

## Waterfront Revitalization Subgroup Meeting #1 Minutes

March 31, 2014 | 1-3pm

Port of Milwaukee Administration Building, 2323 S. Lincoln Memorial Drive  
or call-in at (888) 291-0310 passcode 7526216#

### ATTENDEES

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Bruce Keyes, Foley & Lardner (Waterfront Revitalization Subgroup Co-Chair)  
David Misky, City of Milwaukee (Waterfront Revitalization Subgroup Co-Chair)  
Josh Neudorfer, The Sigma Group  
Bill Scott, Gonzalez, Saggio & Harlan  
Andrew Mott, AECOM  
Charles "Buck" Sweeney, Axley Brynerson  
Laurie Parsons, NRT  
Frank Dombrowski, WE Energies  
Mark Thimke, Foley & Lardner  
Vicki Elkin, Fund for Lake Michigan  
Larry Kirch, City of La Crosse  
Mat Reimer, City of Milwaukee  
Tom German, Board of Commissioners of Public Lands  
Mike Friis, Wisconsin Dept. of Admin  
Steve Galarneau, DNR  
Ken Potrykus, Foth Infrastructure & Environment  
Margaret Brunette, DNR  
Darsi Foss, DNR  
Jason Scott, WEDC  
Brad Basten, DOT  
Michael Prager, DNR  
Peter McAvoy, UWM School of Freshwater Sciences  
Tina Reese, Avantti Environmental Group  
Christine Haag, DNR (Waterfront Subgroup "Buddy")

### AGENDA ITEM #1: Reminder to Sign In

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**Relevant Attachments:** None

**Discussion:** None

### AGENDA ITEM #2: Overview and objectives of Waterfront Revitalization Subgroup: Where do we want the BSG to focus?

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**Relevant Attachments:** None

**Discussion:** Waterfront Initiative Subgroup Co-Chairs Dave Misky and Bruce Keyes introduced the group and gave an overview on the following:

1. History and purpose of the Brownfields Study Group (BSG). Several reports provide context:
  - a. 1999 Brownfield Study Group Report: <http://dnr.wi.gov/files/PDF/pubs/rr/RR615.pdf>
  - b. 2000 Brownfield Study Group Report: <http://dnr.wi.gov/files/PDF/pubs/rr/RR655.pdf> (Chapter 3 and in particular the SAG report may be a good example.)

- c. 2014 Brownfield Study Group website: <http://dnr.wi.gov/topic/Brownfields/bsgreport.html>
2. At the 2/27/14 meeting of the BSG, the Group decided to produce another report. Waterfront Revitalization is one of six subgroups that will make recommendations to the BSG on action items (e.g. legislative, financial, and technical) to include in a report. The BSG identified four waterfront subtopics – aging infrastructure and legacy issues, regulatory process issues, financial needs and contamination issues.
  3. The goal of the waterfront subgroup is to have recommendations on actions to address these issues by the end of May

Action Item	Decision/Recommendation	Dissenting Opinions
None		

Assignments	Timeframe	Person(s) Responsible
None		

**AGENDA ITEM #3:** Topic #1 – “Aging Infrastructure and Legacy Issues” – Create a list of possible subtopics

**Relevant Attachments:** none

**Discussion:** The group identified the following issues within this topic -

- Aging seawalls
- Breakwaters and wave attenuation structures
- Dock walls (both replacing and removing)
  - What is acceptable when replacing? Soft edge? (implications for filling, flood plain) Armoring? (Impacts to adjacent properties from littoral drift)
- Coastal processes - impact from drift or containment of sediment (Oak Creek)
- Barge loading locations – contamination issues
- Navigability issue – determination for established capping depths that may not be the depth in fact
- Permitting delays at DNR – not able to move quickly
- Legacy issues:
  - Constitutional limitation: issues with changing historic, permitted use associated with navigability to a new use not related to navigation (e.g. dock to condos)
  - Submerged lands and bulkhead: activities that extend beyond the bulk head line may require a new line or may require a submerged land lease
- Removal of channelization and dams
- Aging utility outfalls – contamination and infrastructure issues
- Lake elevation issues – impacts from climate change (e.g. shoreline deterioration and dredging needs along Great Lakes; flooding along the Mississippi)
- Waste material and fill along waterways: when below the ordinary high water mark this is a Chapter 30 issue. Could also be a Section 106 issue (e.g. historic anchor)
- Permitted, aging dock posts that are a safety issue but could be used for new development; hard to get new approvals; locals need time to figure out how to incorporate these into a new use (LaCrosse - L. Kirch); ACOE and DNR issue; DOT can be a help in some of these situations.
- Migratory bird issues (Note: Topic #1 may not be in the correct category) (need for best practices document?)
- Impact of leaving contaminated materials in place – will it leach to nearby surface water?

- Public Trust Doctrine:
  - How do sponsors know what to do when a use will change?
  - What is the authority to evaluate a change in use?
  - What are the legal options?
  - There are communication issues
  - Need a good GIS definition of OHWM
  - Categories of issues:
    - Repurposing at formerly permitted areas (Pioneer Inn at Oshkosh)
    - Grandfathered uses
    - Newly developed bulkheads and features in water
    - Defining OHWM and GIS efforts

Action Item	Decision/Recommendation	Dissenting Opinions
None		

Assignments	Timeframe	Person(s) Responsible
None		

**AGENDA ITEM #4:** Topic #2 - “Regulatory Process” – Create a list of possible subtopics

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**Relevant Attachments:** none

**Discussion:** The group identified the following issues within this topic -

- Section 106 and waste material in or along waterways
- Public Trust Doctrine and historic use (See
- Migratory birds – damage to structures; regulation challenges from Migratory Bird Treaty Act
- NR 347: acceptance of dredge materials and carriage water
- NR 500: exemptions; beneficial reuse – what is ok to place?
  - NR 105: what is ok to discharge to surface waters – transfer of contaminants
- NR 718 and interface with water criteria (NRT ex. Westside)
- What is the definition of sediment?
  - Does NR700 apply to sediments? The codes need to be integrated from a process standpoint for sediment. What happens to the edge materials? What does “contaminated sediment” mean? Need a regulatory process for sediment cleanups and sediment cleanup criteria.
- Chloride
- VPLE and sediment contamination – can sediment be insured?
- Federal /state interface: ACOE, Coast Guard - streamline process for construction of bridges and river walks
- ACOE: general permit has been a success; other projects not so much
- ACOE: unclear of who to deal with and no flow chart for how to get from A to B
- Issues of transparency
- Where is the lake bed? Need to digitize lake bed maps to make accessible.
- Where does the lake end and the river start?
- Dispute resolution process needed at DNR

- Checklist of regulatory requirements needed at DNR/Feds
- Can sites get closure for the uplands if the sediment issues are long term?
  - Federal interest: can they let the uplands go through NR 700
  - Need access to area if land gets redeveloped first (addressing sediment later after development is a challenge – there may be no access to truck out materials, the upland is “dressed up”, etc.

Action Item	Decision/Recommendation	Dissenting Opinions
None		

Assignments	Timeframe	Person(s) Responsible
None		

**AGENDA ITEM #5:** Topic #3 - “Financial” – Create a list of possible subtopics

**Relevant Attachments:** none

**Discussion:** The group identified the following issues within this topic –

- Reminder - BCPL loans funds for any public purpose
- How can those areas in AOCs better integrate with Great Lakes Legacy Initiative funding to bring additional funds to projects (rather than leaving it to the PRP)
- Integrate into Great Lakes Restoration funds
- Multiple entities can work together on a regional scale for landscape-level impact rather than on an individual property basis. We need a mechanism to be an aggregator – smaller amounts collected for bigger projects.
- Harbor Assistance grant program is fantastic
- TAP program at DNR has worked for La Crosse, but funds are scarce
- Need money for waterfront plans; redevelopment is aided when pre-plans are already in place (give more implementation money to communities that have a plan?)
- Need money for assessment and demo, cleanup, removing fill, dredging, contaminated sediments, infrastructure such as for docks, marina, stormwater management
- Look at multiple sources; DNR RR; TIF
- Stewardship funds and urban brownfields – requirement to allow trapping and hunting is an issue. DNR should consider future use in the NBOA safety determination if there is a master plan
- ACOE can contribute work
- Look at all funding sources and make a determination on each if they meet our needs
- Go to Congress/feds for more \$ for redevelopment projects – the upland portions that are visible to the public
- Harbor maintenance trust funds - need to make sure we get our share
- Funding for public open space
- DOA Coastal Management program has \$2m annually to provide grants for beach restoration, facilities, planning, initial stages of a project to position it for larger private investment
  - DOA can’t fund private entities – there must be a public interest in the land
  - Lack of ownership is an issue
- Regional bonding authority for funding
- DOT tech and financial assistance: financial swat team to help developers/communities/SPOC
- Educational sessions by geographic areas to municipalities promoting for seeking redevelopment – present best practices

Action Item	Decision/Recommendation	Dissenting Opinions
None		

Assignments	Timeframe	Person(s) Responsible
None		

**AGENDA ITEM #6:** Topic #4 - "Contamination Issues" – Create a list of possible subtopics

**Relevant Attachments:** none

**Discussion:** The group identified the following issues within this topic –

- See notes pertaining to sediment under Agenda Item 4 – Regulatory process
- No standards for sediment: need two –
  - What can we leave in place
  - What can be picked up and beneficially reused
  - Maybe not a numerical standard, maybe we need a performance standard (NR 720) (welfare vs health standard for sediment – when is there room to give?)
- Continuing obligations at sediment sites - fix 292.12
  - Property ends at waters edge – doesn't deal with the realities of riparian ownership
    - Property law doesn't match RR laws
  - Must take a more holistic view – need clarity
  - Downstream owner that has capped sediment – if RP goes bankrupt the riparian owner becomes responsible for maintaining the cap
  - Who pays for failure? What the financial assurances necessary?
- GIS form - does it deal with sediment? Doesn't address very well properties with a water component or sediment problems. Should there be a separate BRRTS # for the sediment so the upland could close?
- VPLE and insurance of sediments (VPLE is based on the property, not the water's edge)

Action Item	Decision/Recommendation	Dissenting Opinions
None		

Assignments	Timeframe	Person(s) Responsible
None		

**NEXT MEETING**

Date: April 14, 2014

Time: 1-3pm

Location or Call-in Info: Dane County Land and Water Conservation Office (or call in: 888-291-0310 passcode 7526216#)