



July 26, 2012

File: NR-12-01

NOTICE OF DECISION

This is official notice of action taken by the Milwaukie Planning Commission on July 24, 2012.

Applicant: Leah Robbins for TriMet
Location: 2519, 2525, and 2535 SE Harrison St
Tax Lots: 1S1E25CC, taxlots 4300, 4400, and 4500
Application Type: Natural Resource Review
Decision: Approved with Conditions
Review Criteria: Milwaukie Zoning Ordinance:

- MMC 19.306 Residential Zone R-2
- MMC 19.402 Historic Resources
- MMC 19.700 Public Facility Improvements
- MMC 19.1006 Type III Review

Neighborhood: Historic Milwaukie

This notice is issued in accordance with Milwaukie Municipal Code Section 19.1006 Type III Review. The complete case file for this application is available for review between 8:00 a.m. and 5:00 p.m. on regular business days at the Planning Department, Johnson Creek Facility, 6101 SE Johnson Creek Blvd. Please contact Brett Kelter, Associate Planner, at 503-786-7657 or kelterb@ci.milwaukie.or.us, if you wish to view this case file.

Only persons who submitted comments or made an appearance of record at the public hearing have standing to appeal the decision by filing a written appeal. An appeal of this decision would be heard by the Milwaukie City Council. The period during which an appeal can be filed expires on the date shown below. This decision becomes final on the date below if no appeal is filed during the appeal period.

Appeal period closes: 5:00 p.m., August 10, 2012

Appeals of Planning Commission decisions must follow the procedures of Milwaukie Municipal Code Section 19.1010 Appeals. Milwaukie Planning staff can provide information regarding forms, fees, and the appeal process at 503-786-7630 or planning@ci.milwaukie.or.us.

Findings in Support of Approval

1. The applicant, TriMet (“the applicant”), is seeking land use approval to disturb a designated Water Quality Resource (WQR) as part of the Portland-Milwaukie Light Rail (PMLR) project. The process of constructing the PMLR trackway, extending and repairing an existing culvert under the new trackway, and replacing an existing culvert under SE 26th Avenue will result in temporary and permanent disturbance of the WQR that includes Crystal Creek, a small delineated wetland, and associated vegetated buffers.
2. The project area includes the rear portions of 3 residential lots at 2519, 2525, and 2535 SE Harrison Street. The properties are zoned Residential R-2. The site is located between SE 26th Avenue to the east and the Union Pacific Railroad (UPRR) right-of-way and existing trackway to the west. An overpass for Highway 224 runs east-west approximately 400 ft north of the site.

The project area is undeveloped, though each of the 3 lots is developed with a single-family house structure and has a substantial rear yard where the WQR is located. The existing structure at 2535 SE Harrison St is used as an office for professional medical services. Adjacent properties to the south and west are primarily developed with single-family residential structures and to the east with multi-family residential structures.

Crystal Creek flows east to west through the project area and under the UPRR trackway. An existing concrete foundation wall, a remnant of infrastructure from the historic Crystal Lake Park (early 1900s), diverts the creek and feeds a small wetland on the east side of the UPRR trackway. The project area is vegetated with approximately two dozen trees (Douglas fir, willow, big-leaf maple) but is dominated by invasive vegetation (primarily blackberry, ivy, and clematis).

3. The proposal is subject to the following provisions of Milwaukie Municipal Code (MMC) Title 19 Zoning:

MMC 19.306 Residential Zone R-2

MMC 19.402 Natural Resources

MMC 19.700 Public Facility Improvements

MMC 19.1006 Type III review

4. The Planning Commission reviewed the application in compliance with the Type III review process described in MMC 19.1006. As required, the applicant posted public notice at the site and the City mailed notices to surrounding property owners and residents within 300 ft of the site. The Planning Commission held a duly advertised public hearing considering the application on July 10, 2012; the hearing was continued to July 24, 2012.

5. The Planning Commission reviewed the application for compliance with the code sections listed in Finding 3.

The Planning Commission finds that code sections not addressed in these findings are not applicable to the decision.

6. MMC 19.306 Residential R-2 zone

MMC 19.306 establishes regulations for the R-2 zone. The PMLR trackway itself is part of a larger public transportation system and is allowable in all zones as a transportation facility. No other uses or structures are proposed.

The Planning Commission finds that no R-2 zone standards are applicable to the work proposed within the project area.

7. MMC 19.402 Natural Resources

MMC 19.402 establishes regulations for designated natural resource areas. The standards and requirements of MMC 19.402 are an acknowledgment that many of the riparian, wildlife, and wetland resources in the community have been adversely impacted by development over time; and they are intended to minimize additional negative impacts and to restore and improve natural resources where possible.

- A. MMC 19.402.3 establishes applicability of the Natural Resource (NR) regulations, including all properties containing Water Quality Resources (WQRs) and Habitat Conservation Areas (HCAs) as shown on the City's NR Administrative Map. Specifically, MMC 19.402.3.G requires the submittal of a construction management plan for projects that will disturb more than 150 sq ft.

The project area includes Crystal Creek and a small delineated wetland. These features, along with the associated vegetated buffer areas as defined in Table 19.402.9.A, constitute a WQR on the site. As proposed, the proposed development will disturb over 11,000 sq ft of WQR area.

The Planning Commission finds that the requirements of MMC 19.402 are applicable to the subject property, including the requirement to provide a construction management plan according to the standards of MMC 19.402.9.

- B. MMC 19.402.8 establishes that certain activities within a designated WQR, including development activities allowed in the base zone, are subject to Type III review (MMC 19.1006) and the general discretionary review criteria provided in MMC 19.402.12.

The proposed construction of the light rail trackway within a WQR is not exempt from the provisions of MMC 19.402, nor is it permitted as a Type I or Type II activity.

The Planning Commission finds that the proposed development is subject to Type III review (MMC 19.1006) and that the general discretionary review criteria of MMC 19.402.12 apply to the proposed disturbance of the WQR area.

- C. MMC 19.402.9 establishes standards for construction management plans, which are required for projects that disturb more than 150 sq ft of natural resource area. Construction management plans must provide information related to site access, staging of materials and equipment, and measures for tree protection and erosion control.

As noted in Finding 7-A, above, a construction management plan is required prior to commencement of the proposed development activity. A construction management plan was not included with the application submittal, so a condition is established to ensure that a construction management plan, with the information required by MMC 19.402.9, is provided as part of the development permit review process.

The Planning Commission finds that, as conditioned, this standard is met.

- D. MMC 19.402.11 establishes development standards for projects that impact a natural resource.

- i. MMC 19.402.11.A provides standards for protecting natural resource areas during development, including requirements to mark work areas, flag WQR and HCA areas that are to remain undeveloped, and conduct all work in accordance with an approved construction management plan.

The proposed project is subject to all relevant standards in MMC 19.402.11.A. A condition is established to ensure that all project work is performed in accordance with an approved construction management plan.

As conditioned, the Planning Commission finds that this standard is met.

- ii. MMC 19.402.11.B establishes general standards for required mitigation, including requirements related to items such as plant species, size, spacing, and diversity, as well as location of mitigation area, removal of invasive vegetation, and plant survival.

The applicant has provided a general mitigation plan for the proposed disturbance to the WQR. The plan includes information about species, size, spacing, and survival within a designated mitigation area. As proposed, existing nuisance species vegetation will be removed and the mitigation area will be planted or seeded with native species to 100% surface coverage as required. The applicant has proposed to maintain the mitigation effort for 5 years after planting. A condition is established to require a more detailed plan for implementation of the approved mitigation, including timelines for planting, maintenance, and monitoring, as well as a contingency plan.

As conditioned, the Planning Commission finds that this standard is met.

- iii. MMC 19.402.11.C establishes mitigation requirements for disturbance within WQRs. The requirements vary depending on the existing condition of the WQR, according to the categories established in MMC Table 19.402.11.C. For Class B "Marginal" WQR conditions, MMC Table 19.402.11.C requires that disturbed areas be restored and mitigated with native species from the Milwaukie Native Plant List, using a City-approved plan developed to represent the vegetative composition that would naturally occur on the site.

According to the applicant's inventory of vegetation in the WQR, the combination of trees, shrubs, and ground cover and the percentage of tree canopy are sufficient to categorize the existing condition as Class A "Good." However, the applicant has noted that most of the shrub and ground cover vegetation consists of nuisance species and that, if the nuisance species were removed, the actual condition of the WQR would be Class B "Marginal."

ESA, the City's on-call natural resource consultant, has reviewed the applicant's materials and visited the site to assess existing conditions. Within the wetland area, ESA observed a variety of native plants in addition to the nuisance species noted by the applicant. However, ESA concurs overall with the applicant's assessment of the existing condition of the WQR as Class B "Marginal" instead of Class A "Good," due to the large percentage of nuisance species.

Within the WQR, the proposed development will permanently disturb 0.2 acres and temporarily disturb 0.06 acres. As proposed, all temporary disturbance areas will be revegetated with native plants. As mitigation for permanent disturbance, the applicant has proposed to restore approximately 0.25 acres within the WQR, within an area available for mitigation through a temporary construction easement. The applicant proposes to remove existing nuisance species vegetation, remove an existing concrete foundation wall that impedes stream flow, minimally re-grade the area to improve drainage to the new culvert extension, and revegetate the area with native plants. According to the applicant, the proposed mitigation is intended to create a multi-canopy arrangement of plantings that, once established, will prevent the return of nuisance species and will reset the ecological conditions of the site.

ESA has assessed the proposed mitigation plan and determined that it is generally sufficient as mitigation for the proposed permanent disturbance to the WQR. ESA offered one suggestion for improving the mitigation plan: within the mitigation area, retain some fell logs from trees downed as part the project, to provide immediate nutrients and large woody and organic material. A condition is established to incorporate this suggestion and ensure that the mitigation plan adequately compensates for detrimental impacts to the ecological functions of the WQR.

As conditioned, the Planning Commission finds that this standard is met.

The Planning Commission finds that, as conditioned, the proposed development meets the applicable standards of MMC 19.402.11.

- E. MMC 19.402.12 establishes a discretionary process for analyzing the impacts of development on WQRs and HCAs.
- i. MMC 19.402.12.A requires a report presenting an evaluation of impacts and analysis of alternatives for the proposed development. The report must be prepared and signed by a qualified natural resource professional and must include several specific elements, which are addressed below.

The submittal materials include a WQR report prepared by Vigil-Agrimis, a professional firm specializing in engineering, landscape design, and environmental science. The report includes an evaluation of impacts and analysis of alternatives sufficient to address the required elements listed below.

- a) MMC 19.402.12.A.1 requires identification of the ecological functions of riparian habitat found on the subject property.

The applicant's WQR report provides an assessment of the existing ecological functions of the Crystal Creek riparian habitat. Overall, the WQR within the project area is in a state of ecological decline. Although there is substantial canopy provided by native species trees, the shrub layer and ground cover are dominated by non-native nuisance species (primarily blackberry, ivy, and clematis) that are out-competing native plants and preventing the regeneration of trees and other native species. A concrete foundation wall, a remnant from past development at the historic Crystal Lake Park in the early 1900s, is in the stream channel, where it alters the natural stream flow and causes active erosion. (Note: The site is not on the City's list of historic properties.)

ESA reviewed the applicant's WQR report and generally concurs with the applicant's assessment of ecological functions and values of the WQR. The applicant's identification of ecological functions is sufficient to meet this requirement.

- b) MMC 19.402.12.A.2 requires an inventory of vegetation, sufficient to categorize the existing condition of the WQR per MMC Table 19.402.11.C.

The applicant's WQR report includes an inventory of existing vegetation within the project area. Tree canopy covers approximately 68% of the project area, shrubs cover approximately 91%, and ground cover and vines cover approximately 92%. The trees are mostly native species (willow, Douglas fir, big leaf maple); the shrub and groundcover layers are dominated by nuisance species (Armenian blackberry, English ivy, and clematis).

According to MMC Table 19.402.11.C, the existing condition of the WQR is Class A "Good." However, the applicant has noted that the area would be categorized

as Class B "Marginal" if the most prolific nuisance plants (blackberry, ivy, and clematis) were removed and not included in the assessment. The nuisance plants are further degrading the tree canopy and preventing the growth of new trees.

ESA has reviewed the applicant's WQR report and visited the site to assess existing conditions. Overall, ESA concurs with the applicant's assessment of the existing condition of the WQR as Class B "Marginal."

- c) MMC 19.402.12.A.3 requires an assessment of the water quality impacts related to the proposed development.

The applicant's WQR report notes that direct impacts to water quality resulting from the proposed development will be minimal. Erosion control measures will be established, staging areas will be located at least 150 ft from any water body, and all temporarily disturbed areas will be restored following construction. Thirteen (13) trees within the WQR will be removed as part of the temporary and permanent disturbance, including 8 trees within 20 ft of Crystal Creek. However, the WQR report notes that temperature and water quality in Crystal Creek are more directly affected by Crystal Lake than by tree canopy. And 61 native trees will be planted as mitigation, which will eventually re-establish a comprehensive canopy.

ESA has reviewed the applicant's WQR report and generally concurs with the applicant's assessment of the proposed development's impacts on water quality. ESA has noted that the report did not sufficiently discuss the project's impacts on sediments, sediment control, or nutrients. A condition is established to ensure that a construction management plan (including provisions for sediment control) is provided as part of the development permit process. Another condition is established to ensure that some_fell logs from trees removed as part of the project are retained within the mitigation area to provide immediate nutrients and large woody and organic material. As conditioned, the applicant's assessment of water quality impacts is adequate.

- d) MMC 19.402.12.A.4 requires an analysis of alternatives to the proposed development, including an explanation of the rationale behind choosing the alternative selected.

Within its approved alignment, the PMLR trackway will cross Crystal Creek and pass through the adjacent WQR area. Therefore, some intrusion into and disturbance of the WQR is inevitable for the PMLR project.

The applicant's WQR report asserts that the proposed development, which involves using mechanically stabilized earth (MSE) behind a new retaining wall to construct the PMLR trackway, is the most practicable alternative. Although the applicant's WQR report does not directly discuss other specific alternatives in detail, it does note several relevant considerations:

- Crystal Creek already passes through a culvert under the existing Union Pacific Railroad (UPRR) trackway. The proposed development would simply extend the existing culvert under the new PMLR trackway.*
- There is no documented history of Crystal Creek being a fish-bearing stream for protected species.*

- *Additional barriers to fish passage in Crystal Creek exist both upstream and downstream from the project area.*
- *The Oregon Department of Fish & Wildlife (ODFW) has granted the applicant an exemption to the requirements to maintain standard fish-passage conditions in Crystal Creek. The applicant is not required by ODFW to establish or maintain particular conditions for fish passage in Crystal Creek.*

Given these considerations, in addition to the fact that the overall project has been approved by all of the relevant federal and state agencies, it is reasonable to conclude that the proposed culvert extension, using MSE and a retaining wall to establish the new trackway, is in fact the most practicable, least impactful option.

- e) For alterations to existing structures within the WQR, MMC 19.402.12.A.5 requires the presentation of evidence that 1) no practicable alternative design or method of development exists that would have a lesser impact on the WQR than the one proposed and 2) mitigation is provided for impacts to the WQR.

As noted in Finding 7-E-i(d), above, the proposed development (using mechanically stabilized earth and a retaining wall for the new trackway) represents the least impactful, most practicable alternative regarding disturbance to the WQR. As noted in Finding 7-E-i(f), below, the proposed mitigation of impacts is designed to reset a healthy ecological function for the WQR.

- f) MMC 19.402.12.A.6 requires a mitigation plan, including a description of the proposed development's impacts to the WQR, a map showing where mitigation activities will occur and a schedule and timeline for implementation.

The applicant's WQR report includes a description of the proposed disturbances to the WQR. The new PMLR trackway will result in a permanent disturbance of 0.2 acres, with 0.06 acres of temporary disturbance for construction access. A map (Figure 2: Mitigation Area) shows the location of temporary and permanent disturbance areas within the WQR.

Existing trees to remain on the site will be protected, and an area equal to the permanent disturbance area will be restored with native species trees, shrubs, and ground cover. The concrete foundation wall within the stream channel will be removed to restore a more natural stream hydrology within the WQR. The nuisance species plants that currently dominate the area will be removed, reversing the trend of ecological decline and resetting a natural course for a healthy, native vegetation community within the WQR.

The mitigation plan includes some general information about how the work will be conducted within the WQR. Erosion and sediment control measures will be established prior to the commencement of work, and cleared areas will not be left unprotected for more than 24 hours. According to the planting list included in the applicant's WQR report, cleared areas will be re-seeded within 48 hours of disturbance and will be replanted with trees and shrubs as soon as practicable. Unless the Oregon Department of Fish & Wildlife (ODFW) grants an extension, in-stream work will be conducted during the ODFW-sanctioned window of July 15 through August 31.

ESA has reviewed the mitigation plan provided in the WQR report and concluded that it is generally sufficient, given the amount and type of disturbance proposed. A condition is established to require a more detailed plan for implementation of the approved mitigation, including timelines for planting, maintenance, and monitoring, as well as a contingency plan. An additional condition is established to require that some fell logs from the trees downed within the project area be retained in the mitigation area.

As conditioned, the Planning Commission finds that the WQR report provided by the applicant meets the applicable standards of MMC 19.402.12.A.

- ii. MMC 19.402.12.B establishes criteria for approving disturbances to the WQR.
 - a) MMC 19.402.12.B.1.a requires that the proposed development shall avoid intrusion into the WQR to the extent practicable and that it be the least impactful alternative.

The alignment of the PMLR trackway, which the Milwaukie City Council and Metro approved, crosses Crystal Creek and passes through the adjacent WQR. The approved alignment location makes intrusion into and some disturbance of the WQR inevitable.

As discussed in Finding 7-E-i(d), above, Crystal Creek already passes through a culvert under the existing Union Pacific Railroad (UPRR) trackway; the proposed development will extend the existing culvert. There is no documented history of Crystal Creek being a fish-bearing stream for protected species. Additional barriers to fish passage in Crystal Creek exist both upstream and downstream from the project area. The Oregon Department of Fish and Wildlife (ODFW) granted the applicant a waiver from the requirement to establish or maintain particular conditions for fish passage in Crystal Creek. Given these circumstances, repairing and extending the existing culvert and using mechanically stabilized earth (MSE) and a retaining wall represents the least impactful alternative for the new trackway that is practicable.

As proposed, this criterion is met.

- b) MMC 19.402.12.B.1.b requires that the proposed development shall minimize detrimental impacts to the WQR to the extent practicable.

The project proposal limits the area of WQR disturbance and the number of existing trees that will be removed to the minimum necessary, and provides protection for the WQR area and the trees that will remain. Temporary disturbance for trackway construction and for access to the project area will be limited to the minimum necessary for construction access, both along the new trackway and into the project area from SE 26th Avenue.

The proposed development is subject to all applicable development standards, including measures to protect areas within the WQR that will not be disturbed by the proposed development. A condition is established to ensure that all project work is performed in accordance with an approved construction management plan. An additional condition is established to confirm that no chemicals found on the City's Prohibited Chemicals List shall be applied within the WQR area.

As conditioned, this criterion is met.

- c) MMC 19.402.12.B.1.c requires that the proposed development shall mitigate for detrimental impacts to the WQR. Mitigation shall be on site, use native plants, be

done in accordance with allowable windows for in-water work, and follow a mitigation maintenance plan.

The applicant has proposed to mitigate for permanent impacts to the WQR by restoring an area equal to the permanent disturbance area (0.2 acres). Existing nuisance plant species will be removed from the mitigation area. The applicant will also remove a concrete foundation wall from the stream channel, improving stream flow and water quality. Removal of the concrete wall will require removal of 1 small willow tree that is growing out of the foundation. The mitigation area will be replanted with native species, including 61 trees and 870 shrubs, and the area will be minimally re-graded to establish a more natural channel and direct water into the newly extended culvert. The proposed mitigation is designed to reset the ecological balance of the area in favor of native species and more natural stream and wetland hydrology.

ESA has assessed the proposed mitigation plan and determined that it is generally sufficient as mitigation for the proposed permanent disturbance to the WQR. ESA offered one suggestion for improving the mitigation plan: within the mitigation area, retain some fell logs from trees downed as part the project, to provide immediate nutrients and large woody and organic material. A condition is established to address this suggestion and ensure that the mitigation plan adequately compensates for detrimental impacts to the ecological functions of the WQR.

As conditioned, this criterion is met.

The Planning Commission finds that, as conditioned, the proposed development meets the approval criteria established in MMC 19.402.12.B.

The Planning Commission finds that, as conditioned, the proposed development meets the applicable standards of MMC 19.402.12.

- F. MMC 19.402.15 establishes standards for verifying the boundaries of WQRs and HCAs and for administering the City's Natural Resource (NR) Administrative Map. The locations of WQRs are determined based on the provisions of MMC Table 19.402.15. In general, for primary protected water features, the WQR includes the feature itself and a vegetated corridor that extends 50 ft from the top of bank (for streams) or delineated edge of the feature (for wetlands).

The application submittal includes a map showing the location of Crystal Creek, a primary protected water feature. The map also shows the location of the wetland associated with the creek, the delineation of which has been approved by the Oregon Department of State Lands (DSL). The vegetated corridors adjacent to both protected water features have been determined in accordance with the provisions of MMC Table 19.402.15, including an accounting for steep slopes in the project area.

ESA visited the site and reviewed the applicant's map of the WQR. ESA concurs with the applicant's presentation of the location of the primary protected water features (Crystal Creek and the associated wetland) and the adjacent vegetated corridors that comprise the WQR.

The Planning Commission finds that the WQR is accurately mapped according to the relevant provisions of MMC 19.402.15.

The Planning Commission finds that, as conditioned, the proposed development meets all the applicable standards of MMC 19.402.

8. MMC 19.700 Public Facility Improvements

The purpose of MMC 19.700 is to ensure that development provides public facilities that are safe, convenient, and adequate in rough proportion to their public facility impacts. As per MMC 19.702.3.G, public capital improvement projects are exempt from the standards of MMC 19.700.

The Portland-Milwaukie Light Rail (PMLR) project is part of a larger, regional public transportation system and represents a type of capital improvement project. The standards of MMC 19.700 are not applicable to the proposed work.

9. The City distributed the subject application to the following City departments and agencies for review and comment on May 23, 2012: City of Milwaukie Building, Engineering, and Operations Departments; Clackamas County Fire District #1; Historic Milwaukie Neighborhood District Association; TriMet; U.S. Army Corps of Engineers; Oregon Department of State Lands; and ESA, the City's on-call natural resource consultant. The City mailed notice of the initial public hearing to property owners and current residents at all properties within 300 ft of the subject property on June 20, 2012.

The following is a summary of the comments received by the City:

- **Rob Livingston, City of Milwaukie Erosion Control Specialist:** No specific comments on this application. Will review the Erosion, Sediment, and Pollution Control Plan submitted as part of actual construction, as referenced on Page 8 (third paragraph) of the applicant's WQR report.
- **Zach Weigel, City of Milwaukie Engineering Department:** The provisions of MMC 19.700 Public Facility Improvements are not applicable to the proposed development.
Response: This comment has been incorporated into the Findings.
- **Jean Baker, co-chair of Historic Milwaukie NDA:** There are no further questions at this time. (*Note: NDA members met with TriMet staff met on June 18, 2012, to address questions site access, phasing of construction and mitigation, the ODFW fish-passage exemption, and repurposing of trees removed.*)
- **Sarah Hartung and Alison Sigler, Biologists with ESA:** As the City's on-call natural resource consultant, ESA reviewed the application; assessed the existing conditions, alternatives analysis, and proposed mitigation plan; and prepared a report summarizing the analysis.

Response: The ESA analysis has been incorporated into the Findings.

Conditions of Approval

1. Prior to issuance of any building or other permits for development on the subject property, the following shall be resolved:
 - A. Unless otherwise required by these conditions of approval, all plans submitted for development permits for the subject property shall be substantially similar to those submitted as part of the final land use application (stamped received on May 18, 2012, for most of the applicant's materials; or June 7, 2012, for the revised Figure 1 (Existing Conditions); or July 23, 2012, for the revised Figure 2 (Mitigation Area) and Figures 3A and 3B (Planting Plan)).

- B. Provide a construction management plan that shows the following:
 - i. Demarcation of the Water Quality Resource (WQR) and the location of disturbance areas (temporary and permanent)
 - ii. Erosion and sediment control measures
 - iii. Measures to protect trees and other vegetation located within the WQR but outside of the approved disturbance area
 - iv. Location of any site access (ingress and egress) that construction or mitigation equipment will use
 - v. Any equipment and material staging or stockpile areas
 - C. Provide a final mitigation plan that includes the following details:
 - i. Clear indication of the person responsible for the mitigation work, including primary contact, phone number, and address.
 - ii. Demarcation of planting areas for mitigation of temporary and permanent disturbances to the WQR. The mitigation area shall be expanded by approximately 2,700 sq ft beyond the areas shown in the plans presented with the applicant's original submittal, to encompass the entirety of the area within the applicant's temporary construction easement.
 - iii. Locations of particular plant species within the mitigation planting area— plantings shall be appropriate for particular conditions (e.g., sun/shade, wet/dry, etc.) and shall be native, non-nuisance species from the Milwaukie Native Plant List.
 - iv. A note that a minimum of 4 pieces of large wood from trees removed from within the WQR shall be retained within the mitigation area, to provide immediate nutrients and large woody and organic material for habitat or other ecological benefit. For purposes of these conditions, "pieces of large wood" shall mean logs at least 20 ft long and at least 15 in diameter at breast height.
 - v. A note specifying that no chemicals listed on the City's Prohibited Chemicals List shall be applied within the WQR area.
 - vi. Timeline for planting, with schedule for watering, maintenance, monitoring, and replacement of plants—the timeline shall note that monitoring and maintenance will continue for at least 5 years after planting, to ensure 80% survival of the mitigation plantings. Throughout this 5-year establishment period, nuisance species plants shall be removed and/or otherwise controlled within the mitigation area.
 - vii. Contingency plan for ensuring that work will be completed as proposed
2. Prior to final inspection for any development permit for the subject property, implement the final mitigation plan for disturbance to the WQR, including the following tasks:
- A. Remove all invasive nonnative vegetation and any debris or noxious material from within designated mitigation planting areas.
 - B. Install trees, shrubs, and ground cover according to the details provided in the final mitigation plan and in accordance with the standards provided in MMC 19.402.11.B. This includes standards for plant size, spacing, and survival.

- C. Provide a signed statement from the responsible party identified in Condition 1-C-i above, stating that all mitigation plantings have been installed according to the final mitigation plan.
 - D. As outlined in Condition 1-C-iv, demonstrate that a minimum of 4 pieces of large wood, from trees removed from within the WQR, remain within the mitigation area.
3. The land use approval shall expire and become void unless both of the following steps are completed:
- A. Obtain all necessary development permits and start construction within 2 years of land use approval.
 - B. Pass final inspection within 4 years of land use approval.



Scot Siegel
Interim Planning Director

Copy: Leah Robbins, Applicant for TriMet
Jeff Joslin, KLK Consulting (Applicant's Representative)
Jeb Doran, Urban Design Lead for TriMet
Joe Recker, Environmental Permits Coordinator for TriMet
Planning Commission
Kenny Asher, Community Development/Public Works Director
Wendy Hemmen, Light Rail Design Coordinator
Zach Weigel, Civil Engineer
Tom Larsen, Building Official
Bonnie Lanz, Permit Specialist
Doug Whiteley, Lieutenant Deputy Fire Marshal
Sarah Hartung, Senior Biologist with ESA (City's on-call natural resource consultant)
NDA: Historic Milwaukie
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