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METRO

November 19, 2002


From: Pete Sandrock, Chief Operating Officer
To: Charlie Ciecko, Terry Petersen, and Paul Garrahan

Re: Landfill & Lakes: Permits and 40-mile Trail

This memorandum records my conversations and correspondence with City of Portland staffers about the City's conditional use permits for bank repairs at the landfill and the construction of a water control structure at Smith & Bybee Lakes.

July 9, 2002. Dan Cooper and I met with Sam Adams and Tommy Brooks in Sam's office at City Hall. This meeting took place when there was still a slim chance that Metro would build the water control structure in 2002. Our purposes were to (1) agree on a process to locate and complete the 40-mile Trail in the vicinity of the Landfill and Lakes, and (2) to get consistency between the conditions for the two City permits.

We asked that City Parks sign Metro's proposed Trail Alignment IGA and that OPDR accept the IGA as satisfaction of Condition A in the bank repair permit.

We agreed that Metro would construct the water control structure to accommodate the Trail in case the trail alignment planning process determined that the Trail should cross the slough at that location. We asked that OPDR modify the language of the proposed permit to require Metro to construct a trail segment in the affected area only if the trail alignment planning process under Condition A resulted in an agreement to locate the trail on the water control structure.

Sam Adams assigned his assistant, Tommy Brooks, to follow up with City Parks and OPDR regarding Metro's requests.

See attached agenda from the July 9, 2002 meeting. We left copies with Sam and Tommy.

July 19, 2002. Tommy Brooks called me (823-2855). He had talked with City Parks and OPDR. OPDR's position on the water control structure is driven by the natural resource master plan. As the condition is now written, Metro would need to build the trail segment on the water control structure within 3 years (OPDR might agree to 5 years). A second option would be for Metro to seek a minor amendment to the master plan relocating the

trail segment, but Metro would have to demonstrate trail connectivity. A third option would be to legislatively amend the master plan.

Tommy said that Mikey Jones came in to see him and told him that he would sue if the City signed the IGA.

Tommy said that Jim Sjulín (sp?) is holding Metro's proposed Trail Alignment IGA; he wants to change the language to bring the alignment process clearly under City control. Tommy and Jim have seen and read the minutes of the October 9, 2001 with Mike Burton that established the "basic principles regarding interim and long-term uses of the St. Johns Landfill and nearby land in the Smith & Bybee Lakes Management Area." They interpret the principles to mean that Metro has tried to unilaterally reject the master plan. I assured him that wasn't the case and pointed out how public use was contingent on meeting certain conditions, e.g., safety and habitat protection.

August 19, 2002. Tommy Brooks called me. OPDR is willing to write the water control structure permit allowing construction that would accommodate later placement of the trail subject to one of three options: (1) within 3 years, Metro constructs and OPDR accepts a trail segment on the structure, or (2) within 3 years, Metro obtains a minor amendment for another alignment, or (3) within 3 years, Metro initiates a legislative change to eliminate the alignment altogether.

Tommy will now contact City Parks and urge them to work out a settlement on the IGA, stressing how important resolution is.

I told him that Metro would not try to build the water control structure in 2002.

August 20, 2002. Tommy sent me the following email:

"Pete - Per our last conversation I am sending the following e-mail from OPDR. You may have already received it from Elaine Stewart. Basically, the 120-day extension is not official yet, so it needs to get signed for the decision to be delayed until next year. The second part describes the options within the proposed condition that we discussed yesterday so that you can share it on your end. Please let me know if you need anything else so that we can wrap this portion of the discussion up and cross it off our list. Thanks, Tommy.

-----Original Message-----

From: Wenger, Stacey

Sent: Tuesday, August 20, 2002 11:32 AM

To: Brooks, Tommy

Cc: Feldman, Susan; Sjulín, Jim; 'stewart@metro.dst.or.us'

Subject: Trail alignment at Smith & Bybee Lakes (LU 02-113706 EN)

Tommy,

in response to yesterday's voice mail, I have two comments: 1) Metro's last correspondence stopped the LUR 120-day clock until September 1. If Metro wishes to stop the clock indefinitely, they need to sign the attached standard 120-day waiver form, and submit it to the application case file. Elaine, I've attached the waiver form for your use, should you and Pete Sandrock decide to stop the clock for additional time. 2) Regarding draft Condition B: in addition to requiring that the water control structure design be revised to accommodate the trail before it is approved in this

LUR, I would support re-drafting Condition B to read as follows: Within 3 years of the date this Decision becomes final, the applicant shall document that one of the following has occurred:

- a Site Development permit has been obtained by the applicant, for final inspection of the constructed trail, within the approved limits of disturbance for the water control structure, shown on Exhibit C .3, and as depicted on Figure 5 of the Smith and Bybee Lakes NRMP; or
- a Minor Amendment of the Smith and Bybee Lakes NRMP, has been approved by OPDR LUR at the request of the applicant, demonstrating a revised alignment of the trail, but maintaining 40-mile loop trail connectivity as required by the NRMP. This plan amendment shall have been accompanied by a proposal to construct the trail within the proposed new alignment, by a specified date; or
- a legislative process has been completed by the applicant, eliminating the trail designation in the area of the water control structure, from the Smith and Bybee Lakes NRMP. A condition with these options should allow the latitude needed by Metro to work out the IGA with Parks, and then act upon it in whatever form it takes. Please forward this information to Pete Sandrock for his use. Please let me know if you need anything further to facilitate resolution of this issue with Metro and Parks.

Thank you,
Stacey "

August 22, 2002. I sent the following text to Tommy Brooks in an email:

"Thanks much for your help. I've asked our staff to work on a solution that looks something like this: "We waive the 120 days and try very hard to reach agreement with City Parks et al on a better alignment. The alignment agreement might come out of the process described in our proposed IGA or the facilitated process that Jim Sjulín suggested to Charlie Ciecko. We uncouple the funding and compliance issues so we don't end up with a requirement we can't possibly pay for, but we work in good faith to find funding--whether through cost-sharing or by including it in an open space bond measure or both. With everyone at Metro and Portland holding hands and noses we agree to amend the NRMP in a mutually satisfactory way and OPDR agrees that we've satisfied the conditions for the water control structure and landfill permits (and gives the parties a reasonable but not excessive time to work out an agreement)." I don't think you and I can cross this off our lists yet, but I do think we've made progress. I think the next step is for Charlie, Terry Petersen, Jim Sjulín, and other stakeholders to figure out the best alignment. Your thoughts? Pete"

August 30, 2002. Tommy sent me the following text in an email:

"Pete: Some of our parks people are on vacation, so I'll get back to you as soon as I get a chance to talk this through on our end a bit. Thanks."

As of November 19, 2002, this was the last communication.

July 9, 2002
AGENDA
PERMITS AFFECTING 40-MILE TRAIL
Adams, Cooper, Sandrock

1. Purposes

- Planning process. Agree on a process to locate and complete the segment of the 40-Mile Trail in the vicinity of Smith & Bybee Lakes and the St Johns Landfill.
- Permit conditions. Create consistency between the permit conditions for bank stabilization at the Landfill and for construction of a water control structure at Smith & Bybee Lakes.

2. Ownership and management history

- Environmental issues at Lakes
- Safety issues at Landfill

3. 2000 Landfill Permit

4. 2002 Water Control Structure Permit

5. Metro requests

- Landfill Permit. City Parks signs the IGA submitted by Metro; OPDR accepts the IGA as satisfaction of Condition A.
- Water Control Structure Permit. Metro agrees to construct the water control structure to accommodate the trail. OPDR modifies the permit to require Metro to construct a trail segment in the affected area when and if the planning process conducted under the Landfill permit results in an agreement to locate the trail in the area of the water control structure.

July 9, 2002
PERMITS REQUIREMENTS AFFECTING
40-MILE TRAIL ALIGNMENT

Bank repairs at Landfill (approved 1-27-00)

Prior to August 1, 2000...submit a written agreement between Metro and the City of Portland Parks Department regarding construction of the 40-Mile Loop Trail...for review and approval by the Land Use Review Division.... This agreement must include the following:

- Metro REM agrees to participate in the City of Portland Park's Master Plan process, work with the 40-Mile Loop Land Trust, Port of Portland, Portland Parks and Recreation, and Metro Parks and Greenspaces toward a consensus alignment that may include alignments across the St. Johns Landfill.
- Metro REM agrees to pay for design, permitting, and construction of trail segments that cross the Landfill (including fair share of any trail bridge across the Slough).
- Metro REM agrees to complete the Landfill segment of the trail no later than July 31, 2002.

Water Control Structure (proposed conditions)

The applicant shall construct the segment of the 40-mile loop trail located within the limits of disturbance shown on Exhibit C.3 and as per the Smith and Bybee Lakes NRMP. This trail must be constructed within three years of the final date of this land use decision. If the trail alignment changes prior to these three years, the realignment must go through the Minor Modification procedure.... If a modification is requested by the applicant ..., the new deadline for trail construction will be three years from the date of the final decision for modification of the trail.

October 9, 2001
Minutes of Meeting

USE OF ST. JOHNS LANDFILL & ADJACENT METRO-MANAGED PROPERTIES

Attendees: Mike Burton, Charlie Ciecko, Dan Cooper, Paul Garrahan, Terry Petersen, and Pete Sandrock.

The purpose of the meeting was to reach agreement on basic principles regarding interim and long-term uses on the St. Johns Landfill and nearby land in the Smith & Bybee Lakes Management Area.

The attendees agreed that the following statements are accurate:

1. The landfill is a heavily polluted, regulated, and managed site. Although the Department of Environmental Quality has not issued a final closure permit, it is probable that Metro will be required to monitor and contain pollutants on the site for several more decades. Pollutants in the landfill are health and safety hazards. The landfill is subject to sudden subsidence and risk of fire. Pipe and valve systems on the surface of the landfill are vulnerable to tampering and damage with hazardous consequences. Methane will be commercially extracted for about 5 more years. Thereafter methane extraction will continue for safety purposes for an unknown number of years.
2. Five full-time Metro technicians maintain the landfill and operate its environmental control systems. The technicians are subject to 24/7 recall by automated alarms triggered when monitoring equipment detects unsafe conditions.
3. Metro does not have enough information about its future responsibilities under the closure permit or about the dissipation of methane and groundwater contaminants to begin master planning for public use of the site. A master plan typically costs \$80,000 and \$100,000 to develop.
4. Public use of the landfill prior to final stabilization and closure would require extensive control and regulation. Trails would need to be fenced and restricted to the circumference roadway. Limited use by small groups, such as model airplane hobbyists, would require the construction of controlled access points and the physical protection of vulnerable pipes and valves. Allowing public uses before completing a master plan may limit future options.
5. A public trail along the south shores of Smith and Bybee lakes is undesirable because human encroachment will disturb vulnerable wintering and breeding birds. If a bridge were constructed across the North Slough immediately upstream of its confluence with the Columbia Slough, it would be possible to route a trail onto the perimeter road of the landfill without disturbing wildlife along the south shores of the lakes. A bridge would be an expensive and semi-permanent structure.

6. Condition A of LUR 99-00579 EN does not obligate Metro to recommend, approve, or construct a trail either in the wildlife area or on the landfill (see Office of General Counsel Opinion Letter dated November 16, 2001 regarding "St. Johns Landfill Fall 2000 Dike Repair.")

The attendees agreed to apply the following guidelines to administer the sites:

1. No public uses should be permitted on the landfill until DEQ and Metro have agreed that it is safe to do so and the Metro Council has adopted a master plan for the site.
2. No other uses should be permitted on the landfill that are inconsistent with its status as a landfill or that foreclose future uses by the public or for wildlife habitat.
3. No public trail should be permitted on the south side of Smith or Bybee lakes unless (1) access can be regulated cost-effectively to prevent unacceptable disturbance of wildlife and (2) the trail has an acceptable egress from the site.
4. Master planning for the end use of the landfill should begin no earlier than 3 years before the site is suitable and safe for public access.