

City takes shellacking from state tribunal

Oregon Land Use Board of Appeals remands Portland's plan for area along the Columbia River



OREGON LAND USE

Edward Sullivan and Carrie Richter

On Jan. 21, the Oregon Land Use Board of Appeals decided multiple challenges to the Portland North Reach River Plan and, in doing so, handed the city its worst planning defeat in almost 20 years.

The NRRP was an ambitious plan covering a 12-mile stretch of the Willamette River from the Broadway Bridge to its confluence with the Columbia River. It included much of the city's heavy industrial areas, some remnant natural areas and some superfund sites.

Among other things, the NRRP would have applied new environmental overlay districts and vegetation enhancement requirements on allowed industrial uses, rezoned 42 acres from industrial to mixed employment, and adopted a new natural resource inventory. Petitioners were generally industrial landowners who challenged these regulatory policies.

LUBA found fault with the city's new planning and regulatory provisions in four principal areas. First, Goal 9 (economic development) requires effects of these efforts to not reduce the supply of industrial lands. The city had adopted a River Environmental overlay zone and Vegetative Enhancement ("VE") regulatory requirements that petitioners contended reduced the amount of industrial lands by requiring either on-site or off-site mitigation. Petitioners contended that the on-site mitigation would reduce the amount of available industrial lands and off-site mitigation sites were also zoned for industrial uses, so the amount of such lands would also be reduced. LUBA said the city must quantify any loss of industrial lands under the RE and VE provisions of the new plan and evaluate the impact on the city's needed industrial lands analysis.

Second, LUBA faulted the city for relying on base data contained in a 2009 Economic Opportunities Analysis that had not been incorporated into the city's comprehensive plan, stating that the EOA could not be used to determine how much land was available for industrial use unless it was in the plan. The City also had a 1989 EOA in its plan; however, that

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analysis was not relied upon and contained no projections for such lands in 2010.

Third, the City replanned and rezoned the 42-acre McCormick & Baxter property from industrial sanctuary to mixed-use employment. Current law regarding such rezoning requires such action to be "consistent with" the most recent EOA. The 2009 EOA could not be used because it was not in the plan and the 1989 EOA did not have a baseline to show rezoning could be consistent.

Finally, LUBA found inconsistency with certain unamended policies of the city's plan, including the Guilds Lake Industrial Sanctuary Plan, with no reconciliation of the two plans demonstrated.

The result is a calamity for the city.

The industrial and manufacturing community believes the city will attempt to get to the same or similar result in future proceedings and may dig in for the long haul. That community cannot make long-term investments until it knows the rules under which it must operate.

Residents in nearby neighborhoods and environmentalists are frustrated because they have aspirations for a more verdant shoreline and environmental restoration.

And the city cannot hope to attract new business to the area until it has a settled plan in place so that it can deal with commerce and industry.

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Edward Sullivan has specialized in land-use law for more than 40 years and is an owner in the Portland office of Garvey Schubert Barer. Contact him at 503-228-3939 or at esullivan@gsblaw.com.

Carrie Richter specializes in land-use and municipal law and is an owner in the Portland office of Garvey Schubert Barer. Contact her at 503-228-3939 or at crichter@gsblaw.com.