



# CITY OF OREGON CITY URBAN RENEWAL COMMISSION AGENDA

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Commission Chambers, 625 Center Street, Oregon City  
Wednesday, October 21, 2020 at 5:30 PM

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*The public is strongly encouraged to relay concerns and comments to the Commission in one of three ways:*

- *Email at any time up to 12 p.m. the day of the meeting to [recorderteam@orc.org](mailto:recorderteam@orc.org).*
- *Phone call (Monday – Friday, 8 am – 5 pm) to 503-496-1505, all messages will be relayed and/or citizens can sign-up to be called during the meeting to provide over-the-phone testimony.*
- *Mail to City of Oregon City, Attn: City Recorder, P.O. Box 3040, Oregon City, OR 97045.*

## CALL TO ORDER

## ROLL CALL

## CITIZEN COMMENTS

## DISCUSSION ITEMS

1. Election of Vice Chair for 2020
2. Environmental Mitigation Banking Presentation by Mr. Herrmann
3. Oregon City Urban Renewal Study Update

## COMMUNICATIONS

## ADJOURNMENT

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### PUBLIC COMMENT GUIDELINES

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*Citizens are allowed up to 3 minutes to present information relevant to the City but not listed as an item on the agenda. Prior to speaking, citizens shall complete a comment form and deliver it to the Staff Member. When the Chair calls your name, proceed to the speaker table and state your name and city of residence into the microphone. To assist in tracking your speaking time, refer to the timer on the table.*

*As a general practice, the Urban Renewal Commission does not engage in discussion with those making comments.*

*Electronic presentations are permitted but shall be delivered to the City Recorder 48 hours in advance of the meeting.*

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### ADA NOTICE

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*The location is ADA accessible. Hearing devices may be requested from the City Staff Member prior to the meeting. Individuals requiring other assistance must make their request known 48 hours preceding the meeting by contacting the City Recorder's Office at 503 657 0891*

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***Agenda Posted at City Hall, Pioneer Community Center, Library, City Web site.***

***Video Streaming & Broadcasts: The meeting is streamed live on Internet on the Oregon City's Web site at [www.orcity.org](http://www.orcity.org) and available on demand following the meeting. The meeting can be viewed live on Willamette Falls Television on channel 28 for Oregon City area residents. The meetings are also rebroadcast on WFMC. Please contact WFMC at 503 650 0275 for a programming schedule***



# CITY OF OREGON CITY

## Staff Report

625 Center Street  
Oregon City, OR 97045  
503-657-0891

**To:** Urban Renewal Commission  
**From:** City Recorder Kattie Riggs

**Agenda Date:** 10/21/2020

### SUBJECT:

Election of Vice Chair for 2020

### STAFF RECOMMENDATION:

Staff recommends electing a Vice Chair for the remainder of 2020.

### BACKGROUND:

Resolution No. UR12-03 sets guidelines for the Urban Renewal Commission related to the election of its chair and vice chair. Below are excerpts from the bylaws to provide guidance related to the election.

#### ARTICLE III -OFFICERS AND PERSONNEL

**Section 1. Officers:** The officers of the Urban Renewal Commission shall be a chair and vice chair. Officers, who may be members of the City Commission except that the Mayor may not be an officer. At least one of these officers during any given term should not be a City Commissioner.

**Section 2. Chair:** The chair shall be elected by the Board members of the Urban Renewal Commission and shall preside at all meetings of the Agency Board. Except as otherwise authorized by Board Members, the chair shall sign all contracts, deeds, and other instruments made by the Agency.

**Section 3. Vice Chair:** The vice chair shall be elected by the Board members of the Urban Renewal Commission and shall perform the duties of the chair in the absence or incapacity of the chair; and in case of resignation or death of the chair, the vice chair shall perform such duties as are imposed on the chair until such time as the Board shall elect a new chair.

**Section 4. Executive Committee:** The Mayor, the Chair and Vice Chair shall comprise the Executive Committee of the Urban Renewal Commission. They shall assist and advise the City Manager where requested in Urban Renewal Commission business matters, Urban Renewal Commission briefings, project review and agenda preparation.

The Executive Committee shall perform such other duties and functions as may from time to time be required by the Urban Renewal Commission or by the by-laws or rules and regulations of the Agency.

**Section 5: Election or Appointment:** The chair and vice chair shall be elected annually by the Board members at the first regular meeting of the Urban Renewal Commission each year, and shall hold office for one year or until their successors are elected and qualified.

**OPTIONS:**

1. Elect a Vice Chair for the remainder of 2020.
2. Hold-off and in January 2021 elect a Chair and Vice Chair.
3. Provide staff direction with any other option the Commission seeks to take.



# CITY OF OREGON CITY

## Staff Report

625 Center Street  
Oregon City, OR 97045  
503-657-0891

**To:** Urban Renewal Commission  
**From:** City Manager, Tony Konkol

**Agenda Date:** 10/21/2020

### **SUBJECT:**

Environmental Mitigation Banking Presentation by Mr. Herrmann

### **STAFF RECOMMENDATION:**

Presentation and discussion

### **EXECUTIVE SUMMARY:**

Mr. Herrmann will be providing a presentation to the Urban Renewal Commission concerning the opportunity to create an environmental mitigation bank program at the Cove and the surrounding area. Mr. Herrmann has provided the following information: 1) Cove Mitigation White Paper (attachment 1); and 2) Cove History (attachment 2). Staff has included the following attachments as background information about mitigation banking programs: 3) Understanding the Basics of Mitigation Banking (attachment 3); and 4) The Rinearson Natural Area Agreement between Rinearson Natural Area, LLC and the City of Gladstone (attachment 4).

### **BACKGROUND:**

As described in "Understanding the Basics of Mitigation Banking" (attachment 3), mitigation banking is a system of credits and debits devised to ensure that ecological loss, especially to wetlands and streams resulting from various development works, is compensated for by the preservation and restoration of wetlands, natural habitats, streams, etc. in other areas so that there is no net loss to the environment.

According to the National Mitigation Banking Association (NMBA), mitigation banking is defined as "the restoration, creation, enhancement, or preservation of a wetland, stream, or other habitat area undertaken expressly for the purpose of compensating for unavoidable resource losses in advance of development actions, when such compensation cannot be achieved at the development site or would not be as environmentally beneficial."

A mitigation bank is a site developed for the purpose of off-setting other off-site environmental impacts. The person or entity undertaking such restoration work is referred to as a mitigation banker. Just as a commercial bank has cash as an asset that it can loan to customers, a mitigation bank has mitigation credits as its assets that it can eventually sell to those who are trying to offset mitigation debits. Generally these purchases of mitigation credits are individuals or entities undertaking commercial projects.

As part of the Cove project the URC entered into an agreement with RestorCap to investigate the possibility of a mitigation bank program along certain areas of the Cove. The project did not advance and there has been insufficient research and study completed to determine if there is an environmentally beneficial restoration program that is economically feasible at the site.

**OPTIONS:**

1. Provide direction to staff if any additional work is necessary at this time.

# Clackamette Cove and Mitigation

## White Paper

**"A white paper is an authoritative report or guide that informs readers concisely about a complex issue and presents the issuing body's philosophy on the matter."**

This document prepared by members of the Rivers Assets and Opportunity Task Force. Members include Oregon City business Alliance, Rivers of Life Center, County and Water Environment Officials, and Citizens of Oregon City. We have been meeting quarterly for 24 months.

### **I. What are the Problems to be Addressed**

- Water quality has been contaminated 6 out of the 10 years and posted several times by the Oregon Health Authority, "No Human Contact"
- Cove lands not scheduled for immediate improvements through Development DDA's are heavily invaded by invasive, garbage, and debris; Those lands are approximately 20 acres of the coves 50 upland acres
- Previous DDA's did not address areas adjoining Clackamette Park for improvement; Approximately 10 acres
- Previous DDA's focused on the east shore and uplands of phase 2 including expensive grading were difficult to execute due to multiple Natural Resource Agencies oversight

**Of all the problems listed, water quality and improvements to uplands not scheduled in phase 2 are significant challenges.**

### **II. Background**

- The city invested \$50,000 in a comprehensive Water Quality Study that provided options to remedy poor water quality (2018/2019 Study)
- Professionals from Cascade Environmental Group, Oregon Department of Fish and Wildlife, Oregon State Lands Division, and others created the Water Quality Study and suggestions for remedy.

- Those same professionals participate in discussions with RestorCap, a mitigation planning and funding organization, and others to address degraded lands, habitat, and public use areas conceptualization
- These efforts cost the city \$50,000 plus significant donated work by professionals and agency members mentioned
- The cove degraded water quality has put a “stain” on the public's mind about contact with waters in late summers; citizens and the general public have been prohibited from water contact during these algal bloom events
- The city received and holds a dredging permit from the Oregon State Lands Division and US Army Corp of Engineers to deal with water quality. This encumbered a good deal of staff time to first receive and then maintain in effect.

**These investments set the stage for successful mitigation strategies and funding.**

### **III.WHO OR WHAT OTHER COMMUNITIES ARE DOING TO ADDRESS THE PROBLEMS**

- Meldrum Bar Park has three areas that were experiencing water quality issues and restrictions to safe public access. They included: Dahl Beach and Park, Rinearson Creek, Wetlands, debris, garbage and other vegetation cleanup, and Meldrum Park Revetment which collapsed in the river over an existing natural gas pipeline (City had very limited funds and mitigation strategies were established. Over 30 acres of city lands were restored and made usable for citizens and fish and wildlife; these projects total nearly \$10 million in terms of investment and new value)
- The city of Portland, the Port of Portland, the Portland Development Commission, and other private companies have worked through mitigation strategies to enhance and improve several thousand acres at various sites for the purposes of economic development and community enhancements and benefits to people and wildlife. (Because many of those sites were or are still industrial lands, a “Lower Harbor Trust Fund” was established to look for upriver sites

as far as Wilamette Falls to find opportunities to solve Portland's Harbor impact problems)

- City of Milwaukie is now working with mitigation professionals to establish strategies and an overall theme for Kellogg Lake and the removal of a fish passage dam on some 30 plus acres of city owned land. They see this as “community building” and wish to involve their citizens and community volunteers in the mitigation fundable work. This area has severe water quality problems similar to Clackamette Cove and they will be addressed and solved through mitigation funding. **These communities receive professional planning, design, project management and long-term maintenance through mitigation strategies that require little investment of those cities' funds. RestorCap is an organization that provided the City of Oregon City a preliminary concept and agreement in January of 2019; this type of agreement was what was successfully used in other communities**

#### **IV. WHAT ARE THE STRATEGIES AND PROGRAMS USED TO ADDRESS THE PROBLEMS THAT WERE INITIALLY MENTIONED**

Excerpts herewith provided are from the signed RestorCap and the City of Oregon City agreement dated January 15, 2019. **This agreement is out of date and was signed by the City, RestorCap, and Clackamette Cove LLC. Principal David Mooney. A new agreement between Mitigation Bank professionals needs to be executed if the City wishes to move forward.**

Excerpts are as follows:

*“RestorCap, L.L.C is pleased to present this non-binding Letter of Interest (LOI) to secure through lease or purchase Oregon City (City) owned land adjacent to Clackamette Cove (Cove) for the purposes only and does not constitute an agreement or commitment of any person or party to negotiate, enter into or consummate any transaction, including the transaction contemplated hereby, and is merely intended to serve as a general outline of the significant terms under which the parties would be willing to consider entering into an agreement after further diligence. In the lower Willamette there are three primary mitigation markets in place or in development, including: 1) Wetlands and waters of the U.S.;*

*2) Natural Resources Damages Assessment (NRDA); and 3) endangered species conservation. Each of these markets could be available to a mitigation bank in the Cove because of its location. Developing a mitigation bank in the Cove could provide both restored habitat and revenue over time... RestorCap will, at its expense, commission an appraisal of the property which will be approved by City prior to such commissioning. The appraised value may be used as a basis as a lease or purchase price, subject to the approval of both parties and by the suitability of the property to produce a viable mitigation bank. RestorCap may develop a proposal whereby profit sharing among RestorCap, the City, and The Cove, L.L.C is possible."*

## **V. WHAT IS YOUR RECOMMENDATION TO ADDRESS THE PROBLEM**

- The problems mentioned could be addressed through city funding but many are eligible for mitigation funding if an updated agreement with RestorCap can be executed.
- Water quality, dredging permits, and other challenges related to health and welfare of Oregon City's citizens and visitors can best be addressed through professionals through the City's past Water Quality plan.
- The city should proceed due to previous investments of city funds and staff time on the path of mitigation funding to solve the problems. It is what other cities are doing and have done, and the city should be in the que for similar mitigation support.
- Lastly, the cove appears to be stalled in the minds of many and could proceed with mitigation support as Milwaukie is by establishing a community vision and theme. That theme could be built around the internationally known successes known by Fredrick Ohm Almstead and his brothers, now deceased, to showcase the built environment in harmony with the natural environment. Their work included: New York City's Central Park, Minneapolis' Riverscapes, Longview Washington's Lake Sacagawea, all of Portland's park blocks, and Forest Park. Their projects included community building through volunteerism and citizen effort

## VI. ANY PROBLEMS ANYONES EXPERIENCED?

1. The city of Portland was working with, then, Gov. John Kitzhaber to establish a trust fund that would help business and industry meet the needs of a "Lower Harbor Cleanup." extreme environmental interests were at the same time advocating for EPA to come in and list the Lower Harbor as a Superfund Site. The battle nearly killed the cleanup of nearly 100 riverside businesses, City and Port of Portland assets. **To date over 1000 acres have been cleaned up in spite of the battle, using "mitigation strategies."**
2. City of Gladstone: has utilized mitigation strategies for nearly 100 acres. There were difficulties with a contractor working under the supervision of the mitigation professionals. That function was replaced by mitigation professionals without impacting the city and the work got done.
3. Milwaukie is now "In The Cue" to receive assistance. **Mayor Gamba and his counsel are excited to be the next site. Mitigation professionals are leading the process with the Commission and Mayor.**
4. Oregon City has a chance to get "In The Cue" and should act as others are "looking."

### LETTER OF INTEREST

April 16, 2018

City of Oregon City  
625 Center Street  
Oregon City, OR 97045

Attention: Mr. Dan Holladay, Mayor; Tony Konkol, City Manager; J. David Mooney, The Cove LLC

Re: Mitigation Bank, Clackemette Cove

Dear Sirs:

RestorCap, LLC is pleased to present this non-binding Letter of Interest (LOI) to secure through lease or purchase Oregon City (City) owned land adjacent to Clackemette Cove (Cove) for the purposes of creating a federally approved mitigation bank. This LOI for discussion purposes only and does not constitute an agreement or commitment of any person or party to negotiate, enter into or consummate any transaction, including the transaction contemplated hereby. This proposal is only a statement of the current intentions of the parties to the transaction contemplated hereby, and is merely intended to serve as a general outline of the significant terms under which the parties would be willing to consider entering into an agreement after further diligence.

#### **Mitigation Bank**

In the lower Willamette there are three primary mitigation markets in place or in development, including: 1) Wetlands and waters of the U.S.; 2) Natural Resources Damages Assessment (NRDA); and 3) endangered species conservation. Each of these markets could be available to a mitigation bank in the Cove because of its location. Developing a mitigation bank in the Cove could provide both restored habitat and revenue over time. Developing a bank in the Cove would entail upfront costs to engage state and federal agencies to design, permit, and construct the bank. The primary agencies that regulate banks are the Oregon Department of State Lands, and the Corps of Engineers (wetland mitigation) and/or NMFS and U.S. Fish and Wildlife (NRDA and conservation banking). The Oregon Department of Fish and Wildlife (ODFW), local tribes, Oregon Department of Environmental Quality, and local governments also serve in an advisory role for mitigation bank development.

## **Price/Appraisal**

RestorCap will, at its expense, commission an appraisal of the Property which will be approved by City prior to such commissioning.

The appraised value may be used as a basis as a lease or purchase price, subject to the approval of both Parties and by the suitability of the property to produce a viable mitigation bank. RestorCap may develop a proposal whereby profit sharing among RestorCap, the City, and The Cove, LLC is possible.

## **Diligence Contingency**

Before moving forward to definitive documentation for the transaction, RestorCap will have a sufficient time period to conduct due diligence on the Property. RestorCap's diligence may include, without limitation, determination of the suitability of the Property for use as a mitigation/habitat restoration site, RestorCap's review and approval of the entitlement, permitting and condition of the Property and of such financial, physical, engineering, environmental, geological and other audits, studies, reports, surveys physical inspections and investigations of the property which RestorCap desires. City will cooperate with RestorCap to provide any necessary information to complete such due diligence.

## **Non-Binding Proposal; Preparation of Transaction Documents**

This proposal is contingent upon, among other things, an opportunity to perform significant diligence of the Property and the negotiation and execution of satisfactory definitive documentation. Except for the Exclusivity and Access paragraphs below, these terms do not constitute any form of binding contract but rather are solely for the purpose of outlining those terms pursuant to which a definitive agreement may ultimately be entered into. Notwithstanding the foregoing, the parties agree to negotiate the definitive transaction documents in good faith and use their commercially reasonable efforts to enter in to agreements as soon as reasonably possible. The

definitive transaction documents will incorporate all of the terms set forth in this proposal and such additional terms as RestorCap or City may reasonably require.

**Exclusivity**

From and after acceptance of this letter, and until twelve (12) months following the date of this letter, City will not offer to sell or lease the Property to any other party or accept any offers related to the Property without the prior written consent of RestorCap.

**Access**

City authorizes RestorCap and its representatives to: (a) enter the Property to conduct due diligence, subject to 24 hour prior notice provided by RestorCap; (b) discuss the potential use of the Property as a mitigation/habitat restoration project with appropriate agencies for permits and approvals including but not limited to the Portland Harbor Trustee Council, the Army Corps of Engineers, Oregon State Department of Natural Resources, (c) discuss preliminary feasibility with the credit market that may include industrial and governmental agencies.

**ACKNOWLEDGED AND AGREED:**

Dated: 1/15/19

RESTORCAP LLC

By: [Signature]

Name: ROBERT MARINAI

Title: PRESIDENT

THE COVE LLC

By: [Signature]

Name: J.D. Mooney

Title: President

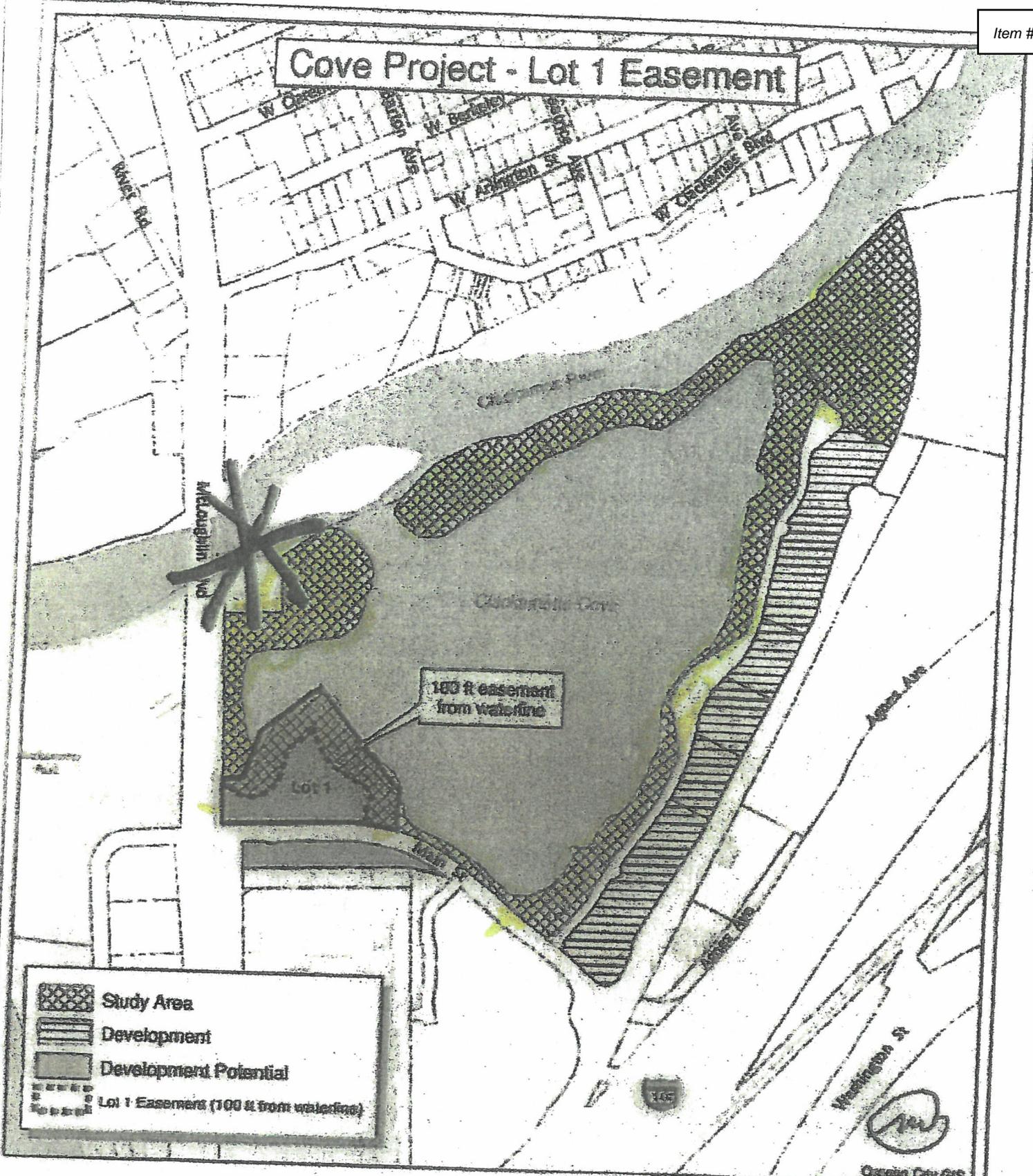
Oregon City

By: [Signature]

Name: Anthony J. Kunkel III

Title: City Manager

# Cove Project - Lot 1 Easement



- Study Area
- Development
- Development Potential
- Lot 1 Easement (100 ft from waterline)

The City of Eugene City maps do not provide any warranties or implied warranties of the information and accuracy of the information displayed. This map is not suitable for legal, engineering, or surveying purposes. The user assumes all responsibility for any errors or omissions.



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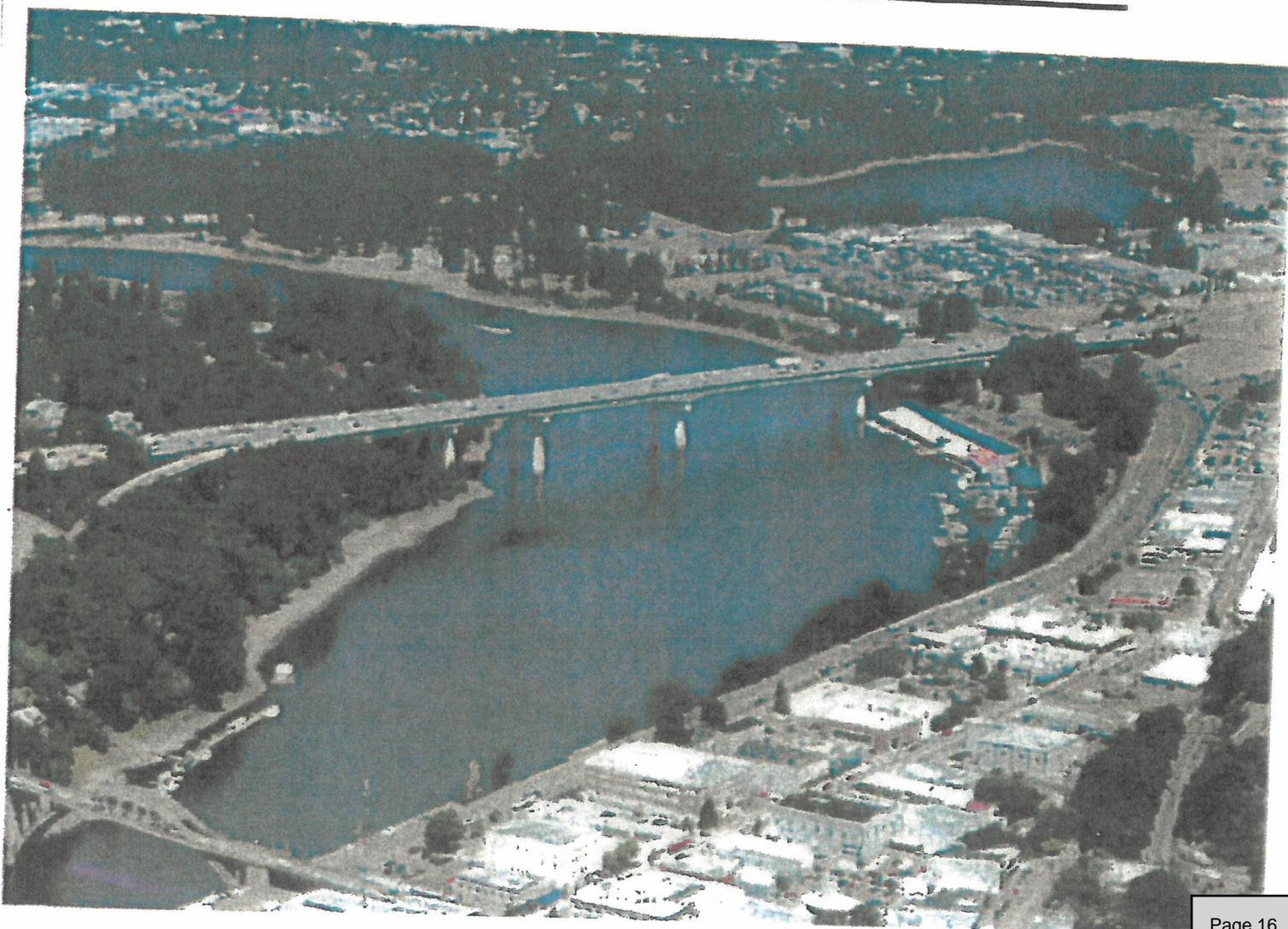
Date: 12/12/14  
 Map Date: 12/12/14  
 File Name: Lot 1 Easement - 8\_Site - 12/12/14.apr

Rivers of Life Center  
Contact Jerry Herrmann at

(503) - 260 - 3432

or at

[riversoflifecenter@gmail.com](mailto:riversoflifecenter@gmail.com)



# Ways to Secure Other Funding for Clackamette Cove Improvements

## History

The city, through its urban renewal agency, commenced a structured program with developers to remediate disturbed lands, create economic value, and ultimately make Clackamette Cove the feature of the North End District.

### TIMELINE:

- 2009: Lands consolidated, city commits \$10,000,000 to assist in infrastructure. ( URC Funds)
- 2010: Urban Renewal district purchases \$3,000,000 in design and professional work of others.
- 2011/ 2012: Citizens vote for initiative limiting urban renewal expenditures.
- 2012/ 2013: Developer seeks to solve loss of urban renewal funding previously committed; “Vertical housing tax abatement” received project proceeds.
- 2014: Davis/ Bacon prevailing wages threaten project; Developer and city seek abatement through Bureau of Labor and Industries, METRO and others. Abatement received project can then proceed.
- 2015/ 2016: Parking for office component in Phase Two was to be supported with a land lease from Tri-City; Tri-City backed away; Phase Two threatened. Office complex was dropped and project Phase Two had to be redesigned. New design had to increase number of town houses to pay for entire underground parking.

## CURRENT STATUS:

- 2017: The Urban Renewal Commission was told of the mitigation opportunities available for the Cove and the North End District of the city that could help with projects as long as wildlife enhancement was a consideration. **The commission agreed to proceed with mitigation strategies.**
- 2018: City authorizes \$50,000 for water quality study which begins preparations for mitigation process. (study completed), and also identifies possible mitigation areas.
- 2018/ 2019: Formal agreement is received for consideration by city by RestorCap. (mitigation professionals and fund managers). **City has not moved forward on mitigation opportunity; RestorCap effort is stalled. Other cities, Gladstone, Milwaukie, Portland, have received funding from RestorCap or are in que to receive same.**

## What RestorCap and Professionals Could Do

- RestorCap Professionals with city, ecologists and green designers evaluate the Cove for fundable projects.
- They design and let contracts with city to accomplish improvements.
- They manage all work onsite; **They are willing to involve volunteers and community members to build the project “with the community.”**
- They manage the long term establishment of the project and receive funding to maintain investments through mitigation funding. **Thus the city and its citizens have a fully executed project supported for long term maintenance and use.**

## Opportunity in Summary

1. The city approved the concept of mitigation in 2016/ 2017.
2. The city expended \$50,000 on a Water Quality Study that set in place approaches for mitigation.
3. RestorCap submitted an agreement which the city signed as a “letter of intent” to proceed in 2019. **That letter of intent needs to be updated if the city wishes to proceed.**
4. The public is confused as to what is or is not happening in the Cove. **Proceeding with mitigation strategies and work onsite with mitigation funding that could involve volunteers and community members would give clarity to a stalled project.**
5. Other areas of the North End District such as End of the Oregon Trail, Washington ST, Metro Wetlands and 8 acres of adjoining “jug-handle” wetlands could receive mitigation assistance since they all contribute to water quality in Clackamette Cove. Clackamette Park could receive assistance with riverside vegetation plantings, interpretive trails, and boat ramp improvement features as long as wildlife habitat enhancement and education is a theme.
6. **Community members and residents of Cove-Phase One have come forward with a theme desiring to celebrate the “built-environment” with a nature scape tasteful to all. They feel following the internationally renowned work of Fredrick Law Almstead and his brothers and integrating their name as a major theme at Clackamette Cove would send a huge signal of excellence to the community, potential funders and the region that Clackamette Cove will be the best of the best for recreation, living and lifestyle.** ( Their work includes New York’s Central Park, Portland’s Forest Park, Longview’s Lake Sacajawea and Park, Portland’s Park Blocks. In all cases they celebrate the Built environment and nature as key endeavors.

## **NorthEnd Projects**

### **Possibly Fundable**

- 1. Clackamette Cove improvements. ( trails, vegetation, water quality and dredging, nature park elements.**
  
- 2. End of the Oregon Trail Naturescape. ( trails, vegetation, nature based interpretive signage).**
  
- 3. Washington ST. Bioswales and wetlands. ( enhancements to existing vegetation and previously built “jug/ handle” wetlands).**
  
- 4. Clackamette Park Naturescape, ( new riverside trails, new riverside vegetation, boat ramp buffers and resolution of dispute.**

# Understanding The Basics Of Mitigation Banking

By Vikram Jhawar

## What is Mitigation Banking?

Mitigation banking is a system of credits and debits devised to ensure that ecological loss, especially to wetlands and streams resulting from various development works, is compensated for by the preservation and restoration of wetlands, natural habitats, streams, etc. in other areas so that there is no net loss to the environment. To mitigate means to reduce the severity of something, in this case, the damage caused to the environment.

According to NMBA (National Mitigation Banking Association), mitigation banking is defined as “the restoration, creation, enhancement, or preservation of a wetland, stream, or other habitat area undertaken expressly for the purpose of compensating for unavoidable resource losses in advance of development actions, when such compensation cannot be achieved at the development site or would not be as environmentally beneficial.”

A mitigation bank is a site developed for such a purpose. The person or entity undertaking such restoration work is referred to as a mitigation banker. Just as a commercial bank has cash as an asset that it can loan to customers, a mitigation bank has mitigation credits as its assets that it can eventually sell to those who are trying to offset mitigation debits. Generally these purchasers of mitigation credits are individuals or entities undertaking commercial projects.

There are two types of mitigation banks:

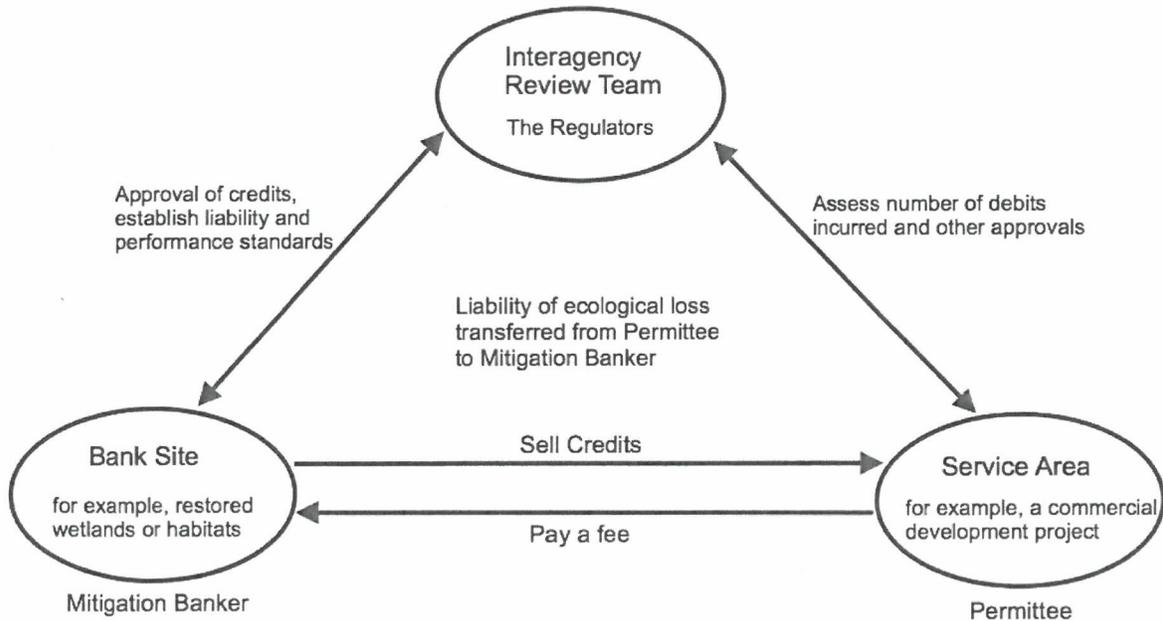
- **Wetland or stream banks**, which offer credits to offset ecological losses that occur in wetlands and streams. These are regulated and approved by the USACE (U.S. Army Corps of Engineers) and the USEPA (U.S. Environmental Protection Agency).
- **Conservation banks**, which offer credits to offset losses of endangered species and/or their habitats. These are regulated and approved by U.S. FWS (Fish and Wildlife Service) and NMFS (National Marine Fisheries Service).

## How Does It Work?

The mitigation banker, after purchasing an environmentally damaged site that they wish to regenerate, works with regulatory agencies such as the MBRT (Mitigation Banking Review Team) and the CBRT (Conservation Banking Review Team) that approve plans for building, maintaining and monitoring the bank. These agencies also approve the number of mitigation credits that the bank may earn and sell with a particular restoration project. These mitigation credits may then be bought by anyone who plans to undertake commercial development on or near a wetland or stream that will in the process negatively impact the ecosystem of that region. The mitigation banker is responsible for not just the development, but also the future upkeep and maintenance of the mitigation bank.

The US EPA (United States Environmental Protection Agency) has defined four distinct components of a mitigation bank:

- **The bank site:** the physical acreage that is restored, established, enhanced, or preserved.
- **The bank instrument:** the formal agreement between the bank owners and regulators establishing liability, performance standards, management and monitoring requirements, and the terms of bank credit approval.
- **The Interagency Review Team (IRT):** the interagency team that provides regulatory review, approval, and oversight of the bank.
- **The service area:** the geographic area within which permitted impacts can be compensated for at a given bank.



## History

- The Clean Water Act (CWA) was passed in 1972. Section 404 and two other provisions of the CWA made it compulsory to avoid and minimize the impact on designated water bodies and provide compensatory mitigation for unavoidable impacts.
- In 1977, a law requiring federal agencies to take steps to avoid the impact to wetlands was passed.
- In 1988, a national policy of 'No Net Loss' of wetland values and functions with concepts of 'Like kind replacement' and 'Functional as opposed to spatial replacement' emerged.
- The concept of mitigation banking started taking shape when the Clinton administration advocated the use of mitigation banks in federal wetlands programs in 1993.
- The guiding principles released by the U.S. Environmental Protection Agency (USEPA) and the U.S. Army Corps of Engineers (USACE) on the role of mitigation banks in the CWA 404 program were expanded in 1995, with guidelines on the establishment and the use of mitigation banks.

- In 1998, TEA-21 (the Transportation Equity Act for the 21<sup>st</sup> Century) was made into a law, specifying a preference for mitigation banking for transportation projects.
- In 2008, after four years of planning, a federal rule to establish standards for mitigation banks, in-lieu fee programs and individual mitigation (also called permittee-responsible mitigation) was implemented. These standards are consistent with those in the CWA 404.

## **Benefits of Mitigation Banking**

**(1) Protection and conservation of environment:** Mitigation banking aids in protecting nature and its diversity. The impact of increasing industrialization and urbanization on natural habitats, streams and wetlands is inevitable. Mitigation banks provide an opportunity to at least partially offset this impact.

**(2) More efficiency:** A mitigation bank is more efficient in that it ensures that a vast consolidated piece of land is recovered or conserved to offset the adverse impact of developers on a lot of small sites. The economies of scale and technological expertise of a mitigation bank make it more efficient not just in terms of cost, but also in terms of the quality of restored acreage.

**(3) Less time lag and regulatory ease:** It is easier for developers to buy credits from an approved bank than to get regulatory approvals that might otherwise take months to procure. As mitigation banks have already restored units of affected acreage in the process of earning credits, there is little to no time lag between the environmental impact at a service area and its restoration at a bank site.

**(4) Transfer of liability:** The system of mitigation banking effectively transfers the liability of ecological loss from the developer (also called permittee) to the mitigation banker. Once the permittee buys the required credits as per regulations, it becomes the responsibility of the mitigation banker to develop, maintain and monitor the site on a long-term basis.

## **Current State**

Currently, there are a number of mitigation banks approved in the United States. According to NMBA, as of January 2010, there were over 950 mitigation banks

approved by the USACE and USEPA, covering over 960,000 acres of restored wetlands, streams and habitats. As of January 2009, there were over 90 conservation banks approved by the FWS protecting over 90,000 acres of endangered wildlife habitats.

### **Challenges and Concerns**

The foremost challenge to the success of mitigation banking is the difficulty encountered by regulatory agencies in correctly assessing ecological loss in economic or monetary terms. The credits offered to mitigation banks have to be appropriately priced and evaluated by regulators, but although these agencies make use of a number of environmental assessment techniques, it is not an easy task to fully capture the economic impact of such damage caused to natural resources.

It is also questionable whether the natural habitats and wetlands that took centuries to evolve can be artificially engineered in a span of just a few years. In some cases, the quality of such artificially developed wetlands in terms of floral and faunal diversity has been found to be sub-standard, compared to their natural counterparts.

It is also believed that mitigation banks, as opposed to individual mitigation where developers create their own mitigation sites in the vicinity of acreage destroyed, tend to be located far from the sites of impact, and hence cannot fully replicate the site impacted.

### **The Bottom Line**

Mitigation banking is a system by means of which the liability of ecological damage is transferred from the permittee to the mitigation banker through a system of credits and debits under regulatory guidelines. A mitigation banker develops, restores, preserves and manages the acreage at a bank site and earns mitigation credits, which are then sold to a permittee or developer for a fee. This system, despite some of its limitations such as the lack of robust environmental assessment techniques and poor quality of natural diversity in some cases, still has a lot of advantages. With increasing private investment in the development of mitigation banks and research on ecosystems as well as easing regulatory controls, the future for mitigation banking is indeed bright both for investors and for nature.

RINEARSON NATURAL AREA AGREEMENT

THIS RINEARSON NATURAL AREA AGREEMENT (the "Agreement") is made and entered into as of this 21 day of Feb, 2013<sup>14</sup>, by and between RINEARSON NATURAL AREA, LLC, an Oregon limited liability company (the "Company"), and the CITY OF GLADSTONE, an Oregon municipal corporation (the "City").

RECITALS:

A. Certain potentially responsible parties ("PRPs") are working with the United States Environmental Protection Agency and the Oregon Department of Environmental Quality to address certain environmental contamination of the Willamette River designated as the Portland Harbor Superfund Site in Portland, Oregon (the "Superfund Site").

B. The Portland Harbor Natural Resource Trustee Council (the "Trustees") was formed to conduct a natural resource damage assessment (the "NRDA") in connection with the Superfund Site. The Trustees are carrying out the NRDA and anticipate bringing claims against the PRPs for injuries to natural resources ("NRD") under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 USC Section 9601, et seq. The Trustees anticipate settling certain of their NRD claims with various PRPs. Such settlements will likely involve, among other things, the payment by PRPs toward the cost of various restoration projects approved by the Trustees as mitigation for the NRD.

C. The Trustees have identified an area known as the Rinearson Natural Area ("RNA") as a restoration project potentially qualifying as mitigation for a portion of the NRD and, in turn, the settlement of a portion of its NRD claims with the PRPs. The RNA is more particularly described on Exhibit A attached hereto and incorporated herein by reference.

D. The City is the owner of the portion of the RNA shown as delineated on Exhibit A (the "City Project Area").

E. The Company is a private entity engaged in the business of, among other things, pursuing environmental restoration projects and selling the NRD mitigation value of such projects to PRPs in connection with settlement of their NRD liability (the “Business Model”).

F. The Company desires to pursue the Business Model at the RNA (the “Project”).

G. The City desires to have the RNA undergo certain environmental restoration, including, but not limited to, removal of the existing dam, placement of water control structures, and creation of open water areas located near the Robinwood Riviere Property Owners Association’s property.

H. The parties, therefore, desire by this Agreement to establish a framework for working together for their mutual benefit to evaluate the feasibility of the Project and, if feasible, for pursuing and implementing the same.

#### AGREEMENT:

NOW, THEREFORE, in consideration of the above recitals (which are incorporated herein by this reference), the sum of \$10.00 USD cash that City has paid Company, the mutual covenants herein contained, and such other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties do covenant and agree as follows:

1. Feasibility Study. The Company shall have the exclusive right to (a) evaluate and determine the feasibility of the Project, and (b) if deemed feasible by the Company, to pursue and implement the Project in accordance with the terms of this Agreement. The Company’s feasibility analysis will at least include (i) obtaining, in consultation with the City, the Trustees’ approval of the Project as mitigation for its NRD claims, (ii) obtaining, in consultation with the City, formal approvals and/or permissions for the Project from any and all other landowners necessary to accomplish the Project, (iii) determining the cost of design, construction,

maintenance, monitoring, and stewardship requirements for the Project, (iv) evaluating the costs associated with the Project relative to the potential revenue from the PRPs for purchasing the NRD mitigation credit, (v) obtaining, in consultation with the City, formal commitments from PRPs to purchase NRD mitigation credits generated by the Project, and (vi) obtaining all necessary legal and regulatory approvals for the Project, including construction related permits and land use approvals from City. The City shall cooperate with and support the Company's efforts in connection with and in furtherance of the Company's efforts to evaluate the feasibility of the Project as described above; provided, however, this duty of cooperation and support does not mean the City acting in its governmental capacity is contractually obligated to approve any application or permit within its regulatory jurisdiction that is necessary to complete the Project. If the Company elects to implement the Project, then the Company shall provide written notice to the City to such effect prior to the commencement of construction of any restoration work associated with the Project (the "Implementation Notice").

2. Termination.

(a) If, at any point prior to the Implementation Notice, the Company in good faith determines that the Project is not or is no longer feasible, then the Company shall have the right to terminate this Agreement by giving written notice to that effect to the City. If the Company exercises its right to terminate this Agreement as provided in this subparagraph, then this Agreement shall terminate and be of no further force or effect and, except as otherwise provided in this Agreement, no party shall have any further rights, obligations or liabilities under this Agreement.

(b) If, at any point after the Implementation Notice, the Company in good faith determines that the Project will not produce Revenues equal to or greater than the Costs (i.e., the

Project will result in a financial loss to the Company) based on a reasonably unforeseen and materially adverse increase in Costs and/or shortfall in Revenues (e.g., increases in Costs caused by hidden site conditions or acts of God such as flooding, and/or shortfalls in Revenues based on default by credit purchasers or saturation of the market for NRD mitigation credits by other mitigation projects) relative to those projected by the Company in consultation with the City prior to the Implementation Notice, then the Company shall:

(i) work with the City to establish and implement a plan for permanently stabilizing the physical condition of the City Project Area relative to the Company's construction activities therein in the most economically efficient manner so as to minimize the financial loss to the Company and permanently stabilizing the physical condition of the City Project Area in a manner that is environmentally appropriate (the "Loss Mitigation Plan"); and

(ii) after implementation of the Loss Mitigation Plan, have the right to terminate this Agreement by giving written notice to that effect to the City. If the Company exercises its right to terminate this Agreement as provided in this subparagraph, then this Agreement shall terminate and be of no further force or effect and, except as otherwise provided in this Agreement, no party shall have any further rights, obligations or liabilities under this Agreement.

3. Project Implementation. If the Company does not terminate this Agreement in accordance with Section 2, then the parties shall proceed as follows:

(a) The Company shall, notwithstanding its obligation to consult with the City hereinafter described, be solely responsible for and shall have the exclusive right to, authority for, and discretion over all aspects of the Project to include, without limitation:

(i) the design of the restoration work, the selection and management of the design firm(s) and construction firm(s) for design and construction of the restoration work, the procurement and delivery of which shall be in compliance with Oregon's Public Contracting Code (ORS Chapters 279A, B and C) as applicable;

(ii) the negotiation with adjacent landowners for inclusion of their properties (or portions thereof) and/or easements over their property as a part of the Project;

(iii) the negotiation and establishment of the restoration plan, maintenance/monitoring, and any stewardship requirement with the Trustees; and

(iv) the negotiation and sale of the NRD mitigation credit to PRPs.

The Company shall be obligated to consult with the City in connection with taking the actions set forth above in Sections (a)(i-iv). The parties agree that the Company's obligation to consult with the City under this Agreement, shall be defined as keeping the City regularly informed of its substantive activities associated with such obligation, receiving input and responding to questions from the City, and working in good faith to address such reasonable concerns as the City may have without materially and adversely impacting the Project's technical feasibility, timeline, regulatory compliance, or implementation costs.

(b) Pursuit and implementation of the Project shall be at the sole cost and expense of the Company; provided, however:

(i) the City agrees to pay upon request an amount not to exceed \$44,000 for studies required by the Trustees and water right compliance activities in connection with the Project, which is a Project Cost (as defined in Section 3(j)(i) below) and for which the City is entitled to reimbursement from Project Revenues (as defined in Section 3(j)(i) below) consistent with Section 3(j)(i); and

(ii) with the exception of the expense of the studies, water right compliance activities and a portion of the City's legal expenses as described further in Section 3(j)(i), the City shall not be entitled to seek any reimbursement or compensation for any other costs or expenses incurred by the City in connection with the Project and the City shall be limited in its compensation under this Agreement to that expressly provided herein.

(c) The City hereby grants to the Company and all employees, directors, officers, contractors, agents, representatives, and invitees thereof an exclusive, irrevocable license to access and occupy the City Project Area. Such license shall be exercised by the Company solely for the purpose of evaluating, pursuing, implementing, maintaining, and monitoring the Project consistent with this Agreement. Notwithstanding the foregoing, the Company's license shall:

(i) be subject to the right of the City and its employees, officers, contractors, agents, and representatives to enter the City Project Area at any time;

(ii) be subject to the right of the City and its employees, officers, contractors, agents, and representatives to observe and inspect the Company's activities to determine compliance with the terms of this Agreement;

(iii) be subject to the right of the City to allow third-parties (e.g. volunteer organizations, education-related groups, news media, etc.) to temporarily enter the City Project Area for the limited purpose of inspection, education, or public relations and in consultation with Company and pursuant to procedures governing such access as City and Company may mutually agree so as to ensure (1) the safety and security of all affected persons and property, and (2) avoidance of additional costs and/or delay in the implementation of the Project; and

(iv) terminate either upon termination of this Agreement, Company's default under this Agreement, or completion of the Project such that the Company's exclusive

license to access and occupy the City Project Area consistent with this Agreement is no longer required by the Company at which time the Company's rights in and to the City Project Area shall be reduced to that necessary to fulfill any remaining obligations of the Company under this Agreement or any associated agreements with third parties.

The City acknowledges responsibility for any and all liability arising out of the exceptions to the Company's license contained in Section 3(c)(i)-(iii) above (the "Exceptions") and, subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act, will hold the Company harmless from and indemnify and defend the Company for any and all liability, settlements, loss, costs, and expenses ("Loss") in connection with any action, suit, or claim resulting or allegedly resulting from the Exceptions and/or the City's, its employees', officers', contractors', agents', or representatives' acts, omissions, or activities relative thereto; provided, however, the foregoing indemnity shall not apply in the event such Loss is caused by the negligent, reckless, or willful act or omission of the Company, its employees, directors, officers, contractors, agents, or representatives. This indemnity obligation is distinct from any potential indemnity obligations of City pursuant to ORS 30.285 which City specifically disclaims in Section 22 below.

(d) The City shall at all times cooperate with and support the Company's efforts in connection with and in furtherance of this Agreement and the Company's efforts to evaluate, pursue, and implement the Project as described in this Agreement. In the interest of clarity, this duty of cooperation and support does not mean the City acting in its governmental capacity is contractually obligated to approve any application or permit within its regulatory jurisdiction that is necessary to complete the Project. By way of example, Company will need to apply to City for certain land use and construction related approvals to complete the Project. City has a legal duty to

review those applications in an objective and impartial manner according to state law and the City's relevant ordinances, notwithstanding the duty described in this subsection.

(e) The City shall, upon request by the Company, establish such easements or other land use restrictions on the City Project Area as may be required by the Trustees, such other regulatory authority having jurisdiction over the Project or elements thereof, or as may otherwise be necessary in connection with the Project, provided that:

(i) City in establishing such easements or other land use restrictions is not obligated to exercise its power of eminent domain under any circumstances;

(ii) City will not pay any money to obtain such easements or impose such restrictions; and

(iii) the City's code and other relevant regional and state laws permit such restrictions.

(f) Upon complete execution of this Agreement the Company shall diligently proceed to evaluate, pursue, and implement the Project until such time as the Project is complete and/or this Agreement is terminated.

(g) The Company shall keep the City reasonably informed of its progress and activities pursuant to this Agreement in such manner as the parties may mutually agree.

(h) All work performed by or at the direction of the Company pursuant to this Agreement shall be performed in a good and workmanlike manner and in compliance with all applicable laws and regulations.

(i) The Company shall not permit any mechanics' or materialmen's liens to be levied against the City Project Area for any labor or material furnished to the Company or to its agents or contractors; provided, however, that the Company shall not be required to pay or

otherwise satisfy any claims or discharge such liens so long as the Company, in good faith and at its own expense, contests the same or the validity thereof by appropriate proceedings and posts a bond or takes other steps acceptable to the City that stay enforcement of such lien.

(j) All funds received by the Company from the sale of NRD mitigation credits associated with the Project to PRPs (the “Revenues”) shall be allocated as follows:

(i) the Company shall be entitled to use the Revenues to pay or to reimburse itself for the payment of all expenses of the Company pursuant to this Agreement and in connection with the Project (a “Cost” or the “Costs”) to include, without limitation, all design costs, construction costs, permit fees, salaries, wages, taxes, insurance, maintenance/monitoring expenses, and third-party easement expenses. As referenced in Section 3(b) above, Costs also include the expense of the sediment study and a portion of the City’s legal expenses. Company will use a portion of the Revenues to reimburse City for its payment of the sediment study pursuant to Section 3(b)(i). In addition, Company will use a portion of the Revenues to reimburse City for a portion of its legal expenses in the amount of \$10,000.00.

(ii) The Company shall take such actions as necessary to satisfy any stewardship fund or endowment required of the Company by the Trustees in connection with the Project. The parties acknowledge that the stewardship requirement associated with the Project (the “Stewardship Amount”) may be established by the Trustees such that the funds therefor are paid by the Company from the Revenues (“Additional Costs”) or paid by the PRPs directly to the Trustees (or such third party as the Trustees may identify) and may not flow through the Company as Revenues.

(iii) The Company shall be entitled to retain all of the Revenues in excess of the Costs and Additional Costs, if any, up to an amount equal to the Stewardship Amount (the “Company Revenue”).

(iv) All Revenues in excess of the Costs, Additional Costs, and the Company Revenue, shall be divided equally among the parties (the “Joint Revenue”).

(k) The Company shall work in good faith to maximize the benefit of the Project for both parties.

(l) The parties acknowledge that the Costs, particularly the maintenance/monitoring element of the Costs, may not be finally and conclusively known for an extended period of time after receipt of the Revenues. Accordingly, the parties agree to work in good faith to establish a reasonable estimate of the Costs at the time of completion of the construction of the restoration work so as to allow for disbursement of some or all of the Company Revenue and Joint Revenue, if any.

#### 4. Insurance.

(a) While this Agreement is effective, the Company shall at all times maintain with a reputable insurer in a form reasonably acceptable to City:

(i) comprehensive automobile liability insurance for all equipment located on the City Project Area, with a combined single limit in the minimum amount of \$2,000,000.00;

(ii) comprehensive general liability insurance covering its activities, equipment, and independent contractors on the City Project Area against claims for personal injury and property damage, with a combined single limit in the minimum amount of \$2,000,000.00 and endorsed to include contractual liability;

(iii) professional liability insurance in the amount of \$1,000,000;

(iv) workers' compensation insurance for all Company's employees who are subject to Oregon's Workers' Compensation laws, either as a carrier-insured employer as provided by ORS 656.407, or as a self-insured employer.

(b) The Company shall direct the issuing insurance company or companies to name the City and its employees, officers, contractors, agents, and representatives as a certificate holder and additional insureds under such policies, protecting them from any and all claims, losses, actions or omissions of Company or as a result of a joint concurring or contributory act, omission or negligence of Company and City arising out of or related to activities specified under this Agreement.

(c) The Company shall provide the City a certificate(s) of insurance confirming the type and amount of coverages and the related additional insured endorsement(s). The certificates must provide that the insurer will give City at least 30 days prior written notice of any material change in or cancellation of the policies. If the insurer is unwilling to provide this notice, then Company will give City at least 30 days prior written notice of any material change in or cancellation of the policies.

(d) No policy may be written on a "claims made" basis, except for the professional liability policy.

(e) Except in regards to the Exceptions as defined in Section 3(e) above Company's insurance coverage required under this Agreement is primary and non-contributory and any other insurance City carries is excess.

5. Indemnity. Company acknowledges responsibility for any and all liability arising out of its performance under this Agreement and will hold City harmless from and indemnify

and defend City for any and all liability, settlements, loss, costs, and expenses (“Loss”) in connection with any action, suit, or claim resulting or allegedly resulting from Company's acts, omissions, activities or services arising out of or related to this Agreement; provided, however, the foregoing indemnity shall not apply in the event a Loss is caused by the negligent, reckless, or willful act or omission of the City, its employees, officers, contractors, agents, or representatives.

6. Security.

(a) Prior to beginning construction of the restoration work, the Company shall:

(i) Establish an escrow account (the “Loss Mitigation Plan Escrow Account”) and place in such account an amount equal to \$125,000. The Loss Mitigation Plan Escrow Account shall be established with a reputable financial institution and pursuant to a customary and reasonable escrow agreement mutually agreeable to the City and the Company. Subject to the City’s rights under such escrow agreement, the Loss Mitigation Plan Escrow Account may be drawn down by the Company to pay for the implementation of the Loss Mitigation Plan and, after completion of the implementation of the Loss Mitigation Plan or completion of project construction, such remaining funds in the Loss Mitigation Plan Escrow Account shall be disbursed to the Company as Revenues. Any interest accrued on the Loss Mitigation Plan Escrow Account shall be held and disbursed in the same manner as the principal amount as provided above. The intent of the Escrow Account is to ensure that funds are available to prepare and implement the Loss Mitigation Plan should such plan be required pursuant to the terms of this Agreement; and

(ii) Require its contractor to provide City with a performance bond naming City as obligee in an amount equal to 110% of the price of the construction contract to construct the restoration work as security for the completion of construction of a restored RNA in

accordance with this Agreement. In the event that the Company is not in default under the terms of this Agreement, the City will work with the Company in good faith to (i) call the contractor's bond in the event the contractor is in default, and (ii) disburse the bond proceeds to the Company for its use in engaging another contractor to complete the construction. In its contract with the contractor that will construct the restoration work, Company will include appropriate language permitting (but under no circumstances obligating) City to accept an assignment of Company's rights and obligations under the contract. The bond required hereunder shall be reduced by the City in connection with and in proportion to the performance of the work which the bond is to secure. The bond shall be released by the City at such time as the work for which it serves as security is complete in accordance with the terms of this Agreement.

(b) It is anticipated that the Company, pursuant to its agreement(s) with the Trustees and after completion of the restoration work in accordance with the terms of this Agreement, will have a short term maintenance obligation (the "Maintenance Obligation") for the restoration work for a period of time before the Stewardship Amount operates to serve as the exclusive long term source of payment for maintenance of the restoration work. The Company's obligations under this Agreement shall be fully satisfied upon the fulfillment of its Maintenance Obligation and the disbursement of all Revenues in accordance with the terms of this Agreement. The Company anticipates its Maintenance Obligation will last for at least 10 years. The Company further anticipates that, pursuant to its agreement(s) with the Trustees, it will be obligated to establish certain financial assurance for the performance of its Maintenance Obligation. If the Company is not otherwise required, pursuant to its agreement(s) with the Trustees, to establish or maintain certain financial assurance for the performance of its Maintenance Obligation, then the Company will establish an escrow account (the "Maintenance Obligation Escrow Account") and

place in such account 15 % of the Revenues from such NRD mitigation credit sales up to an amount equal to 110% of the then reasonably projected cost of the Maintenance Obligation. If insufficient Revenue exists at the time Company is obligated to establish the Maintenance Obligation Escrow Account, the Company may fund all or the balance of the Maintenance Obligation Escrow Account as each NRD mitigation credit is sold under this Agreement. Company will notify City within 10 days of a Trustee determination that Company is not required to establish or maintain a financial assurance for Company's Maintenance Obligation. The Maintenance Obligation Escrow Account shall be established with a reputable financial institution and pursuant to a customary and reasonable escrow agreement mutually agreeable to the City and the Company. The Maintenance Obligation Escrow Account will be established within 30 days of a Trustee determination that is not required to establish or maintain a financial assurance for Company's Maintenance Obligation. Subject to the City's rights under the escrow agreement, the Maintenance Obligation Escrow Account may be drawn down by the Company annually in the amount of the Costs incurred in connection with the Maintenance Obligation and, at the end of such obligation, such remaining funds in the Maintenance Obligation Escrow Account shall be disbursed to the Company as Revenues for application or distribution as provided in this Agreement. Any interest accrued on the Maintenance Obligation Escrow Account that, together with the principal amount therein, exceeds the projected cost of the Maintenance Obligation shall be disbursed to the Company as Revenues for application or distribution as provided in this Agreement. The intent of the Maintenance Obligation Escrow Account is to ensure maintenance of a restored RNA if Company becomes insolvent, otherwise defaults under this Agreement or otherwise fails to maintain the Project.

7. Default. In the event that either party fails to keep or observe any covenant, agreement or obligation to be kept or observed by such party under this Agreement and such party

does not cure same within 10 days after written notice of the same from the other party, then such party shall be deemed to be in default under the terms of this Agreement and the other party shall, in addition to any other rights provided in this Agreement, be entitled to terminate this Agreement and pursue all remedies available at law or in equity; provided, however, that if such default cannot be cured within 10 days, such cure period shall be extended for such reasonable period as may be necessary assuming the defaulting party commences to cure the default within the 10 day period and continuously uses all commercially reasonable efforts to complete the cure.

8. Notice. Any notices required or permitted to be given hereunder shall be deemed given when personally delivered, deposited with a nationally recognized courier for overnight delivery, or deposited in the United States mail, postage prepaid, certified mail, return receipt requested, addressed to the Company or the City, as the case may be, as follows:

If to the Company:

Rinearson Natural Area, LLC  
Attn: John Runyon  
222 NW Davis St., Suite 317  
Portland, OR 92709

and

Ronald J. Boyd  
5209 Center Street  
Williamsburg, VA 23188

With a copy to (which alone shall not constitute notice):

Todd Cleek  
Cleek Law Office, LLC  
2173 NE Broadway  
Portland, OR 97232

and

Timothy O. Trant II

Kaufman & Canoles, P.C.  
4801 Courthouse Street, Suite 300  
Williamsburg, VA 23188

If to the City:

Pete Boyce (or then current Gladstone City Administrator)  
City Administrator  
525 Portland Avenue  
Gladstone, OR 97027

With a copy to (which alone shall not constitute notice):

David Doughman (or then current Gladstone City Attorney)  
Beery Elsner & Hammond  
1750 SW Harbor Way, #380  
Portland, OR 97201

Any party to this Agreement may change its address for notice purposes by giving notice thereof to the other parties hereto, except that such change of address notice shall not be deemed to have been given until actually received by the addressee thereof.

9. Governing Law. This Agreement shall be construed under the laws of the United States of America and the State of Oregon, without respect to conflict of laws principles. Venue and jurisdiction shall be proper only in Clackamas County Circuit Court and, if a suit or action must be brought in federal court, U.S. District Court for the District of Oregon located in Portland, Oregon. The parties hereby irrevocably submit to the jurisdiction of those courts. Any provision of this Agreement that is prohibited by, or unlawful or unenforceable under applicable law shall be ineffective only to the extent of such prohibition without invalidating the remaining provisions of this Agreement.

10. Records. Company shall retain all books, documents, papers, and records that are directly pertinent to this Agreement for at least 2 years after Company's M&M Obligation has

ceased and all other pending matters are closed. City (or any of its authorized representatives) may at any reasonable time audit, examine, copy, take excerpts from or transcribe any books, documents, papers, or records that are subject to the foregoing retention requirement.

11. Terms Required Under Oregon Law.

(a) Any person Company employs under this Agreement, other than a person subject to being excluded from the payment of overtime pursuant to either ORS 653.010 to 653.261 or 29 USC§201 to 209, shall be paid at least time and a half for all overtime worked in excess of 40 hours in any one week.

(b) Company will make payment promptly, as due, to all persons supplying to the Company labor or material for the prosecution of the work provided for in this Agreement.

(c) Company will pay all contributions or amounts due the Industrial Accident Fund incurred in the performance of this Agreement, and will ensure that all subcontractors pay those amounts due from the subcontractors.

(d) Company will pay to the Oregon Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

(e) Company will make payment of all legally required sums to any person, co-partnership, association or corporation, furnishing medical, surgical and/or hospital care incident to the sickness or injury of Company's employee(s), all sums which Company agrees to pay for such services and all monies and sums which Company collected or deducted from the wages of employees pursuant to any law, contract or contract for the purpose of providing or paying for such service.

12. Force Majeure. Notwithstanding any other provision hereof, in the event that either party shall be delayed or hindered in or prevented from the performance of any covenant,

agreement, work, service, or other act required under this Agreement to be performed by such party, and such delay or hindrance is due to causes entirely beyond its control such as riots, insurrections, martial law, civil commotion, war, fire, flood, earthquake, or other casualty or acts of God, the performance of such covenant, agreement, work, service, or other act shall be excused for the period of delay.

13. Binding Effect. This Agreement shall extend to and bind the heirs, personal representatives, successors, and assigns of the parties.

14. Counterparts. This Agreement may be executed in multiple facsimile counterparts, each of which shall constitute an original and all of which shall constitute the same Agreement.

15. Final Agreement. This Agreement represents the parties' full and complete understanding as to the subject matter hereof and there are no other agreements, either written or oral, in this regard.

16. Authority. The parties and the persons signing on behalf of such parties, in each such person's individual capacity, represent and warrant to one another that each party has full power and authority to enter into this Agreement and that each has taken all necessary actions and/or obtained all necessary approvals in connection with same.

17. Non-Waiver. Any failure of either party hereto to insist upon strict observance of any covenant, provision or condition of this Agreement in any one or more instances shall not constitute or be construed to be a waiver at that time or thereafter, of such or any other covenant, provision or condition of this Agreement.

18. Amendment. This Agreement cannot be modified except by a written document executed by both parties in the same manner as this Agreement is executed.

19. Exhibits. The parties incorporate all exhibits identified in this Agreement as if the exhibits were fully and distinctly set out within this document.

20. Headings. The headings, captions and numbers in this Agreement are solely for convenience and shall not be considered in construing or interpreting any provision in this Agreement.

21. Further Assurances. Each party agrees to execute and furnish to the other upon request and without delay such other and further documents as may be reasonably necessary to effect the terms and provisions of this Agreement.

22. No Agency. Nothing in this Agreement shall be deemed or construed by any party or by any third party to create the relationship of principal and agent or of limited or general partners or of joint venturers or of any other association between the parties. To that end, Company is an independent contractor for all purposes and is entitled to no compensation other than the compensation expressly provided by this Agreement. As an independent contractor, Company acknowledges it is not entitled to indemnification by the City or the provision of a defense by the City pursuant to ORS 30.285. This acknowledgment by Company will not affect its independent ability (or the ability of his/her insurer) to assert the monetary limitations, the immunities or other limitations affecting the assertion of any claim under the terms of the Oregon Tort Claims Act (ORS 30.260 to ORS30.300).

23. Assignment. This Agreement may not be assigned by either party without the written consent of the other, which consent shall not be unreasonably withheld, conditioned, or delayed. Notwithstanding the foregoing, this Agreement may be assigned to an entity owned by, controlled by, or under common control with the Company or the members thereof with notice to City.

24. No Third Party Beneficiaries. This Agreement and the rights and obligations of the parties hereunder, are not intended, nor shall they be construed as creating any rights in or for the benefit of any governmental body, person, entity, or organization other than those expressly provided for herein, whether as a third party beneficiary or otherwise.

**IN WITNESS WHEREOF**, the parties have executed this Rinearson Natural Area Agreement as set forth below:

[Signatures located on following pages]

[Signature Page to Rinearson Natural Area Agreement]

COMPANY:

RINEARSON NATURAL AREA, LLC

By:  (SEAL)  
Name: John Remyon  
Title: Principal  
Date: 1-21-2014

CITY:

CITY OF GLADSTONE, OREGON

By:  (SEAL)  
Name: Beth S. Lopez  
Title: City Administrator  
Date: 11-21-14

**EXHIBIT A**

**[INSERT EXHIBIT CLEARLY DEFINING THE RINEARSON NATURAL AREA  
PROJECT LIMITS. THE EXHIBIT SHOULD CLEARLY DELINEATE AND LABEL  
THE PROPERTY OWNED BY THE CITY OF GLADSTONE AND THE ADJACENT  
HOMEOWNERS ASSOCIATION]**

### Exhibit A: Rinearson Natural Area Parcel Map

Clackamas County, Oregon

**Parcel Boundaries**

- Privately Owned
- City of Gladstone
- Water

**CASCADE**  
PROPERTY APPRAISAL SERVICE

Date: 12/2/2013

TAXLOT ID	PARCEL NUMBER	TAX PAYER	MAILING ADDRESS	ACREAGE
102	00526363	SAFENCUCORNEILL V	19710 SE COTTONWOOD ST MILWAUKIE OR 97267	0.05
143	01606925	ROBINWOOD RIVIERE PROP ASSN	NO MAILING ADDRESS AVAILABLE	3.07
101	00526354	CITY OF GLADSTONE	525 PORTLAND AVE GLADSTONE OR 97027	4.20
113	05019648	CITY OF GLADSTONE	525 PORTLAND AVE GLADSTONE OR 97027	1.75
191	05000035	CITY OF GLADSTONE	525 PORTLAND AVE GLADSTONE OR 97027	0.06
200	00526256	CITY OF GLADSTONE	525 PORTLAND AVE GLADSTONE OR 97027	0.22
290	00526265	CITY OF GLADSTONE	525 PORTLAND AVE GLADSTONE OR 97027	16.53
300	00526274	CITY OF GLADSTONE	525 PORTLAND AVE GLADSTONE OR 97027	1.34
1702	00526924	CITY OF GLADSTONE	525 PORTLAND AVE GLADSTONE OR 97027	5.39
WATER				0.53
WATER				0.48



Scale: 1 inch = 250 feet  
 Data Source: Clackamas County, 2013  
 Image courtesy of USGS State of Michigan





# CITY OF OREGON CITY

## Staff Report

625 Center Street  
Oregon City, OR 97045  
503-657-0891

**To:** Urban Renewal Commission  
**From:** City Manager Tony Konkol

**Agenda Date:** 10/21/2020

### **SUBJECT:**

Oregon City Urban Renewal Study Update

### **STAFF RECOMMENDATION:**

Staff recommends that the Urban Renewal Commission approve the implementation of the public involvement plan for the Oregon City Urban Renewal Study.

### **EXECUTIVE SUMMARY:**

The Urban Renewal Commission would like a robust public engagement process to inform the Oregon City Urban Renewal Study. Staff is requesting that the URC review and approve the implementation steps of the public involvement plan presented by the Leland Consulting Group during this meeting, understanding that there may be future steps presented that may need additional input from the Urban Renewal Commission.

### **BACKGROUND:**

With the concurrence of the Urban Renewal Commissioners, the City Manager and the Economic Development Manager met with the Leland Consulting Group to ensure that a robust public engagement process be included in the Agreement. It was the desire of the Urban Renewal Commissioners to be directly involved with the public during the process of evaluating the direction of the Urban Renewal District.

The Urban Renewal Commission voted unanimously on March 18, 2020 to delay the implementation of the Agreement due to the COVID-19 Virus and to have the City Manager to bring the Agreement back to the Urban Renewal Commission to move forward.

On August 5, 2020, the Urban Renewal Commission voted to approve the Leland Consulting Group's Public Service Agreement ("PSA"). As part of the Agreement, a public involvement plan was crafted and presented to the Urban Renewal Commission which was approved on September 8, 2020.

On October 7, 2020, members of the Urban Renewal Commission requested an update from the Leland Consulting Group and wanted to know what name and branding would be utilized to promote and identify the public engagement component. Members of the Urban Renewal Commission generally concurred to have the Leland Consulting Group come back on October 21, 2020 for an update.

**OPTIONS:**

1. Approve the implementation steps presented by the Leland Consulting during this meeting understanding that there may be additional steps in the future that may require further input from the Urban Renewal Commission.
2. Do not approve the current implementation steps presented during this meeting by the Leland Consulting Group.

**BUDGET IMPACT:**

Amount: \$82,911.00

FY(s): 2020/2021

Funding Source(s): Urban Renewal District

# Oregon City Urban Renewal Study

**Date** October 12, 2020  
**To** James Graham, City of Oregon City  
**From** Sam Brookham, Leland Consulting Group  
**CC** Andy Parks, GEL Oregon  
Anais Mathez, Steve Faust, 3J Consulting  
**Subject** Urban Renewal FAQ

This memo serves to present the *Urban Renewal 101* information from which the project team intends to use to develop educational materials and display on the project website.

Questions that the team expects to include in the project "Fact Sheet" are highlighted green.

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## What is this project?

The *Oregon City Urban Renewal Study* will take a "second look" at urban renewal as a tool for development/redevelopment in the community. The project will engage stakeholders and the public in a transparent and thoughtful conversation regarding the use of Oregon City's Urban Renewal District and its impacts on the community.

## Urban Renewal 101

### What is "Urban Renewal"?

Urban renewal is a financing program that allows for the concentrated use of property tax revenues to facilitate economic growth in certain designated areas of a city or county where "blight" is found.

Blight is fully defined in the Oregon Revised Statutes (ORS) 457, and can generally be described as areas that are underdeveloped, underperforming, dangerous, deteriorated, or underserved. Examples of "blight" include buildings that are unsafe or unfit for occupancy, inadequate infrastructure, or population loss.

The theory of urban renewal is that if public investments are made in the "blighted" area, its properties will contribute more substantially to the local economy and to the property taxes which support all of the taxing jurisdictions.

### Who manages the Urban Renewal Program?

The Oregon City Urban Renewal Commission oversees the Urban Renewal program. The Economic Development Department administers the program on behalf of the City Manager and the Urban Renewal Commission.

## Urban Renewal FAQ

### How is an Urban Renewal Plan financed?

Urban renewal is funded by tax increment revenue. The private investment attracted by public urban renewal investments results in increased property values within the district. These increased property values bring in greater property taxes within the district, which are then used to pay off bonds sold to finance the revitalization efforts. This unique funding mechanism is called tax increment financing (TIF).

### How does Tax Increment Financing work?

Urban renewal is funded by tax increment financing (TIF). At the time an urban renewal plan is adopted, the county assessor calculates the total assessed value of the area and establishes this value as the "frozen base" for the area.

Taxes from that frozen base continue going to all of the taxing jurisdictions. Growth above the base is called the "increment". Taxes from the increment, called tax increment revenue, go to the urban renewal agency for projects within the urban renewal area.

### What is Maximum Indebtedness?

Maximum indebtedness is the total amount of tax dollars that may be spent on the projects, programs, and administration in an urban renewal area.

### When does it make sense to use urban renewal?

Generally, urban renewal makes sense in areas that have physical and/or economic conditions that cause a reduction of, or lack of, proper utilization of that area. An urban renewal agency may determine that TIF is required to:

- Support catalytic projects as needed to spur new investment in an area,
- Focus necessary public investments in a specific target area,
- Accelerate the timing of necessary infrastructure and transportation projects,
- Incentivize development, redevelopment, or major improvements to a property that might not otherwise occur without TIF, and
- Fund infrastructure projects that might not otherwise occur without TIF.

### What can urban renewal pay for and what can it not pay for?

The activities eligible for urban renewal funding are determined by ORS 457 and sometimes change. Per ORS 457.170, eligible activities include:

- Rehabilitation or conservation work,
- Real property acquisition,
- Demolition, removal, or rehabilitation of buildings and improvements,
- Installation, construction, or reconstruction of streets, utilities, and site improvements,
- Assisting in the relocation of persons,
- Disposition of property acquired in the urban renewal area,
- Undertaking and carrying out neighborhood development programs.

## Urban Renewal FAQ

Ineligible activities include all other activities not listed by ORS 457, such as non-capital improvements, temporary improvements, and grants or loans for operating expenses.

### **Does urban renewal increase property taxes?**

No, urban renewal simply allows for the reallocation of growth on taxes to the urban renewal agency rather than the overlapping taxing districts. Taxpayers within the city will see a line item on their property tax statements for urban renewal. The overall tax bill does not increase, but the allocation of revenues received from the payment is changed as a portion of that payment now goes to urban renewal. This is called "division of taxes" and is the administrative way that assessors must show the calculation of the tax increment revenue.

### **How does "Tax Increment Financing" affect overlapping taxing districts?**

While the urban renewal area is active, a taxing jurisdiction's revenue from that area is frozen (at the time of the urban renewal plan's adoption) and will not increase until revenue-sharing is triggered. So, while an urban renewal area is active, taxing jurisdictions may not receive as much money as they would otherwise have received. In essence, the taxing districts forego some revenue in exchange for a greater total property tax base and revenue capacity as a result of urban renewal investments. The goal of urban renewal is to spur development that would not have occurred but for urban renewal, so when the urban renewal area expires, taxing jurisdictions can expect to receive more tax revenues than they would have had the urban renewal area never existed at all.

### **What about schools?**

School districts are not directly affected by TIF. Under Oregon's school funding law, the Oregon Department of Education combines property tax revenues with State School Fund revenues to achieve per-student funding targets. Under this system, property taxes foregone due to the use of tax increment financing are replaced with State School Fund revenues, as determined by the state funding formula. While TIF statewide has an impact on the amount of funding in the State School Fund, the legislature can re-allocate other funding sources to the State School Fund.

In theory, a successful urban renewal area will result in more income taxes resulting from job creation and increased property taxes than might have occurred without urban renewal, resulting in more net tax dollars for school funding in the long-term.

### **How is an urban renewal area created?**

An urban renewal area is created through a process that includes community input, notice to impacted taxing jurisdictions, review by the City's urban renewal agency, planning commission, and city council. The city council hearing notice must be sent to a specified group of citizens. The adoption of a plan must be with a non-emergency ordinance by the city council that does not go into effect for 30 days after adoption. The plan, together with an accompanying urban renewal report, identifies the goals of the urban renewal area and projects to be funded with TIF, describes how the area complies with statutory requirements for blight, projects tax increment revenues, and identifies a maximum amount of debt an urban renewal area can incur, among other topics.

## Urban Renewal FAQ

### What are the steps to amend a TIF area/plan?

The Urban Renewal Plan contains a section on how amendments are processed. Minor amendments may be approved by the Commission itself. Substantial amendments are those that increase the maximum indebtedness or add property that totals over 1% of the existing acreage.

### What types of projects are typically completed?

Urban renewal can fund a range of activities, including capital projects and development assistance programs, and typically include:

- Utility or infrastructure projects to support new development
- Infrastructure: streets and utilities
- Streetscape improvements and transportation enhancements, including new lighting, trees, sidewalks, pedestrian and bicycle amenities, and intersection improvements
- Catalyst redevelopment projects, such as mixed-use or infill housing developments
- Storefront improvement grants for improvements to existing properties
- Development assistance grants or incentives for specific desired development types.
- Parks and plazas
- Clean up of brownfield sites
- Property acquisition to aggregate properties for desired development
- Public buildings
- Historic preservation projects

### How has urban renewal been used in Oregon City?

- Provided grants for façade improvements and adaptive reuse/rehabilitation projects.
- Funded streetscape improvements, beautification, and pedestrian and bicycle infrastructure improvements, including projects on Main Street (5th to 10th), McLoughlin Boulevard, 7th Street, and Washington Street.
- Funded community amenities, such as the Clackamas River Trail, the Amtrak Station, and McLoughlin Promenade.
- Relocated City Hall to a more accessible location at the historic, cultural and commercial center of the city and renovated building according to LEED green building standards.
- Provided technical assistance to developers that commit to building on physically and economically challenging sites with high development potential.

### What are the benefits of TIF?

TIF districts can grow the tax base and revitalize parts of a City that are experiencing underinvestment. TIF is based on the diversion of tax revenue increases, but over time, the redevelopment is expected to result in a more robust tax base for the community. Those tax gains are due to increased value in the property around a new development in addition to the potential for job growth and sales tax revenue.

## Urban Renewal FAQ

### Why was the Urban Renewal Plan amended?

In 2007, the Commission approved a substantial plan amendment for the Downtown Oregon City/North End Urban Renewal Plan. The amendment reflected changes in the scope of projects in the project area in response to the 2004 Oregon City Futures Report and increased the maximum indebtedness to complete the Plan. The amendment also addressed infrastructure deficiencies for The Rivers project and The Cove projects.

### How long does an urban renewal plan last?

Typical urban renewal plans are designed for a 20-to-25-year period, but the time period is not a requirement. Plans can be closed out if all projects are completed earlier and the debt is repaid. The Downtown Urban Renewal District does not have a specific duration.

### What are some examples of how urban renewal has been used elsewhere in Oregon?

There are at least 76 cities and counties with active districts in Oregon, several with more than one active district. *[note: the consultant team will provide case study information following the Urban Renewal 101 FAQ and fact sheet]*

## Information About the Downtown/North End District

Following the "Urban Renewal 101" information, the project team will document the following information about the Downtown Oregon City/North End Urban Renewal District:

- When was the current Urban Renewal Area established?
- What is the purpose of the Downtown Urban Renewal District?
- What are the goals of the Downtown Urban Renewal District?
- What are the objectives of the Downtown Urban Renewal District?
- What is the history of the District?
- What are the District boundaries?
- What projects are in the Urban Renewal Plan?
- Which of these projects have been completed? What projects are still to be completed?
- Can the Plan be changed?
- How has the District performed?
- What happens if the District is closed?
- When could the District close?
- What happens if a new District is created?
- What is the revenue of the District?
- How much is the District presently spending?
- Are there changes in Oregon City that suggest a Plan update is needed?

## TAB 1. HOME

### Welcome!

Since 1992, Oregon City's Downtown/North End Urban Renewal District (or Area) has shaped portions of the waterfront, Cove, and downtown business areas. Over time, the Urban Renewal District policies, plans, and management have adapted to a changing Oregon City. Envisioning a future for the district, we want to hear from you about the district's viability and development as an economic tool for Oregon City.

### About this project:

The Downtown/North End Urban Renewal District encompasses 885 acres including the historic downtown area, the 7<sup>th</sup> Street commercial corridor, the Rossman Landfill and the land surrounding the Clackamette Cove. In revitalization of these areas and continued growth in Oregon City, the City has been designated one of seven regional centers by Metro. However, starting in 2007, several amendments to the Downtown/North End Urban Renewal Plan and the Oregon City Charter have limited the effectiveness of Oregon City's Urban Renewal Program. With increasing attention from some community leaders and members of the general public, the Oregon City Commission prioritized a discussion of the future of the Urban Renewal Program as part of the City's 2019-2021 Goals and Priorities.

Today, the *Oregon City Urban Renewal Study* will take a "second look" at urban renewal as a tool for development/redevelopment in the community. The project will engage stakeholders and the public in a transparent and thoughtful conversation regarding the use of Oregon City's Urban Renewal District and its impacts on the community.

## TAB 2. FAQ

- *(We will populate this tab once we have a complete FAQ sheet. For now, let's keep the tab as a placeholder)*

## TAB 3. GET INVOLVED

- List of upcoming engagement opportunities and links to surveys/comment forms. For now, this will include:
  - Community Meeting #1 Details
  - Link to the Community Meeting comment form
  - List of upcoming Town Hall Meetings (date, time, Commissioner-lead)

## TAB 4. PROJECT LIBRARY

- List Documents related to the project and direct links to PDFs. Items may include:

- Fact Sheet
- Meeting agendas and summaries
- Other items, as necessary
- History of the District (timeline)

#### **TAB 5. CONTACT**

For more information about this project, please contact James Graham, Economic Development Manager at [jgraham@orcitey.org](mailto:jgraham@orcitey.org) or 503-657-0891.