

Council Communication

April 5, 2016. Business Meeting

Union Pacific Railroad Rail Yard Remediation – Next Step

FROM:

Dave Lohman, city attorney, lohmand@ashland.or.us

SUMMARY

At the January 5, 2016, Council business meeting, Council approved a two-part motion directing staff to seek modification of a 1999 deed restriction on the Union Pacific Railroad (“UPRR”) rail yard property in Ashland. After completion of full-site remediation to DEQ’s *Residential* standards, the proposed revised deed restriction would allow subdivision and development of individual parcels upon further remediation in conformance with the DEQ risk standards applicable to the proposed actual uses of the parcels and the parcel-specific risks posed by the actual contaminants on them. The motion also directed staff to negotiate with UPRR to develop an agreement concerning full-site remediation of the rail yard property as soon as possible using rail cars for transporting contaminated soils. The purpose of this agenda item is to advise Council on negotiations with UPRR and seek Council confirmation that the second part of the January 5 motion has been satisfactorily addressed and therefore staff should now proceed to apply for modification of the deed restriction.

BACKGROUND AND POLICY IMPLICATIONS:

In November 1999, the City placed a deed restriction on the Union Pacific Railroad (“UPRR”) rail yard property in Ashland requiring that entire property be remediated to DEQ’s *Residential* standards prior to further development or subdivision – even if subsequent subdivided parcels might be used for asphalt-capped streets or parking areas or for light industrial or commercial purposes. Whether or not it was intended have such broad application, the particular legal language of the restriction resulted in years of no progress towards putting the rail yard to beneficial use. The cost of making every possible future subdivided parcel meet *Residential* remediation standards regardless of potential uses made the property unmarketable and diminished UPRR’s incentive to undertake voluntary full-site cleanup.

In April 2015, UPRR proposed remediation of a limited portion of the site containing most of the high concentrations of contaminants and using trucks for transporting outgoing contaminated soil and incoming clean fill. City Council members countered with a request that UPRR conduct a full-site remediation using rail cars for taking contaminated soils away. UPRR asked the City to consider relaxing the deed restriction.

At the January 5, 2016 Council business meeting, Council approved a motion directing staff to initiate the planning process to modify the 1999 deed restriction. Another part of the motion directed staff to try to get agreement from UPRR to clean up the full site as soon as possible and to use rail cars for transporting contaminated soils from the site. Unstated but implicit in the approved motion was the necessity of reaching agreement among the City, UPRR, and DEQ on the wording of the modified deed restriction.



The three parties have now agreed that the following revised deed restriction is appropriate, assuming DEQ's standards are met and the City's concerns are adequately addressed:

Parcel 7 is restricted from further development or land division until Grantor obtains a determination from the Department of Environmental Quality that the property meets cleanup standards applicable to a single residential property. Thereafter, development on any subdivided parcel cannot occur until Grantor obtains a determination from the Department of Environmental Quality that the property meets cleanup standards applicable to the use proposed for the subdivided parcel. Grantor will provide written documentation from the Department of Environmental Quality demonstrating compliance with these standards to the City.

The list presented below is City staff's summary of concerns expressed by City Council about UPRR's remediation of the rail yard property. Councilmembers may decide the list is incomplete and choose to add items or may decide that some of the concerns have been satisfactorily resolved already. The discussion following the list outlines the reasons staff has concluded from its negotiations with UPRR and DEQ that Councilmembers can be reasonably assured each of the listed concerns will be adequately addressed in the course of the remediation project.

1. The full site should be remediated to applicable DEQ standards (meaning that after remediation of the full site as an aggregated unit to *Residential* standards, development on any subdivided parcels could occur only after remediation to DEQ standards applicable to the proposed actual use of the parcel);
2. Contaminated soil should be removed by rail, as proposed in the 2013 work plan;
3. Contaminated water and any debris should be contained and removed from the site;
4. Railcars containing contaminated soil should be covered to prevent releases;
5. The bulk of the work should take place in the latter part of 2016 and the early part of 2017, subject to unforeseen complications;
6. Union Pacific should make batch deliveries of clean fill in distinct phases and stockpile it, so as to avoid unpredictable, intermittent deliveries spread throughout the duration of the project;
7. DEQ-approved dust suppression measures should be observed;
8. Wheel-washing of all trucks and other rubber-tired equipment leaving the site should be used to prevent spread of contaminants beyond the worksite;
9. Heavy trucks traveling to and from the site should exclusively use routes designated by the City in advance; and
10. Union Pacific should pay for repair and restoration of any pavement on public streets damaged by heavy trucks or other equipment used in the project.

In discussions with the City and DEQ, UPRR has committed to incorporate the actions described in items 1 through 9 in the above list in the Remedial Action Work Plan for which it will be seeking DEQ approval. Upon DEQ approval, DEQ's authority to enforce those promised actions provides the City reasonable assurance that its concern will be adequately addressed. If UPRR were to not follow through as agreed, the City can take appropriate action to terminate the effort to revise the deed restriction.



In discussions with the City, UPRR has agreed to pay for street repairs and restoration as described in item 10 above. The City and UPRR have reached agreement already on how such damage to streets will be measured and monetized. The City will require a contract detailing this commitment before issuing the excavation permit UPRR needs in order to remove any soil from the site.

UPRR has declined to enter into a separate written agreement with the City on items 1 through 9 above, saying those will be the subject of primary commitments to DEQ, and UPRR cannot prudently put itself in the position of possibly having to also respond to potentially conflicting interpretations of those obligations by the City. See attached March 28, 2016 letter from Gary Honeyman, UPRR's Manager of Environmental Site Remediation. UPRR's reluctance to enter into a separate agreement concerning its work plan commitments to DEQ is understandable, and Staff believes the City's leverage described in the two paragraphs above already provide sufficient assurance that the City's concerns will be satisfactorily addressed.

Next Steps

If the Council authorizes staff to seek planning approval to modify the deed restriction, the anticipated next steps towards realization of full-site remediation of the rail yard site using rail for removal of contaminated soil are:

- Administration prepares and submits to the Planning Commission an application for Major Amendment to modify the deed restriction, that is, the existing condition of approval of the 1999 land use approval concerning the rail yard.
- Meanwhile, UPRR finalizes and submits to DEQ its Remedial Action Work Plan for full-site remediation using rail for removal of contaminated soil.
- DEQ hosts a public meeting in Ashland about the project to hear and address citizen concerns.
- DEQ approves Remedial Action Work Plan.
- Planning Commission conducts public hearing on modification of the deed restriction and makes a decision.
- If deed restriction is modified and Work Plan is approved, UPRR submits application for City excavation permit.
- City and UPRR enter into agreement on payment for project-related damage to streets.
- City issues excavation permit.
- Early September, 2016 (approximately): UPRR constructs rail spur.
- Fall 2016: Start of excavation and removal of contaminated soil by rail car and phased delivery of clean fill.
- Before summer, 2017: Completion of project.

COUNCIL GOALS SUPPORTED:

Environment

13. Develop and support land use and transportation policies to achieve sustainable development.
 - 13.2 Develop infill and compact urban form policies.

Economy

19. Ensure that commercial and industrial areas are available for development.
 - 19.2 Evaluate the prospects for the redevelopment of the railroad property.



People

5.2. Support and promote, through policy, programs that make the City affordable to live in.

5.2.a Pursue affordable housing opportunities, especially workforce housing.

FISCAL IMPLICATIONS:

There are no noteworthy near-term fiscal impacts. Future development of the railyard site could yield significant economic activity and City tax revenues.

STAFF RECOMMENDATION AND REQUESTED ACTION:

Direct staff to apply for modification of the deed restriction.

SUGGESTED MOTION:

I move to direct staff to prepare, file, and seek approval of an application for a Major Amendment to replace the condition of approval in PA99-048 with the modified condition of approval presented in the April 5, 2016, Council Communication and to continue working with Union Pacific Railroad and DEQ to achieve remediation of the rail yard site to applicable DEQ standards using rail cars for removal of contaminated soil.

ATTACHMENTS:

March 28, 2016, letter from UPRR's Gary Honeyman





Gary L. Honeyman
Manager Environmental Site Remediation

March 28, 2016

Mr. David Lohman
City Attorney
City of Ashland
20 E. Main Street
Ashland, Oregon 97520

SUBJECT: Ashland Railyard Cleanup

Dear David,

The Union Pacific Railroad Company (UPRR) is looking forward to completing remediation activities at the Ashland railyard. Your email sent on January 6, 2016 titled: "RE: proposed changes to UPRR City deed language" outlines four key items to be addressed in order for the project to proceed. The first three items in the email, relating to the process and wording change to the deed restriction, have been addressed to UPRR's satisfaction. The fourth item is quoted from the email as follows:

"4. We also need to develop an agreement between the City and UP documenting the commitment by UP to perform full-site remediation as soon as possible, using railcars to remove contaminated soil, and the commitment by the City to modify the deed restriction. The City Council will need to approve this agreement. The sooner we can get it in place, the better."

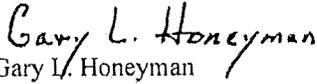
UPRR is already committed to an agreement with the Oregon Department of Environmental Quality (ODEQ) through the Voluntary Cleanup Program (VCP). As part of the VCP, a work plan for the complete full-site remediation, including the removal of all contaminated soil by rail, was already completed and approved by ODEQ in 2013. UPRR cannot enter into a separate agreement with the City of Ashland regarding the full-site remediation.

The work plan is divided into a series of five phases, which are necessary because removal of the contaminated soil by rail is a logistically complex process which is largely controlled by the ability to deliver and remove rail cars to the site on the short-line track that is not controlled by UPRR. Additionally, the rail spur into the center of the railyard needs to be constructed in order to allow for the rail cars to be loaded. The phased clean-up approach outlined in the work plan serves as UPRR's agreement with the State. UPRR is currently working with the ODEQ to complete any outstanding regulatory requirements on the project and ensure that UPRR has a clear understanding of ODEQ's roles and responsibilities during the cleanup process.

The only impediment to completing the work in 2013, as originally intended, was the conflicting wording of the deed restriction compared to ODEQ cleanup standards, which we now believe to be resolved with the proposed language changes. The approach outlined in the existing work plan fully meets the cleanup expectations of the City of Ashland, while complying with the ODEQ

requirements. A separate agreement with the City of Ashland has the potential of proposing requirements that would delay the implementation of the remedy and that are unacceptable and unnecessary given UPRR's current agreement with the ODEQ. UPRR would like to begin the remediation this year with the placement of the spur line and the completion of a couple of the phases defined in the work plan. Please let me know how we can get the wording change completed as outlined in your email.

Sincerely,


Gary L. Honeyman
Manager Environmental Site Remediation

Cc: Mark Ochsner/CH2M HILL