MILWAUKIE
Dogwood City of the West

Advisory Group – Natural Resources Overlay Project Meeting Summary

Community Room, Public Safety Building
3200 SE Harrison St

6:30 p.m., Wednesday, March 31, 2010

Attendees

Public: *(affiliation listed in parentheses)*

Robert Smith *(affected resident)*
Tonia Burns *(North Clackamas Parks & Recreation District)*
Ted Evans *(North Clackamas School District)*
Christopher Burkett *(affected resident)*
Greg McGowan *(affected resident)*
Dick Shook *(North Clackamas Urban Watersheds Council)*
Gary Michael *(affected resident)*
Brad Smith *(affected resident)*
Teri Melnichuck *(affected resident)*
Steve Melnichuck *(affected resident)*
Don Jost *(affected resident)*
Nikki Cerra *(Clackamas County Soil & Water Conservation District)*
Shirley Stageberg *(Milwaukie Presbyterian Church)*
Mart Hughes *(natural resources manager)*
Jason Smith *(Blount, Inc.)*

City/Metro Staff:

Brett Kelver *(Planner, project manager)*
Katie Mangle *(Planning Director)*
Nicole West *(Community Dev. Coordinator)*
Lori Hennings *(Natural resource scientist with Metro)*

1. Welcome

Brett welcomed the group and reviewed the agenda. The primary goal of the meeting was to take a focused look at the areas the City is proposing to cover with the Habitat Conservation Area (HCA) designation, which will be in addition to the existing Water Quality Resource (WQR) areas. With assistance from Lori Hennings of Metro, would also try to clarify the methodology Metro used to designate HCAs. Following that explanation, the group would break down into smaller groups to examine more detailed sections of the proposed resource maps, with a chance to make comments and recommendations about each section.

2. Mapping Methodology

Baseline: Water Quality Resource (WQR) areas and Habitat Conservation Areas (HCAs)

Brett began by reiterating the differences between WQR areas and HCAs, regarding what elements or features they protect and how they are represented on the resource map. The regulations corresponding to each designation represent the ways that Milwaukie and other local jurisdictions are complying with statewide land use planning goals.

Back in 2002, Milwaukie implemented the WQR rules, which came from Metro Title 3 and Statewide Goal 6. The WQR rules are very protective of wetlands and streamside areas and are generally designed to send most development proposals directly to the Planning Commission for a very discretionary review, especially for large construction projects. The map is a general indicator of where the water quality resource is (based on wetland delineations and inventories of water resources) and shows the corresponding 50-foot buffer areas measured from top-of-bank or edge of the wetland.

Now, Metro is again helping local jurisdictions stay in compliance with statewide goals. The HCA rules established under Metro Title 13 deal with Statewide Goal 5 and focus on natural resources in general. The intention is to develop regulations with options for both non-discretionary (clear and objective) and more discretionary reviews for proposed activities within designated HCAs.

Questions (Q) from the group and Answers (A):

Q: Why is edge-of-bank used as the measurement place for WQR areas? Is this written in stone?

A: Since the actual water level in a stream will fluctuate over time, the edge or top of the stream bank is viewed as an indicator of the ordinary high-water mark. Therefore, edge-of-bank is generally considered to be a good starting point for measuring the vegetated buffer for WQR areas. However, there may be other site-specific factors that would determine where to start measuring the buffer.

Lori added that the resource inventory was done at a certain spatial scale that did not capture all details on individual properties. Detail on the meander of individual streams came from the County, and most streams ended up being just straight blue lines on a zoomed-out map. Analysts measured and mapped WQR areas as 50-foot buffers based on that data.

Q: Why did analysts use the stream bank to determine the stream buffer when property ownership generally extends to the center of the stream?

A: If the center of the stream was used in determining the riparian buffer, wider streams would have smaller vegetated buffers on the bank. For example, a 30-foot-wide stream would measure 15 feet from the center and then produce only a 35-foot buffer on each bank; a 2-foot-wide stream would measure 1 foot from center and have a 49-foot buffer on the bank. The idea was to protect streamside areas equally and consistently.

Q: Regarding WQR/HCA boundary verification, is it correct to say that the field verification would focus on establishing the WQR area boundary rather than the existence of the water resource itself?

A: That is correct. The intent of field verification is to determine the boundary of the WQR area, including the vegetated buffer, not to add or remove a water resource from the mapped inventory. Removing or adding an incorrectly mapped water resource is a longer process.

Q: On the proposed maps, why are some areas that are either mowed or covered with invasive species (like English ivy) designated as HCAs if they are not providing a habitat function?

A: The Planning staff is aware that there are inaccuracies on the draft maps. Part of the intent of tonight's meeting is to have the group raise such questions so we can all better understand how the resource inventory was conducted. We also want to note significant mapping errors in order to make the new natural resource maps as accurate as possible.

Lori explained her understanding that Title 13 is primarily intended to protect undeveloped areas, with allowance for certain amounts of disturbance under the exempt category. Katie and Brett clarified that lots with existing development are not necessarily exempt from the rules. Building an addition, exceeding the allowed amount of disturbance, or doing some other activity not listed as exempt will trigger compliance with the new HCA rules, even on an already developed lot.

Metro's inventory and analysis of HCAs

Brett and Lori explained how the Title 13 inventory was done. The mapping process started in the late 1990s with aerial photography that identified natural resource areas. Lori noted that under Statewide Goal 5, Metro was required to conduct two types of inventories: a fish/riparian inventory and a wildlife inventory. The fish habitat inventory began with a very extensive scientific literature review. The inventory also looked at important ecological indicators and considered elements necessary to protect urban streams from toxins, such as recruitment of large woody debris, etc. They clustered these important ecological functions into five groups and identified what would get mapped according to each criterion. Each area of the maps was scored according to these ecological indicators. Floodplain and wetlands were very important in this inventory.

Secondly, Metro conducted a wildlife habitat inventory. Lori acknowledged that Metro's data was somewhat limited to aerial photographs and basic knowledge of the streams. They took a landscape ecology approach and looked at relative size of habitat, connectivity, and shape of habitat. She explains that they tried to favor "big and round" areas versus "long and skinny" habitats because long and skinny areas have more "edge" that can come into contact with the many aspects of urban degradation. Each of these factors was modeled in a computer GIS (Geographic Information Systems) program.

Then ecologists mapped by hand the areas of native oak habitat and the associated wildlife, wetlands, floodplain, and bottom-land hardwood forest (cottonwood, alder, ash) and overlaid it on the inventory. They scored the quality of the habitat according to the five ecological indicators. Lastly, they put the two inventories together and developed three classes of habitat (high, medium, low). One main point of Goal 5 was to do the inventories with a socio-economic cross reference. The hypothetical value of the habitat area was ratcheted down if it had high urban development value.

Pointing at one of the resource inventory maps, Brett noted that most of what we are dealing with in Milwaukie is riparian habitat, focused on Kellogg and Johnson Creeks. He distributed a document encapsulating the City's understanding of how Metro did the inventory. Lori noted that a similar handout from Metro was also available.

Brett addressed the reoccurring issue of whether volunteer restoration activities on one's property will indirectly invite increased regulation on one property. He acknowledged that restoration activity could result in an expansion of designated HCAs, should a full inventory be conducted in the future. However, the City does not have the funding to do that level of assessment in the near future. The Metro process took over 10 years and there is no indication that Metro will re-do the HCA inventory anytime soon. Brett reminded the group that although the prime motivation of this Natural Resources Overlay project is to comply with Metro's Title 13, Metro designed Title 13 in large part to help the local jurisdictions of the Metro region comply with state goals and rules. Lori noted that the state goals are in turn structured to help Oregon meet federally mandated laws, such as the Clean Water Act (CWA). One of the key ways for local jurisdictions to comply with the CWA is to be in compliance with Title 13.

Process for amending/updating the map

Once the new code and its corresponding map are adopted, they are the tools that will direct the City's action and affect property owners. For this reason, one of the evening's goals was to identify possible mapping errors. Given that the proposed code includes provisions for making small adjustments to the map without requiring a complicated process, it may not be critical to correct every tiny inaccuracy at this stage. However, big corrections should be brought forward now because once the map becomes official, concerns with the designation of a water resource or with the way that the analysis was done (more than just small shifts in the resource boundary lines) will require a considerably in-depth analysis. Brett called the group's attention to a draft map indicating the "Low HCA" areas that are proposed for removal from the map.

Lori noted that the inventory was not done at a scale intended to be zoomed in on at a tax lot level and that micro-level verification was intended to take place at the local level. She added that some areas within the stream corridor that may not have much actual native habitat could still be designated as "High HCA" because anything within 50 feet of the stream was tagged for habitat protection. There is strong ecological justification to map even low structure shrubs and ornamental, non-native landscaping, and even grass helps protect streams to some degree by filtering limited amounts of sediments from stormwater runoff. She explained that strict regulation within 50 feet of the stream is the bare minimum that is absolutely critical for protecting urban water quality.

In terms of whether small cities with limited resources like Milwaukie should be expected to conduct extensive local-level verification of the maps, Lori said that her experience suggests that major discrepancies or proposed subtractions from the HCA map could be handled in a type of negotiation process where maintaining water quality is the bottom line. Different jurisdictions have chosen to comply in different ways. For example, the City of Wilsonville has designated the "High HCAs" as completely no-touch resources. She suggested that there might need to be some give-and-take where specific map corrections are proposed, since for every small gap that was captured in the resource inventory another area of canopy was probably missed. So property owners should probably expect an effort to see the small discrepancies balance out. In short, Metro does not wish to be unrealistic by expecting the inventory maps to be completely accurate and unchangeable, but protecting water quality will remain a priority when considering proposed changes.

3. Milwaukie's Water Quality and Natural Resource Area Map

Brett provided an orientation to the proposed Water Quality and Natural Resource (WQNR) Area Map. He noted that the WQNR map would be the base for the required construction management plans under the proposed code. He also presented a version of the map that showed aerial photos of properties across the city with the designated resource areas and the proposed 100-foot trigger line.

Brett noted that some areas are paved and are clearly not providing meaningful habitat. He pointed to the "Low HCA" areas that are proposed to be removed from the map. He showed that the City proposes to combine "High" and "Moderate" HCAs into one general "HCA" classification, for easier administration for both property owners and staff. There was a question about the practical effect of losing the "High" and "Moderate" distinctions for property owners. Staff responded that the model code intended the distinctions to come into play mostly for new development scenarios; staff agreed to report back to the group with more information to demonstrate the effect of the proposed change.

4. Map Review Discussion

Brett noted that the aerial-photo version of the map was arranged around the room in different pieces, clustered by general area (e.g., Island Station, Waverly, Johnson Creek, North Clackamas Park). The group broke up and took about 30 minutes to review the various map sections and post comments where they thought changes were needed. Staff agreed to sort through the proposed corrections after the meeting and determine which ones could fit into the scope of the project.

When the group came back together, Brett indicated that these aerial maps would soon be posted on the project website. He noted that anyone with questions about the draft maps or about how their particular property is shown should feel free to give him a call. He asked whether anyone had any observations to share or any highlights of broader issues that came up while reviewing the aerial maps.

There was a question about mitigating for disturbances that do not involve tree cutting, including what exactly qualifies as "disturbance." Brett responded that the answer regarding mitigation depended somewhat on the type of proposed development. Someone asked about mitigation for tree cutting in the public right-of-way. The current rules do not require mitigation for trees removed from

the right-of-way, although that might change the next time those rules are updated. For the proposed natural resource code, tree cutting and removal remains a key issue and staff will continue researching it in order to report back to the group at the next meeting.

Another group member asked whether there was a way to smooth out some of the HCA boundaries on the map. Brett indicated that such smoothing should be possible at this stage and that small corrections in the future should be able to be made fairly easily. One question for tonight was whether the proposed map passes a basic credibility test.

The group asked for further clarification about why the map has such finely parsed lines if it was done at such a zoomed-out scale. Lori responded that the HCA areas were hand-digitized pixel by pixel in GIS, so that what look like nice rounded contours at this scale can seem choppy and strange when zoomed in. Katie added that, for this very reason, the first step in the review process is boundary verification. Brett asked Lori whether it would be possible to get the more recent Metro tree-cover data as an overlay to help us with the mapping that we are doing now. Lori indicated that the tree-cover data, which is from 2007, is very good data and can be made available to the City.

To balance the discussion of suggestions to remove areas from the HCA map, Katie noted comments the break out session during which two people encouraged the City to not give an inch on what has been designated HCA. Their suggestion was that the 50-foot buffer from the stream edge is a relatively tiny requirement and only the bare minimum for stream health. Other agencies like the Bureau of Land Management (BLM) regulate as much as a 200-foot buffer.

Brett asked Lori how deeply the City could go into cleaning up map inaccuracies without running into a need to provide the scientific analysis involved in the original inventory. Lori responded that, ecologically speaking, the goal is to aim for no net loss of protected habitat over time. Any type of gains would be ideal, but "no net loss" should be the rule of thumb.

There was a question about why there are not more strict regulations within the floodplain, which is seen as critical to the function of the waterway. In some cases the floodplain is larger then the WQR area and HCA but would not have the same protections. Lori answered that Metro dealt with the floodplain by taking an inventory of what was undeveloped at the time (which was tricky) and considered the 100-yearr floodplain as well as the 1996 flood area. Then they removed properties that were modeled as "developed floodplain," which were generally the properties that had any pre-existing development.

The questioner noted that that methodology could have resulted in a pre-existing parking lot within the floodplain that would not have been designated for protection, resulting in a property that is available for redevelopment and an intensification that could result in a net loss of floodplain area or function. Lori explained that the inventory was a huge process of compromise, looking for balance in the urban environment. That challenge appears to be huge in light of projected population increases for the region (expansion of one million people by 2025) and where climate-change modeling shows that storm events and flooding will likely become more severe.

5. Next Steps

Brett and Katie explained that City staff has been noting the ideas and concerns that have come up throughout the Advisory Group's meetings and discussions. Staff would like at least one more meeting with the group before the draft code goes forward in the adoption process. The next meeting was set for **Wednesday, April 28, 2010** in the City Hall conference room. (The meeting room in the Public Safety Building proved to be already reserved for another meeting that day.)

The meeting adjourned at approximately 8:45 p.m.