

# Innovation with Clean Diesel Construction

BY JILL R. LONG

When I hear that a real estate project is faced with environmental issues, the first thought that comes to mind is not one of compromise and collaboration. Instead I imagine pitchfork yielding activists, greedy developers and irresponsible landowners. But in 2013 I was involved in a project that completely turned that stereotype on its head.

Toward the end of 2012, Con-way (the owner of approximately 20 acres of mostly undeveloped surface parking lots in northwest Portland) obtained an approval from the City of Portland for a comprehensive Master Plan of its northwest Portland campus. The Master Plan provides for flexible development on the Con-way site to create a vibrant pedestrian friendly, mixed-use neighborhood.

Following approval of the Master Plan, Con-way (the landowner), CE John (the first developer) and the Northwest District Association (NWDA) (the neighborhood) began meeting regularly to discuss a good neighbor agreement (GNA). GNAs come in a variety of shapes and sizes. Sometimes they are required directly by the City Code, and other times they are simply a gesture of goodwill. For the Con-way Master Plan there was no GNA required. However, all the parties agreed to work in earnest toward a GNA. The bigger question became — what exactly would this particular GNA cover?

The NWDA came to the table with a very specific environmental issue in mind — clean diesel construction. The neighborhood wanted to ensure that the construction project was done in a “clean” manner, using the most advanced diesel technology. The landowner and the developer liked the concept but were concerned about costs and the availability of technology.

To help understand this innovative area, the parties agreed to have a representative from the Oregon Department of Environmental Quality (DEQ) participate as a neutral resource. This greatly helped everyone’s understanding of the issues and educated both sides about the reality of clean diesel equipment. Having DEQ at the table created a platform for compromise. DEQ articulated issues with technology availability and cost from a neutral position. Instead of the parties getting entrenched in a particular position, they were able to keep an open mind and look for creative solutions.

The ultimate creative solution became a GNA that adopts a construction standard of Environmental Protection Agency-rated Tier 4 off-road construction equipment to be used whenever feasible. By identifying a standard and then agreeing to a feasibility component, the parties were able to find a position of compromise that promotes and protects everyone’s interest in a successful project with reduced

diesel emissions. The GNA also includes ongoing dialogue among the parties to capture opportunities as technology changes over time.

To deal with the question of uncertain costs, the parties pursued grant opportunities to help alleviate the burden of additional costs to the project. The developer was able to successfully obtain a grant that is anticipated to be employed in the construction of the first Con-way project in June of 2014. This grant will be administered in a partnership with the Oregon DEQ and provides funds to retrofit construction equipment with clean diesel technology.

Phil Selinger, NWDA board President, commented on the agreement saying that “the NWDA is pleased that Con-way has repeatedly demonstrated its commitment to enhancing the community’s quality of life — with well-designed, mixed-use redevelopment; the dedication of future parkland; and the commitment to an innovative good neighbor agreement that will minimize the impact of diesel emissions and other construction-related impacts on the community.”

The process was filled with occasional bumps in the road, but one main factor that kept everyone talking, even during times of tension, was the high level of trust built among the parties during the entitlement process for the Master Plan. With a history of working together and a proven successful result with the Master Plan, the parties really believed they would find a solution to address clean diesel construction. And they did. The official “Clean Diesel and Conduct of Construction Good Neighbor Agreement” was unanimously approved by the NWDA Board on November 18, 2013. “We hope this agreement will be a model for other development projects and even applied on a City and State level,” Selinger added.



Jill R. Long is a shareholder at Lane Powell, where she leads the Firm’s Land Use Practice Group. She focuses her practice on land use and real estate, with a concentration on obtaining entitlements for retailers, developers and property owners. Jill can be reached at 503.778.2147 and [longj@lanepowell.com](mailto:longj@lanepowell.com).