

ORDINANCE NO. 2036

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AMENDING THE COMPREHENSIVE PLAN CHAPTER 3 AND THE MILWAUKIE MUNICIPAL CODE TITLE 19 ZONING ORDINANCE, TO PROTECT THE CITY'S NATURAL RESOURCES (FILE #s ZA-11-01 AND CPA-11-01).

WHEREAS, many of Milwaukie's riparian, wildlife, and wetland resources have been adversely affected by development over time; and

WHEREAS, it is the City's policy to minimize additional adverse impacts and to restore and improve resources where possible while balancing property rights and development needs; and

WHEREAS, the proposed amendments to Title 19 and the Comprehensive Plan increase protections for regionally designated Habitat Conservation Areas as shown on the proposed Comprehensive Plan Map 5, thereby bringing Milwaukie into compliance with the Metro Functional Plan Title 13 (Nature in Neighborhoods); and

WHEREAS, the proposed amendments to Title 19 and the Comprehensive Plan will continue the City's existing policy to restrict development near Water Quality Resources as shown on the proposed Comprehensive Plan Map 5, thereby maintaining the City's compliance with Metro Functional Plan Title 3 (Water Quality and Flood Management); and

WHEREAS, all legal and public notices have been provided as required by law, in addition to efforts to educate property owners more broadly about the proposal; and

WHEREAS, on March 22, 2011, the Planning Commission opened a public hearing on the amendments and, on June 14, 2011, approved a motion to recommend that City Council adopt the amendments; and

WHEREAS, the City Council finds that the proposed amendments will result in improved protection of the city's designated natural resources and more effective administration of the associated regulatory program.

NOW, THEREFORE, THE CITY OF MILWAUKIE DOES ORDAIN AS FOLLOWS:

Section 1. Findings. Findings of fact in support of the amendments are attached as Exhibit A.

Section 2. Repeal and Replacement. Section 19.402 Water Quality Resource Regulations within Title 19 Zoning Ordinance is repealed and replaced with the new Section 19.402 Natural Resources as presented in Exhibit B.

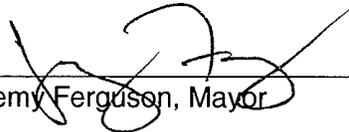
Section 3. Amendments. The Comprehensive Plan Chapter 3 and other sections of Milwaukie Municipal Code Title 19 Zoning Ordinance are amended as described in Exhibit C (strikeout/underline version) and Exhibit D (clean version). The existing Comprehensive Plan Map 5 presented in Exhibit G is replaced by the new Map 5 presented in Exhibit F.

Section 4. Administrative Map. The Natural Resource (NR) Administrative Map presented in Exhibit E is adopted by reference as an administrative tool to be used in conjunction with the new Section 19.402 presented in Exhibit B.

Read the first time on 8/2/11, and moved to second reading by 4-1 vote of the City Council.

Read the second time and adopted by the City Council on 8/16/11

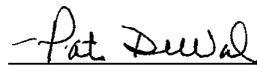
Signed by the Mayor on 8/16/11



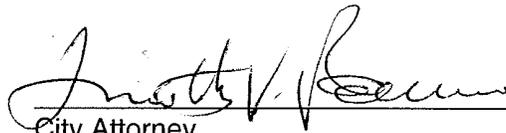
Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Ramis PC



Pat DuVal, City Recorder



City Attorney

Document6 (Last revised 2/6/2008)

Exhibit A

Recommended Findings in Support of Approval Land Use File ZA-11-01 & CPA-11-01

1. The City of Milwaukie proposes to amend its regulations related to designated natural resources in Milwaukie Municipal Code (MMC) Title 19 Zoning and Milwaukie Comprehensive Plan (MCP) Chapter 3 Environmental and Natural Resources. The land use applications for these amendments are file #s ZA-11-01 and CPA-11-01, submitted on January 21, 2011.
2. The purpose of the proposed amendments is to improve the effectiveness of the City's existing Water Quality Resource (WQR) regulations and to establish new regulations for Habitat Conservation Areas (HCAs). The current WQR regulations are compliant with Metro Title 3 (Water Quality and Flood Management) and Statewide Land Use Planning Goal 6 (Air, Water, and Land Resources Quality). The proposed amendments maintain the City's compliance with Title 3 and Goal 6. The proposed HCA regulations also bring the City into compliance with Title 13 (Nature in Neighborhoods) and update the City's efforts to comply with Goal 5 (Natural Resources, Scenic and Historic Areas, and Open Spaces).

The primary proposed amendment is to repeal MMC Section 19.402 Water Quality Resource Regulations in its entirety, and adopt a new set of regulations for Natural Resource Areas. The proposal also includes minor amendments to other sections of the Municipal Code and MCP Chapter 3 Environmental and Natural Resources, to coordinate with the new regulations. The complete list of amendments is as follows:

Chapter, Section, or Subsection Title	MMC Chapter or Section Number
Comprehensive Plan Chapter 3 Environmental and Natural Resources	n/a
Zone Classifications	19.107
Special Areas (new section)	19.108
Definitions	19.201
Overlay Zones and Special Areas	19.400
Water Quality Resource Regulations	19.402
Off-Street Parking and Loading	19.600
Land Use Applications	19.900
Review Procedures	19.1000
Annexations and Boundary Changes	19.1100
Comprehensive Plan Map 5 Natural Resource Sites	n/a

3. The City's decision to adopt the proposed amendments is subject to the following provisions of the MMC and MCP:
 - MMC 19.902 Amendments to Maps and Ordinances
 - MMC 19.1008 Type V Review
 - MCP Chapter 2 Plan Review and Amendment Process, Objective #1 Amending the Plan

4. Sections of the Milwaukie Municipal Code or Comprehensive Plan not addressed in these findings are found to be not applicable to the decision on this land use application.
5. Public notice was provided in accordance with MMC 19.1008.3 Type V Public Notice.
6. MMC 19.902 Amendments to Maps and Ordinances

A. MMC 19.902.1 Purpose

MMC 19.902 establishes the process for amending the City's Comprehensive Plan and land use regulations within the Milwaukie Municipal Code, to ensure compliance with State laws and administrative rules, including the 19 Statewide Planning Goals and the Metro Urban Growth Management Functional Plan (UGMFP), Chapter 3.07, Title 3 of the Metro Code.

The proposed amendments are intended to make the City compliant with Metro UGMFP Title 13 (Nature in Neighborhoods) and update the City's efforts to comply with Statewide Planning Goal 5 (Natural Resources, Scenic and Historic Areas, and Open Spaces). The proposed amendments also maintain compliance with Metro UGMFP Title 3 (Water Quality and Flood Management) and Statewide Planning Goal 6 (Air, Water, and Land Resources Quality). This criterion is met.

B. MMC 19.902.2 Applicability

The requirements of MMC 19.902 apply to amendments to add, modify, or delete text of the Milwaukie Comprehensive Plan (MCP) or MMC Title 19 Zoning; as well as to amendments to the maps of the MCP.

The proposed amendments are to the text of MCP Chapter 3 Environmental and Natural Resources, to MMC Title 19 Zoning, and to MCP Map 5 Natural Resource Sites. The requirements of MMC 19.902 apply to the proposed amendments.

C. MMC 19.902.3 Comprehensive Plan Text Amendments

1) MMC 19.902.3.A establishes the Type V review as the appropriate process for text amendments to the MCP. The proposed amendments have been processed in accordance with MMC 19.1008 Type V review. This criterion is met.

2) MMC 19.902.3.B establishes the following approval criteria for text amendments to the MCP:

- a. *The proposed amendment is consistent with the goals and policies of the Comprehensive Plan, as proposed to be amended.*

The proposed amendments update and clarify the background and planning concepts related to the Open Spaces, Scenic Areas, and Natural Resources Element of MCP Chapter 3 Environmental and Natural Resources. The proposed amendments remove unnecessary or outdated narrative from MCP Chapter 3 and bring the chapter's language up to date with the current state of natural resources in the community. The changes include more accurate descriptions of the City's code history of natural resource protections and more clearly outline how the City's municipal code and comprehensive plan are compliant with regional and state goals and policies related to natural resource protection. This criterion is met.

- b. *The proposed amendment is in the public interest with regard to neighborhood or community conditions.*

The proposed amendments remove unnecessary or outdated narrative from MCP Chapter 3 Environmental and Natural Resources and insert language that more precisely explains how the City's goals and policies related to open space and natural resource areas serve to protect and enhance environmental and community health. This criterion is met.

- c. *The public need is best satisfied by this particular proposed amendment.*

The proposed amendments remove unnecessary or outdated narrative from MCP Chapter 3 Environmental and Natural Resources and insert language that more precisely explains how the City's goals and policies related to open space and natural resource areas serve to protect and enhance environmental and community health. This criterion is met.

- d. *The proposed amendment is consistent with the Metro Urban Growth Management Functional Plan and relevant regional policies.*

The proposed amendments bring the City into compliance with Metro UGMFP Title 13 (Nature in Neighborhoods), while maintaining the City's compliance with Metro UGMFP Title 3 (Water Quality and Flood Management). This criterion is met.

- e. *The proposed amendment is consistent with relevant State statutes and administrative rules, including the Statewide Planning Goals and Transportation Planning Rule.*

The proposed amendments update the City's efforts to comply with Statewide Land Use Planning Goal 5 (Natural Resources, Scenic and Historic Areas, and Open Spaces), while maintaining the City's compliance with Statewide Planning Goal 6 (Air, Water, and Land Resources Quality). This criterion is met.

The approval criteria for the proposed text amendments to MCP Chapter 3 Environmental and Natural Resources are met.

D. MMC 19.902.4 Comprehensive Plan Map Amendments

- 1) MMC 19.902.4.A gives the City Attorney the authority to establish whether Type IV or V review is appropriate for amendments to MCP maps. Generally, map amendments involving 5 or more properties are subject to Type V review. The proposed amendments to MCP Map 5 Natural Resource Sites involve approximately 750 properties, for which the City Attorney has determined that Type V review in accordance with MMC 19.1008 is appropriate. This criterion is met.
- 2) MMC 19.902.4.B establishes the same approval criteria provided in MMC 19.902.3.B as those for map amendments to the MCP.

The same responses provided in Finding 6-C(2) apply for the proposed amendments to MCP Map 5 Natural Resource Sites. The proposed amendments move the existing MCP Map 5 Natural Resource Sites into Appendix 2, where the list of Natural Resource Sites already exists. A new MCP Map 5 Natural Resource Areas will replace the existing map. The new map documents the City's designated WQRs and HCAs to a level of detail sufficient to comply with Statewide Planning Goals 5 and 6. This criterion is met.

E. MMC 19.902.5 Zoning Text Amendments

- 1) MMC 19.902.5.A establishes the Type V review as the appropriate process for text amendments to MMC Title 19 Zoning. The proposed amendments have been processed in accordance with MMC 19.1008 Type V review. This criterion is met.
- 2) MMC 19.902.5.B establishes the following approval criteria for text amendments to MMC Title 19 Zoning:

- a. *The proposed amendment is consistent with other provisions of the Milwaukee Municipal Code.*

The proposed amendments are designed to ensure consistency with other provisions of MMC Title 19 Zoning. All new and existing terms are clearly defined, and all affected code sections are appropriately located. The proposed amendments include a specific provision addressing coordination with MMC 19.401 Willamette Greenway (WG) zone, to ensure that the Natural Resource Areas regulations do not unduly limit the ability to maintain view corridors as allowed in the WG zone. The amendments also include minor changes to ensure consistency with other coordinated parts of the MMC, including MMC 13.14 Stormwater Management, MMC 16.28 Erosion Control, and MMC 18.04 Flood Hazard Areas. This criterion is met.

- b. *The proposed amendment is consistent with the goals and policies of the Comprehensive Plan.*

The proposed amendments conform to the goals, objectives, and policies outlined in the Environmental and Natural Resources Element of MCP Chapter 3 Environmental and Natural Resources. Amendments are proposed to this chapter to fully align it with the implementing ordinance. Several policies from this chapter are directly incorporated in the proposed zoning code amendments. These include:

- The City will encourage the dedication of public easements to and through important Open Space - Natural Resource areas. Tax deferral programs and/or density transfer (so that full development potential may be realized) will be utilized so that open space can be conserved and easements dedicated without undue hardships for private land owners.
- Develop a review process for development in natural areas, which requires mitigation or other means of preservation of natural resource values.
- Provide protection to important wetland and water body areas through designation of riparian area buffers between natural resources and other urban development activities. Restrict non-water dependent development within the riparian buffer area.
- Protect existing upland areas and values related to wildlife habitat, groundwater recharge, and erosion control.
- Provide protection to inventoried natural resource sites currently outside the City limits as these sites are annexed.

This criterion is met.

- c. *The proposed amendment is consistent with the Metro Urban Growth Management Functional Plan and relevant regional policies.*

The proposed amendments are consistent with the Metro UGMFP. The proposed amendments retain a high level of protection for WQRs, which maintains the City's compliance with Metro UGMFP Title 3 (Water Quality and Flood Management). The amendments also provide incentives for development to avoid impacting HCAs and establish both nondiscretionary and discretionary options for review of proposals that would disturb newly designated HCAs, making the City substantially compliant with Metro UGMFP Title 13 (Nature in Neighborhoods). This criterion is met.

- d. *The proposed amendment is consistent with relevant State statutes and administrative rules, including the Statewide Planning Goals and Transportation Planning Rule.*

The proposed amendments update the City's efforts to comply with Statewide Land Use Planning Goal 5 (Natural Resources, Scenic and Historic Areas, and Open Spaces), while maintaining the City's compliance with Statewide Planning Goal 6 (Air, Water, and Land Resources Quality). This criterion is met.

- e. *The proposed amendment is consistent with relevant federal regulations.*

By virtue of complying with the relevant regional and State policies, statutes, and administrative rules, the proposed amendments are consistent with relevant federal regulations. This criterion is met.

The approval criteria for the proposed text amendments to MMC Title 19 Zoning are met.

The City Council finds that the applicable criteria for the proposed amendments to the text of MCP Chapter 3 Environmental and Natural Resources, to MMC Title 19 Zoning, and to MCP Map 5 Natural Resource Sites are met.

7. MMC 19.1008 Type V Review

A. MMC 19.1008.1 Preapplication Conference

MMC 19.1008.1 requires a preapplication conference for Type V applications initiated by any individual or party other than the City. The Milwaukie Planning Commission initiated the proposed amendments on January 21, 2011. This requirement is not applicable.

B. MMC 19.1008.2 Type V Application Requirements

MMC 19.1008.2 requires that Type V applications shall be made on forms provided by the Planning Director, shall include all the information required by MMC 19.1003.2, and are subject to completeness review in accordance with the provisions of MMC 19.1003.3. The applications for file #s ZA-11-01 and CPA-11-01 were made on the appropriate forms provided by the City and included all relevant information required by MMC 19.1003.2. The application package was deemed complete on January 21, 2011. These requirements are met.

C. MMC 19.1008.3 Type V Public Notice

1) MMC 19.1008.3.A General Public Notice

MMC 19.1008.3.A requires that the City provide general public notice to allow the public, organizations, and other governmental agencies a meaningful opportunity to review and comment on legislative proposals.

In September 2009, at the initiation of the project to develop the proposed amendments, the City mailed all property owners and residents who would be directly affected by the proposed amendments, notifying them of the project and inviting them to participate in an advisory group. The Advisory Group convened on 6 different occasions to discuss the proposed amendments; participation included approximately 25 individuals representing property owners, local businesses, governmental agencies, and natural resource managers.

The proposed amendments were referred directly to various City departments, governmental agencies, neighborhood district associations (NDA), and stakeholders for review and comment. In October 2009, the City developed a project webpage on the City website and posted draft documents and maps, meeting summaries, and other background information. The times and locations of the various public hearings on the proposed amendments have also been posted on the project webpage.

In January 2011, prior to submittal of the land use applications for the proposed amendments, the City hosted an open house event at Milwaukie Presbyterian Church and invited all property owners who would be directly affected by the proposed amendments to attend. In addition, City Planning staff held 7 Planning Commission work sessions and 4 City Council work sessions prior to submittal of the land use applications for the proposed amendments.

More information about the notices mailed directly to affected property owners is provided in Finding 7-C(4), below.

This requirement is met.

2) MMC 19.1008.3.B DLCD Notice

MMC 19.1008.3.B requires that the City provide the Department of Land Conservation and Development (DLCD) with notice of a Type V application at least 45 days prior to the initial evidentiary hearing on adoption. The City sent notice of the land use application for the proposed amendments to DLCD on January 21, 2011, more than 45 days prior to the initial public hearing held on March 22, 2011. This requirement is met.

3) MMC 19.1008.3.C Metro Notice

MMC 19.1008.3.C requires that the City provide Metro with notice of a Type V application at least 45 days prior to the initial evidentiary hearing on adoption. Prior to amendments to the Zoning Ordinance made effective on May 14, 2011 (Ordinance 2025), notice to Metro was required 45 days before the final hearing on the adoption of any amendment (MMC 19.902.1.B, as numbered prior to Ordinance 2025). The City sent notice of the land use application for the proposed amendments to Metro on February 16, 2011, more than 45 days prior to the final public hearing on August 2, 2011. The requirement that was in place at the time notice was sent has been met.

4) MMC 19.1008.3.D Property Owner Notice (Measure 56)

MMC 19.1008.3.D requires that the City mail notice of a proposed ordinance to those property owners whose permissible use of the land might be affected by such an ordinance. The notice is to be mailed at least 20 days but no more than 40 days prior to the initial evidentiary hearing on the related Type V application.

The City mailed notice of the proposed amendments, in the format prescribed in MMC 19.1008.3.D, to all property owners who would be directly affected by the proposed amendments. The notice was mailed on February 28, 2011, more than 20 days prior to the initial public hearing held on March 22, 2011. This requirement is met.

5) In accordance with the requirement established in MMC 19.1008.3.E, the City prepared an affidavit of mailing of notice for file # ZA-11-01. This requirement is met.

D. MMC 19.1008.4 Type V Decision Authority

MMC 19.1008.4 establishes the City Council as the decision-making body for Type V applications. The City Council has the authority to approve, approve with conditions, amend, deny, or take no action on a Type V application.

The City Council held a public hearing on July 19, 2011, to consider file # ZA-11-01 for the proposed amendments. The hearing was continued to August 2, 2011, when the Council voted to adopt the amendments. This requirement is met.

E. MMC 19.1008.5 Type V Recommendation and Decision

MMC 19.1008.5 establishes the procedures for evaluating Type V applications. The Planning Commission shall conduct a public hearing and make a decision based on compliance with the applicable goals and policies of the MCP, and prepare a recommendation to the City Council. The City Council shall conduct a public hearing.

The Planning Commission conducted a public hearing on March 22, 2011. The hearing was continued to April 12, again to April 26, and again to June 14, 2011. At the June 14 hearing, the Planning Commission voted 4-to-1 to recommend approval of the proposed amendments. The City Council held a public hearing on July 19, 2011. The hearing was continued to August 2, 2011, when the Council voted to adopt the amendments.

The City Council finds that the applicable requirements for the proposed amendments to the text of MCP Chapter 3 Environmental and Natural Resources, to MMC Title 19 Zoning, and to MCP Map 5 Natural Resource Sites are met.

8. MCP Chapter 2 Plan Review and Amendment Process, Objective #1 Amending the Plan

Policy #7 in MCP Chapter 2, Objective #1 requires that all Comprehensive Plan amendments be evaluated according to the following criteria:

- *Conformance with the Comprehensive Plan, its goals, policies, and spirit.*
- *Public need for the change.*
- *Public need is best satisfied by this particular change.*
- *The change will not adversely affect the health, safety, and welfare of the community.*
- *Conformance with applicable Statewide Planning Goals.*
- *Consistency with Metro Growth Management Functional Plan and applicable regional policies.*

The proposed amendments to MCP Chapter 3 Environmental and Natural Resources remove unnecessary or outdated narrative and bring the chapter's language up to date with the current state of natural resources in the community. The changes include more accurate descriptions of the City's code history of natural resource protections and more clearly outlines how the City's municipal code and comprehensive plan are compliant with regional and state goals and policies related to natural resource protection.

The proposed amendments bring the City into compliance with Statewide Land Use Planning Goal 5 (Natural Resources, Scenic and Historic Areas, and Open Spaces) and Metro UGMFP Title 13 (Nature in Neighborhoods), while maintaining the City's compliance with Statewide Planning Goal 6 (Air, Water, and Land Resources Quality) and Metro UGMFP Title 3 (Water Quality and Flood Management). The proposed amendments update and clarify the background and planning concepts related to this element. They remove unnecessary or outdated narrative and insert language that more precisely explains how the City's goals and policies relate to open space and natural resource areas serve to protect and enhance environmental and community health.

The proposed amendments move the existing MCP Map 5 Natural Resource Sites into Appendix 2, where the list of Natural Resource Sites already exists. A new MCP Map 5 Natural Resource Areas will replace the existing map. The new map documents the City's designated WQRs and HCAs to a level of detail sufficient to comply with Statewide Planning Goals 5 and 6.

These criteria are met.

TITLE 19 ZONING**CHAPTER 19.400 OVERLAY ZONES AND SPECIAL AREAS****19.402 NATURAL RESOURCES****19.402.1 Intent**

Section 19.402 is to be interpreted consistently with the following:

- A. Section 19.402 provides protection for water quality resources under Statewide Land Use Planning Goal 6 and Sections 1-4 of Title 3 of the Metro Urban Growth Management Functional Plan (UGMFP). Section 19.402 also provides protection for designated natural resources that have been identified for the purposes of implementing Statewide Planning Goal 5 relating to significant natural riparian, wildlife, and wetland resources and Title 13 of the UGMFP.
- B. Many of Milwaukie's riparian, wildlife, and wetland resources have been adversely affected by development over time. These regulations seek to minimize additional adverse impacts and to restore and improve resources, where possible, while balancing property rights and development needs of the city.
- C. It is also the intent of Section 19.402 to:
 - 1. Designate water quality resources (WQRs) to protect the functions and values of riparian and wetland resources at the time of development.
 - 2. Protect and improve the functions and values that contribute to water quality and to fish and wildlife habitat in urban streamside areas. These functions and values include, but are not limited to:
 - a. Vegetated corridors to separate protected water features from development.
 - b. Microclimate and shade.
 - c. Streamflow moderation and water storage.
 - d. Water filtration, infiltration, and natural purification.
 - e. Bank stabilization and sediment and pollution control.
 - f. Large wood recruitment and retention and natural channel dynamics.
 - g. Organic material resources.
 - 3. Designate habitat conservation areas (HCAs) to implement the performance standards of Title 13 of the UGMFP for riparian areas and fish and wildlife habitat, and to protect significant local Goal 5 resources such as wetlands.
 - 4. Provide nondiscretionary (clear and objective) standards, as well as a discretionary review process, applicable to development in HCAs, in accordance with Goal 5.
 - 5. Allow and encourage habitat-friendly development while minimizing the impact on water quality and fish and wildlife habitat functions.
 - 6. Permit residential cluster development to encourage creative and flexible site design that is sensitive to the land's natural features and adapts to the natural topography.

7. Provide mitigation standards for the replacement of ecological functions and values lost through development in WQRs and HCAs. This includes restoration of designated natural resources that are temporarily disturbed during development, as well as mitigation for permanent disturbance of those areas as a result of development.
 8. Preserve existing native vegetation against removal and replacement with lawns, gardens, or other nonnative plantings.
- D. Section 19.402 allows development in situations where adverse impacts from the development can be avoided or mitigated and where the strict application of these rules would deny reasonable economic use of property.
- E. It is not the intent of Section 19.402 to:
1. Impose any obligation on property owners to restore existing developed sites to predevelopment or natural conditions when no new activity is proposed.
 2. Impose any unreasonable hardship against the continued maintenance of existing legal site conditions.
 3. Apply to activities that do not affect WQRs or HCAs.
 4. Prohibit normal lawn and yard landscape planting and maintenance that does not involve removal and replacement of existing native vegetation. Normal lawn and yard planting and maintenance does not include the planting of invasive nonnative or noxious vegetation, including, but not limited to, plants listed as nuisance species on the Milwaukie Native Plant List established in Subsection 19.402.2.G.

19.402.2 Coordination with Other Regulations

- A. Implementation of Section 19.402 is in addition to, and shall be coordinated with, Title 19 Zoning, Title 18 Flood Hazard Regulations, and Chapter 16.28 Erosion Control.
- B. For properties along the Willamette River, Section 19.402 shall not prohibit the maintenance of view windows, as allowed by Section 19.401 Willamette Greenway Zone WG.
- C. Except as provided for in Subsection 19.402.2.B, when applicable provisions of Sections 19.402 and 19.401 are in conflict, the more restrictive provision shall be controlling.
- D. Nonconforming development that was legally existing for WQRs as of January 16, 2003, the effective date of Ordinance #1912, or that was legally existing for HCAs as of September 15, 2011, the effective date of Ordinance #2036, and that is nonconforming solely because of Section 19.402, shall not be subject to the provisions of Chapter 19.800 Nonconforming Uses and Development. However, development that is nonconforming for other reasons shall be subject to the provisions of Chapter 19.800.
- E. The requirements of Section 19.402 apply in addition to all applicable local, regional, State, and federal regulations, including those for wetlands and flood management areas. Where Section 19.402 imposes restrictions that are more stringent than regional, State, and federal regulations, the requirements of Section 19.402 shall govern.
- F. Development in or near wetlands and streams may require permits from the Oregon Department of State Lands (DSL) and the U.S. Army Corps of Engineers (Corps). If a federal permit is required, a water quality certification from the Oregon Department of Environmental Quality (DEQ) may also be required. The Planning Director shall notify DSL and the Corps when an application for development within streams and wetlands is

submitted. Because these agencies may have more restrictive regulations than the City, applicants are encouraged to contact them before preparing development plans.

- G. A document or other list used to identify native, nuisance, and prohibited plants shall be maintained by the Planning Director and shall be referred to as the "Milwaukie Native Plant List."
- H. A document or other list used to identify chemicals that have been demonstrated to be detrimental to water quality and habitat health shall be maintained by the Planning Director and shall be referred to as the "Milwaukie Prohibited Chemicals List."

19.402.3 Applicability

- A. The regulations in Section 19.402 apply to all properties that contain, or are within 100 ft of a WQR and/or HCA (including any locally significant Goal 5 wetlands or habitat areas identified by the City of Milwaukie) as shown on the Milwaukie Natural Resource Administrative Map (hereafter "NR Administrative Map").
- B. For properties that do not contain, but are within 100 ft of, a WQR and/or HCA, as shown on the NR Administrative Map, and where an activity not listed as exempt in Subsection 19.402.4.A will disturb more than 150 sq ft, a construction management plan is required in accordance with Subsection 19.402.9 (see also Table 19.402.3).
- C. The NR Administrative Map, which shows WQRs and HCAs, is adopted by reference. The NR Administrative Map shall be used to determine the applicability of Section 19.402 and shall be administered in accordance with Subsection 19.402.15.
- D. Designated natural resources are shown on the NR Administrative Map as follows:
 - 1. Water quality resources (WQRs) include protected water features and their associated vegetated corridors, as specified in Table 19.402.15. The vegetated corridor is a buffer around each protected water feature, established to prevent damage to the water feature. The width of the vegetated corridor varies depending on the type of protected water feature, upstream drainage area served, and slope adjacent to the protected water feature. The NR Administrative Map is a general indicator of the location of vegetated corridors; the specific location of vegetated corridors shall be determined in the field in accordance with Table 19.402.15.
 - 2. Habitat conservation areas (HCAs) include significant Goal 5 wetlands, riparian areas, and fish and wildlife habitat. HCAs are designated based on a combination of inventory of vegetative cover and analysis of habitat value and urban development value. HCA locations on the NR Administrative Map are assumed to be correct unless demonstrated otherwise; verifications and corrections shall be processed in accordance with the procedures established in Subsection 19.402.15.
- E. To determine whether a proposed activity on a given property will trigger any requirements of Section 19.402, the City shall use the latest available aerial photographs; a copy of the applicable section of the NR Administrative Map; and, in the case of WQRs, the parameters established in Table 19.402.15. If a property owner or applicant believes that the NR Administrative Map is inaccurate, they may propose corrections according to the standards established in Subsection 19.402.15.
- F. In the context of designated natural resources, "disturbance" is a condition or result of an act that "disturbs" as defined in Section 19.201. Disturbance can be either temporary or permanent as noted below.

Proposed Code Amendment

1. Temporary disturbances are those that occur during an allowed or approved development or activity but will not persist beyond completion of the project. Temporary disturbances include, but are not limited to, accessways for construction equipment; material staging and stockpile areas; and excavation areas for building foundations, utilities, stormwater facilities, etc.
 2. Permanent disturbances are those that remain in place after an allowed or approved development or activity is completed. Permanent disturbances include, but are not limited to, buildings, driveways, walkways, and other permanent structures.
- G. If more than 150 sq ft of area will be disturbed in conjunction with a proposed activity listed as exempt in Subsection 19.402.4.B, a construction management plan shall be submitted according to the provisions of Subsection 19.402.9. This requirement applies even when the proposed activity will not occur within a designated natural resource but is within at least 100 ft of the resource, in accordance with Table 19.402.3.
- H. Proposed activities that are listed as exempt or occur more than 100 ft from a WQR or HCA, as shown on the NR Administrative Map or determined in accordance with Table 19.402.15, do not require review under the provisions of Section 19.402.
- I. Those portions of streams, creeks, and other protected water features that appear on the NR Administrative Map but are enclosed in pipes, culverts, or similar structures are not subject to the provisions of Section 19.402, except where a proposed activity will expose or directly disturb the protected water feature, such as with excavation.
- J. The requirements of Section 19.402 apply, as shown in Table 19.402.3, both to properties that include a WQR and/or HCA, and to properties that do not include a WQR or HCA but where an activity is proposed within 100 ft of a WQR or HCA.

Table 19.402.3 Applicability of Requirements of Section 19.402		
Situations/Activities that may Trigger Section 19.402	Prepare Construction Management Plan per Subsection 19.402.9	Comply with Remainder of Section 19.402
Activities listed as exempt per: <ul style="list-style-type: none"> • Subsection 19.402.4.A (outright exemptions for both WQRs and HCAs) • Subsection 19.402.4.B (limited exemptions for HCAs only) 	No No (unless > 150 sq ft of disturbance is proposed)	No No
Nonexempt activities: <ul style="list-style-type: none"> • Outside of WQR and HCA • Within WQR or HCA 	No (unless activity is within 100' of WQR or HCA and > 150 sq ft of disturbance is proposed) Yes	No Yes

- K. Activities that are not exempt per Subsection 19.402.4, or prohibited per Subsection 19.402.5, are subject to the Type I, II, or III review process as outlined in Table 19.402.3.K.

Table 19.402.3.K Types of Process Review for Various Activities			
Activity (and applicable code sections)	Type of Review Process		
	Type I (19.1004)	Type II (19.1005)	Type III (19.1006)
Construction management plans (Subsection 19.402.9)	✓		
Agency-approved natural resource management plans (Subsections 19.402.10.A and C)	✓		
Independent natural resource management plans (Subsections 19.402.10.B and C)		✓	
Limited tree removal (Subsection 19.402.6.B)	✓		
Tree removal that is not exempt or allowable with Type I review (Subsection 19.402.8.A.8)			✓
Activities within HCA that meet nondiscretionary standards (Subsection 19.402.11.D)	✓		
Maintenance of existing utility facilities (Subsection 19.402.6.E)	✓		
Utility connections (Subsection 19.402.6.F)	✓		
Nonemergency abatement of nuisances or violations (Subsection 19.402.6.G)	✓		
Special use activities (Subsections 19.402.7.A and 19.402.11.E)		✓	
Limited disturbance to WQRs (Subsection 19.402.7.D)		✓	
Property line adjustments that balance the HCA distribution (Subsection 19.402.13.E.1 or 2)	✓		
Property line adjustments that otherwise limit HCA disparity (Subsection 19.402.13.E.3)		✓	
Low-impact partitions or replats (put designated natural resources in separate tract) (Subsection 19.402.13.G)		✓	
Other partitions, replats, subdivisions. Development activities that are not exempt or allowable with Type I or II review (Subsections 19.402.8, 19.402.12, and 19.402.13.F, H or I)			✓
Boundary verifications with minor corrections (Subsection 19.402.15.A.1)	✓		
Boundary verifications with substantial corrections (Subsection 19.402.15.A.2)		✓	

19.402.4 Exempt Activities

A. Outright Exemptions

The following activities in WQRs or HCAs are exempt from the provisions of Section 19.402:

1. Action taken on a building permit for any portion of a phased development project for which the applicant has previously met the applicable requirements of Section 19.402, including the provision of a construction management plan per Subsection 19.402.9. This exemption applies so long as the building site for new construction was identified on the original application, no new portion of the WQR and/or HCA will be disturbed, and no related land use approvals have expired per Subsection 19.1001.7. This exemption also extends to projects initiated prior to September 15, 2011, the effective date of Ordinance #2036, that have already been approved through Water Quality Resource Review.
2. Stream, wetland, riparian, and upland enhancement or restoration projects and development in compliance with a natural resource management plan or mitigation plan approved by the City or by a State or federal agency.
3. Emergency procedures or activities undertaken that are necessary to remove or abate hazards to person or property, provided that the time frame for such remedial or preventative action is too short to allow for compliance with the requirements of Section 19.402. After the emergency, the person or agency undertaking the action shall repair any impacts to the designated natural resource resulting from the emergency action; e.g., remove any temporary flood protection such as sandbags, restore hydrologic connections, or replant disturbed areas with native vegetation.
4. The planting or propagation of plants categorized as native species on the Milwaukie Native Plant List.
5. Removal of plants categorized as nuisance species on the Milwaukie Native Plant List. After removal, all open soil areas shall be replanted and/or protected from erosion.
6. Removal of trees under any of the following circumstances:
 - a. The tree is a “downed tree” as defined in Section 19.201, the tree has been downed by natural causes, and no more than 150 sq ft of earth disturbance will occur in the process of removing the tree.
 - b. The tree is categorized as a nuisance species on the Milwaukie Native Plant List, no more than 3 such trees will be removed from 1 property during any 12-month period, and no more than 150 sq ft of earth disturbance will occur in the process of removing the tree(s).
 - c. The tree presents an emergency situation with immediate danger to persons or property, as described in Subsection 19.402.4.A.3. Emergency situations may include, but are not limited to, situations in which a tree or portion of a tree has been compromised and has damaged, or is damaging, structures or utilities on private or public property, or where a tree or portion of a tree is prohibiting safe passage in the public right-of-way. Examples are trees that have fallen into or against a house or other occupied building, or trees downed across power lines or roadways. This exemption is limited to removal of the tree or portion of the tree as necessary to eliminate the hazard. Any damage or impacts to the designated natural resource shall be repaired after the emergency has been resolved.

- d. Removal of the tree is in accordance with an approved natural resource management plan per Subsection 19.402.10.
- e. Major pruning of trees and shrubs within 10 ft of existing structures.
- 7. Landscaping and maintenance of existing landscaping and gardens. This exemption extends to the installation of new irrigation and drainage facilities and/or erosion control features, as well as to landscaping activities that do not involve the removal of native plants or plants required as mitigation, the planting of any vegetation identified as a nuisance species on the Milwaukie Native Plant List, or anything that produces an increase in impervious area or other changes that could result in increased direct stormwater discharges to the WQR.
- 8. Additional disturbance for outdoor uses, such as gardens and play areas, where the new disturbance area does not exceed 150 sq ft; does not involve the removal of any trees of larger than 6-in diameter; and is located at least 30 ft from the top of bank of a stream or drainage and at least 50 ft from the edge of a wetland.
- 9. Routine repair and maintenance, alteration, demolition, and/or change of use of existing legal structures, provided that the following criteria are met:
 - a. There is no change in the location, or increase in the footprint, of any building, impervious surface, or outdoor storage area within a WQR or HCA.
 - b. No other site changes are proposed that could result in increased direct stormwater discharges to a WQR. If the project will result in increased direct stormwater discharges, the proposal is subject to the Type II review process and the standards for discretionary review established in Subsection 19.402.12.
- 10. Routine repair and maintenance, alteration, and/or total replacement of existing utility facilities, accesses, streets, driveways, trails, walkways, and parking improvements (including asphalt overlays); provided that there is no new disturbance of the WQR or HCA, no increase in impervious area, no reduction in landscaped areas or tree cover, and no other change that could result in increased direct stormwater discharges to the WQR.
- 11. Routine repair and maintenance of public and private stormwater facilities in accordance with a stormwater management plan approved by the City.
- 12. Existing agricultural practices or uses, excluding buildings and structures, provided that such activities or uses do not result in increased direct stormwater discharges to WQRs.
- 13. Removal of debris, as defined in Section 19.201.
- 14. Change of ownership.
- 15. Lot consolidations, as defined in Section 17.08.150.
- 16. Activities and improvements in existing public rights-of-way.
- 17. Establishment and maintenance of trails in accordance with the following standards:
 - a. Trails shall be confined to a single ownership or within a public trail easement.
 - b. Trails shall be no wider than 30 in. Where trails include stairs, stair width shall not exceed 50 in and trail grade shall not exceed 20%, except for the portion of the trail containing stairs.
 - c. Trails shall be unpaved and constructed with nonhazardous, pervious materials.

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- d. Trails shall be located at least 15 ft from the top of bank of all water bodies.
- e. Plants adjacent to trails may be trimmed, but trimming clearances shall not exceed a height of 8 ft and a width of 6 ft.
- f. Native trees of larger than 6-in diameter, and native shrubs or conifers larger than 5 ft tall, shall not be removed.

B. Limited Exemptions Within HCAs

The following activities within HCAs are exempt from the provisions of Section 19.402, except that a construction management plan is required, according to the provisions of Subsection 19.402.9, where the activity disturbs a total of more than 150 sq ft:

1. The alteration and/or total replacement of existing structures, provided that both of the following standards are met:
 - a. The alteration and/or replacement shall not intrude more than 500 sq ft into the HCA, beyond the area defined as the building footprint as of September 15, 2011, the effective date of Ordinance #2036.
 - b. The alteration and/or replacement shall not result in increased direct stormwater discharges to a WQR.
2. Minor encroachments, not to exceed 500 sq ft for residential zones or 150 sq ft in nonresidential zones, for new features such as accessory buildings, patios, walkways, or retaining walls.
3. Temporary and minor clearing, excavation, or other disturbances, not to exceed 150 sq ft, for the purpose of: site investigations or preparation of soil profiles; installation of underground utility facilities or other infrastructure; routine repair and maintenance and/or alteration of existing utility facilities, access, streets, driveways, and parking improvements; or similar activities, provided that such disturbed areas are restored to their original condition when the activity is complete.
4. Low-impact outdoor recreation facilities for public use—including, but not limited to, multiuse paths, accessways, trails, picnic areas, or interpretive and educational displays and overlooks that include benches and outdoor furniture—provided that such facilities contain no more than 500 sq ft of new impervious surface. Any trails shall have a maximum width of 5 ft and shall be constructed using nonhazardous, pervious materials.
5. Facilities that infiltrate stormwater on the site, including the associated piping, so long as the forest canopy and the areas within the driplines of the trees are not disturbed. Such facilities may include, but are not limited to, vegetated swales, rain gardens, vegetated filter strips, and vegetated infiltration basins. Native or nonnative vegetation may be planted in these facilities, provided that none of the plantings are identified as a nuisance species on the Milwaukie Native Plant List.

19.402.5 Prohibited Activities

Title 19 Zoning is comprised of regulations that deal with the use of land; it does not extend into the broader realm of laws that regulate personal activities unrelated to land use and development. Given such limitations, the following activities are prohibited within WQRs and HCAs:

- A. New structures, development, or landscaping activity other than those allowed by Section 19.402.

- B. Uncontained areas of hazardous materials, as defined by DEQ.
- C. Planting any vegetation listed as a nuisance species on the Milwaukie Native Plant List.
- D. Outside storage of materials; unless such storage began before September 15, 2011, the effective date of Ordinance #2036; or unless such storage is approved according to the applicable provisions of Section 19.402.
- E. Application of pesticides or herbicides with any of the active ingredients listed on the Milwaukie Prohibited Chemicals List.

19.402.6 Activities Requiring Type I Review

Within either WQRs or HCAs, the following activities and items are subject to Type I review per Section 19.1004:

A. Construction Management Plans

Construction management plans, as outlined in Subsection 19.402.9, are subject to Type I review.

B. Limited Tree Removal

1. The Planning Director may approve an application for limited tree removal or major pruning within WQRs and HCAs, subject to Section 19.402.6.B.2, under any of the following circumstances:
 - a. The tree removal is necessary to eliminate a hazardous, nonemergency situation, as determined by the Planning Director. A situation may be deemed hazardous if a tree, or portion of a tree, has undergone a recent change in health or condition in a manner that may pose a danger to people, to structures on private property, to public or private utilities, or to travel on private property or in the public right-of-way. Examples of imminent hazards may include, but are not limited to, trees that are broken, split, cracked, uprooted, or otherwise in danger of collapse. Approval shall be limited to removal of the tree, or portion of the tree, as necessary to eliminate the hazard.
 - b. The tree is dead, diseased, or dying and cannot be saved, as determined and documented in a report by a certified arborist.
 - c. The proposal would remove more than 3 trees during any 12-month period that are categorized as nuisance species on the Milwaukie Native Plant List.
 - d. The tree is a downed tree, but more than 150 sq ft of earth disturbance is necessary to remove it.
 - e. The tree is a nuisance species, but more than 150 sq ft of earth disturbance is necessary to remove it.
 - f. The tree is not categorized as either a nuisance or native species on the Milwaukie Native Plant List and is not located in a WQR categorized as Class A ("Good"), according to Table 19.402.11.C, provided that no more than 3 such trees will be removed during any 12-month period.
 - g. For major pruning, as defined in Section 19.201, a certified arborist has determined, and documented in a report, that the tree will survive the proposed pruning.

2. The provisions of Subsection 19.402.6.B.1 do not apply to tree removal proposed in association with development or other activities regulated by Section 19.402, for which other approval criteria and mitigation standards may apply.
3. The Planning Director shall require the application to comply with all of the following standards:
 - a. A construction management plan shall be prepared in accordance with Subsection 19.402.9. When earth disturbance is necessary for the approved removal or pruning, all open soil areas that result from the disturbance shall be replanted and/or protected from erosion.
 - b. All pruning and/or tree removal shall be done in accordance with the standards of the International Society of Arboriculture (ISA).
 - c. Any tree that is removed in accordance with Subsection 19.402.6.B shall be replaced with a new tree, of at least ½-in caliper or at least 6-ft overall height after planting. An exception to this requirement may be granted if the applicant demonstrates that a replacement tree has already been planted, in anticipation of tree removal, or if the existing site conditions otherwise preclude tree replacement (due to existing dense canopy coverage or other ecological reasons).
 - d. The replacement tree(s) shall be located in the general vicinity of the removed tree(s), somewhere within the designated natural resource (WQR or HCA). The replacement tree(s) does not have to be a native species; but, in accordance with Subsection 19.402.5.C, the replacement tree(s) shall not be categorized as a nuisance species on the Milwaukie Native Plant list. The property owner shall ensure that the replacement tree(s) survives at least 2 years beyond the date of its planting.

C. Activities within HCAs in Compliance with Nondiscretionary Standards

Within HCAs, but outside of WQRs, nonexempt development that is not listed in Subsections 19.402.7 or 19.402.8, and that is in compliance with the nondiscretionary standards provided in Subsection 19.402.11.D, is subject to Type I review.

D. Natural Resource Management Plans

Natural resource management plans that meet the standards outlined in Subsection 19.402.10.A are subject to Type I review. These are typically plans that have already been approved by a qualified agency.

E. Maintenance of Existing Utility Facilities

Routine repair and maintenance of existing utility facilities, accesses, streets, driveways, and/or parking improvements that disturbs a WQR and/or HCA is subject to Type I review, provided such activities can meet the general standards for special uses established in Subsection 19.402.11.E.1. These include, but are not limited to, the requirement to provide a mitigation plan and to restore the disturbed area.

F. Utility Connections

Unless they are exempt per Subsection 19.402.4, connections to existing or new utility lines that involve disturbance to a WQR and/or HCA are subject to Type I review against the following criteria:

1. The activities required to establish the connection shall not disturb a protected water feature. Utility connections that will disturb a protected water feature are subject to the review procedures for special uses established in Subsection 19.402.11.E.
2. The activities required to establish the connection shall not disturb an area greater than 10 ft wide.
3. The connection can meet the general standards for special uses established in Subsection 19.402.11.E.1.

G. Nuisance Abatement

Measures to remove or abate nuisances; or any other violation of State statute, administrative agency rule, or City or County ordinance; shall be subject to Type I review of a construction management plan, to be approved by the Planning Director prior to the abatement activity. The person or agency undertaking the action shall repair any impacts to the designated natural resource resulting from the nuisance or violation (e.g., restore disturbed soils, restore hydrologic connections, replant disturbed areas with native vegetation, etc.) unless subsequent development has been approved.

H. Boundary Verification

Boundary verifications that propose minor corrections will be processed in accordance with Subsection 19.402.15.A.1 and are subject to Type I review.

19.402.7 Activities Requiring Type II Review

Within either WQRs or HCAs, the following activities and items are subject to Type II review and approval by the Planning Director per Section 19.1005, unless they are otherwise exempt or permitted as a Type I activity.

A. Special Uses

If not listed as exempt in Subsection 19.402.4, and not able to meet the nondiscretionary standards for HCAs as established in Subsection 19.402.11.D, any special use activity listed below shall be subject to Type II review if the proposal complies with the applicable standards provided in Subsection 19.402.11.E:

1. Improvement or construction of public or private utility facilities.
2. New stormwater facilities.
3. Walkways and bike paths.
4. Stormwater management plans.

If the proposed special use activity is not in compliance with the applicable standards in Subsection 19.402.11.E, it shall be subject to Type III review and the general discretionary review criteria provided in Subsection 19.402.12.

B. Natural Resource Management Plans

Natural resource management plans that do not meet the Type I review standards provided in Subsection 19.402.10.A, but that meet the standards provided in Subsection 19.402.10.B, are subject to Type II review. These are typically plans that have been prepared independently of a qualified agency but that are in accordance with standards and guidelines related to enhancing natural resources.

C. Partitions

Partitions that meet the standards provided in Subsection 19.402.13.G are subject to Type II review.

D. Other Uses and Activities with Minimal Impacts to WQRs

The activities listed below are subject to Type II review and the general discretionary review criteria provided in Subsection 19.402.12:

1. New agricultural practices or uses, excluding buildings and structures, that result in increased direct stormwater discharges to WQRs.
2. Landscaping and maintenance of existing landscaping that would increase impervious area within a WQR by no more than 150 sq ft and/or would result in increased direct stormwater discharges to the WQR.
3. Routine repair and maintenance, alteration, and/or total replacement of existing legal buildings or structures that increases the disturbance area by no more than 150 sq ft within the WQR.
4. Routine repair and maintenance, alteration, and/or total replacement of existing utility facilities, accesses, streets, driveways, and parking improvements that disturbs no more than 150 sq ft within the WQR. Activities approved under this subsection shall be subject to the following requirements:
 - a. Restore the disturbed portion of the WQR.
 - b. Within the disturbed portion of the WQR, remove any vegetation categorized as a nuisance species on the Milwaukie Native Plant List and replace it with native vegetation from the list.

E. Boundary Verification

Boundary verifications that propose substantial corrections will be processed in accordance with Subsection 19.402.15.A.2 and are subject to Type II review.

19.402.8 Activities Requiring Type III Review

Within either WQRs or HCAs, the following activities are subject to Type III review and approval by the Planning Commission under Section 19.1006, unless they are otherwise exempt or permitted as a Type I or II activity.

- A. The activities listed below shall be subject to the general discretionary review criteria provided in Subsection 19.402.12:
1. Any activity allowed in the base zone that is not otherwise exempt or permitted as a Type I or II activity.
 2. Within HCAs, development that is not in compliance with the nondiscretionary standards provided in Subsection 19.402.11.D.
 3. New roads to provide access to protected water features, necessary ingress and egress across WQRs, or the widening of an existing road.
 4. Improvement of existing public utility facilities that cannot meet the applicable standards of Subsection 19.402.11.E.
 5. New stormwater facilities that cannot meet the applicable standards of Subsection 19.402.11.E.

6. New public or private utility facility construction that cannot meet the applicable standards of Subsection 19.402.11.E.
 7. Walkways and bike paths that are not exempt per Subsection 19.402.4 or cannot meet the applicable standards of Subsection 19.402.11.E.
 8. Tree removal in excess of that permitted under Subsections 19.402.4 or 19.402.6.
 9. Landscaping and maintenance of existing landscaping that would increase impervious area by more than 150 sq ft.
 10. Routine repair and maintenance, alteration, total replacement, and/or change of use of existing legal buildings or structures that that increases the disturbance area by more than 150 sq ft within the WQR.
 11. Routine repair and maintenance, alteration, and/or total replacement of existing utility facilities, accesses, streets, driveways, and parking improvements that would disturb more than 150 sq ft within the WQR.
- B. The activities listed below shall be subject to the review criteria for partitions and subdivisions provided in Subsections 19.402.13.H and I, respectively:
1. The partitioning of land containing a WQR or HCA that cannot meet the standards provided in Subsection 19.402.13.G.
 2. The subdividing of land containing a WQR or HCA.

19.402.9 Construction Management Plans

- A. Construction management plans are subject to Type I review per Section 19.1004.
- B. Construction management plans shall provide the following information:
1. Description of work to be done.
 2. Scaled site plan showing a demarcation of WQRs and HCAs and the location of excavation areas for building foundations, utilities, stormwater facilities, etc.
 3. Location of site access and egress that construction equipment will use.
 4. Equipment and material staging and stockpile areas.
 5. Erosion and sediment control measures.
 6. Measures to protect trees and other vegetation located within the potentially affected WQR and/or HCA. A root protection zone shall be established around each tree in the WQR or HCA that is adjacent to any approved work area. The root protection zone shall extend from the trunk to the outer edge of the tree's canopy, or as close to the outer edge of the canopy as is practicable for the approved project. The perimeter of the root protection zone shall be flagged, fenced, or otherwise marked and shall remain undisturbed. Material storage and construction access is prohibited within the perimeter. The root protection zone shall be maintained until construction is complete.

When required for a property that does not include a designated natural resource, the construction management plan shall show the protective measures that will be established on the applicant's property.

19.402.10 Natural Resource Management Plans

Natural resource management plans or restoration plans that authorize limited disturbance within the WQR or HCA may be approved with Type I or II review, subject to the following standards:

A. Plans Eligible for Type I Review

The plan has already been approved by the U.S. Fish and Wildlife Service, Oregon Department of Fish and Wildlife (ODFW), DSL, Oregon Watershed Enhancement Board (OWEB), Metro, Clackamas County Soil and Water Conservation District, or other agency approved by the Planning Director.

B. Plans Eligible for Type II Review

The plan has been prepared in accordance with particular standards and guidelines promulgated by a natural resource agency, such as OWEB's Oregon Aquatic Habitat Restoration and Enhancement Guide, ODFW's Western Oregon Stream Restoration Program, DSL's Hydrogeomorphic (HGM) approach of assessment for wetland and riparian functions, or other standards approved by the Planning Director.

C. Approval Criteria

Every plan prepared for approval under Section 19.402 shall demonstrate that it encourages restoration activities that have any of the following effects:

1. Changes the trend of habitat function from one of a diminishing ability to support salmonids and other organisms to one that supports a complex, self-sustaining system.
2. Corrects or improves conditions caused by past management and/or disturbance events.
3. Maximizes beneficial habitat in the short term where watershed degradation has been extensive and natural processes will need substantial time to restore habitat.
4. Creates beneficial habitat and restores stream function and hydrology to the fullest extent practicable within developed areas where there is no reasonable expectation of returning to natural conditions.

D. Construction Management Plans

A construction management plan prepared in accordance with Subsection 19.402.9 is required with each natural resource management plan.

E. Ongoing Maintenance

Natural resource management plans shall demonstrate how ongoing maintenance is part of the associated restoration or enhancement activities.

F. Expiration of Plans

The approval of a natural resource management plan shall be valid for 5 years. Approved plans may be renewed through the Type I review process by demonstrating that the original approved plan still meets the criteria provided in Subsection 19.402.10.C. Plans that demonstrate an adaptive management component and/or that involve partnership with one of the agencies noted in Subsection 19.402.10.A may be approved as valid for up to 20 years upon request.

19.402.11 Development Standards

A. Protection of Natural Resources During Site Development

During development of any site containing a designated natural resource, the following standards shall apply:

1. Work areas shall be marked to reduce potential damage to the WQR and/or HCA.
2. Trees in WQRs or HCAs shall not be used as anchors for stabilizing construction equipment.
3. Native soils disturbed during development shall be conserved on the property.
4. An erosion and sediment control plan is required and shall be prepared in compliance with requirements set forth in the City's Public Works Standards.
5. Site preparation and construction practices shall be followed that prevent drainage of hazardous materials or erosion, pollution, or sedimentation to any WQR adjacent to the project area.
6. Stormwater flows that result from proposed development within and to natural drainage courses shall not exceed predevelopment flows.
7. Prior to construction, the WQR and/or HCA that is to remain undeveloped shall be flagged, fenced, or otherwise marked and shall remain undisturbed. Such markings shall be maintained until construction is complete.
8. The construction phase of the development shall be done in such a manner as to safeguard the resource portions of the site that have not been approved for development.
9. Where practicable, lights shall be placed so that they do not shine directly into any WQR and/or HCA location. The type, size, and intensity of lighting shall be selected so that impacts to habitat functions are minimized.
10. All work on the property shall conform to a construction management plan prepared according to Subsection 19.402.9.

B. General Standards for Required Mitigation

Where mitigation is required by Section 19.402 for disturbance to WQRs and/or HCAs, the following general standards shall apply:

1. Disturbance
 - a. Designated natural resources that are affected by temporary disturbances shall be restored, and those affected by permanent disturbances shall be mitigated, in accordance with the standards provided in Subsection 19.402.11.C for WQRs and Subsection 19.402.11.D.2 for HCAs, as applicable.
 - b. Landscape plantings are not considered to be disturbances, except for those plantings that are part of a non-exempt stormwater facility; e.g., raingarden or bioswale.

2. Required Plants

Unless specified elsewhere in Section 19.402, all trees, shrubs, and ground cover planted as mitigation shall be native plants, as identified on the Milwaukie Native Plant List. Applicants are encouraged to choose particular native species that are

appropriately suited for the specific conditions of the planting site; e.g., shade, soil type, moisture, topography, etc..

3. Plant Size

Replacement trees shall average at least a ½-in caliper—measured at 6 in above the ground level for field-grown trees or above the soil line for container-grown trees—unless they are oak or madrone, which may be 1-gallon size. Shrubs shall be at least 1-gallon size and 12 in high.

4. Plant Spacing

Trees shall be planted between 8 and 12 ft on center. Shrubs shall be planted between 4 and 5 ft on center or clustered in single-species groups of no more than 4 plants, with each cluster planted between 8 and 10 ft on center. When planting near existing trees, the dripline of the existing tree shall be the starting point for plant spacing measurements.

5. Plant Diversity

Shrubs shall consist of at least 2 different species. If 10 trees or more are planted, then no more than 50% of the trees shall be of the same genus.

6. Location of Mitigation Area

a. On-Site Mitigation

All mitigation vegetation shall be planted on the applicant's site within the designated natural resource that is disturbed, or in an area contiguous to the resource area; however, if the vegetation is planted outside of the resource area, the applicant shall preserve the contiguous planting area by executing a deed restriction such as a restrictive covenant.

b. Off-Site Mitigation

- (1) For disturbances allowed within WQRs, off-site mitigation shall not be used to meet the mitigation requirements of Section 19.402.
- (2) For disturbances allowed within HCAs, off-site mitigation vegetation may be planted within an area contiguous to the subject-property HCA, provided there is documentation that the applicant possesses legal authority to conduct and maintain the mitigation, such as having a sufficient ownership interest in the mitigation site. If the off-site mitigation is not within an HCA, the applicant shall document that the mitigation site will be protected after the monitoring period expires, such as through the use of a restrictive covenant.

7. Invasive Vegetation

Invasive nonnative or noxious vegetation shall be removed within the mitigation area prior to planting, including, but not limited to, species identified as nuisance plants on the Milwaukie Native Plant List.

8. Ground Cover

Bare or open soil areas remaining after the required tree and shrub plantings shall be planted or seeded to 100% surface coverage with grasses or other ground cover species identified as native on the Milwaukie Native Plant List. Revegetation shall occur during the next planting season following the site disturbance.

9. Tree and Shrub Survival

A minimum of 80% of the trees and shrubs planted shall remain alive on the second anniversary of the date that the mitigation planting is completed.

a. Required Practices

To enhance survival of the mitigation plantings, the following practices are required:

- (1) Mulch new plantings to a minimum of 3-in depth and 18-in diameter to retain moisture and discourage weed growth.
- (2) Remove or control nonnative or noxious vegetation throughout the maintenance period.

b. Recommended Practices

To enhance survival of tree replacement and vegetation plantings, the following practices are recommended:

- (1) Plant bare root trees between December 1 and April 15; plant potted plants between October 15 and April 30.
- (2) Use plant sleeves or fencing to protect trees and shrubs against wildlife browsing and the resulting damage to plants.
- (3) Water new plantings at a rate of 1 in per week between June 15 and October 15 for the first 2 years following planting.

c. Monitoring and Reporting

Monitoring of the mitigation site is the ongoing responsibility of the property owner. Plants that die shall be replaced in kind as needed to ensure the minimum 80% survival rate. The Planning Director may require a maintenance bond to cover the continued health and survival of all plantings. A maintenance bond shall not be required for land use applications related to owner-occupied single-family residential projects. An annual report on the survival rate of all plantings shall be submitted for 2 years.

10. Light Impacts

Where practicable, lights shall be placed so that they do not shine directly into any WQR and/or HCA location. The type, size, and intensity of lighting shall be selected so that impacts to habitat functions are minimized.

C. Mitigation Requirements for Disturbance within WQRs

1. The requirements for mitigation vary depending on the existing condition of the WQR on the project site at the time of application. The existing condition of the WQR shall be assessed in accordance with the categories established in Table 19.402.11.C.
2. When disturbance within a WQR is approved according to the standards of Section 19.402, the disturbance shall be mitigated according to the requirements outlined in Table 19.402.11.C and the standards established in Subsection 19.402.11.B.

Table 19.402.11.C Mitigation Requirements for WQRs	
Existing Condition of WQR	Requirements
Class A ("Good") Extent and character of existing vegetation provides good conditions for water quality and wildlife habitat	
Combination of trees, shrubs, and ground cover are 80% present, with more than 50% tree canopy coverage in vegetated corridor.	<ul style="list-style-type: none"> • Submit a plan for mitigating water quality impacts related to the development, including: sediments, temperature, nutrients, or any other condition that may have caused the protected water feature to be listed on DEQ's 303(d) list. • Inventory and remove debris and noxious materials.
Class B ("Marginal") Extent and character of existing vegetation provides marginal conditions for water quality and wildlife habitat	
Combination of trees, shrubs, and ground cover are 80% present, with 25-50% canopy coverage in vegetated corridor.	<ul style="list-style-type: none"> • Restore and mitigate disturbed areas 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. • Inventory and remove debris and noxious materials.
Class C ("Poor") Extent and character of existing vegetation provides poor conditions for water quality and wildlife habitat	
Combination of trees, shrubs, and ground cover are less than 80% present and/or less than 25% canopy coverage in vegetated corridor.	<ul style="list-style-type: none"> • Restore and mitigate disturbed areas 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. • Plant and/or seed all bare areas to provide 100% surface coverage. • Inventory and remove debris and noxious materials.

D. Nondiscretionary Standards for HCAs

The following nondiscretionary standards may be applied to proposals that are subject to Type I review and located within HCAs only. These standards do not apply to activities proposed within WQRs.

1. Disturbance Area Limitations in HCAs

To avoid or minimize impacts to HCAs, activities that are not otherwise exempt from the requirements of Section 19.402, and that would disturb an HCA, are subject to the following disturbance area limitations, as applicable:

a. Detached and Attached Single-Family Residential Uses

The amount of disturbance allowed within an HCA for detached and attached single-family residential uses, including any related public facilities as required by Section 19.700 Public Facility Improvements, shall be determined by subtracting the area of the lot or parcel outside of the HCA from the maximum disturbance area calculated per Figure 19.402.11.D.1.a. Such disturbance shall be subject to the mitigation requirements described in Subsection 19.402.11.D.2.

Figure 19.402.11.D.1.a
Method for Calculating Allowable Disturbance within an HCA
for Detached and Attached Single-Family Residential Uses

X = The maximum potential disturbance area within the HCA , which is 50% of the total HCA, up to a maximum of 5,000 sq ft.

Y = The area of the lot or parcel outside the total resource area (WQR and HCA).

Z = The net amount of disturbance area allowed within the HCA ($Z = X - Y$)

If (Y) is greater than (X), development shall not be permitted within the HCA; otherwise, the applicant may disturb up to the net amount of disturbance area allowed (Z) within the HCA.

Example 1: 8,000-sq-ft lot with 3,000 sq ft of HCA and 5,000 sq ft outside of HCA/WQR

X = 1,500 sq ft (50% of HCA)

Y = 5,000 sq ft outside of HCA/WQR

Z = - 3,500 sq ft (1,500 sq ft – 5,000 sq ft)

Conclusion: Y is greater than X; therefore, development is not permitted within the HCA.

Example 2: 8,000-sq-ft lot with 6,000 sq ft of HCA and 2,000 sq ft outside of HCA/WQR

X = 3,000 sq ft (50% of HCA)

Y = 2,000 sq ft outside of HCA/WQR

Z = 1,000 sq ft (3,000 sq ft – 2,000 sq ft)

Conclusion: Y is not greater than X; therefore, the applicant may disturb up to the value of Z (1,000 sq ft) within the HCA.

b. All Other Uses

A net disturbance area of 10% of the HCA on the site is allowed by right, subject to the mitigation requirements described in Subsection 19.402.11.D.2.

c. Temporary and Permanent Disturbances

All disturbances within an HCA that occur during construction or other development activities, whether temporary or permanent disturbances, count equally for the purposes of calculating and tracking the maximum disturbance area allowed for a particular site. Disturbance resulting from any activity deemed exempt per Subsection 19.402.4 shall not be counted against the amount of disturbance allowed by Subsection 19.402.

d. Disturbance in Excess of that Allowed by Section 19.402

In accordance with Subsection 19.402.8, proposed development that would disturb more HCA than allowed by Subsections 19.402.11.D.1.a and b shall be subject to the Type III review process and general discretionary review criteria, as outlined in Subsection 19.402.12.C.1.

e. Disturbance Changes HCA Status

When disturbances within HCAs are allowed, in accordance with the applicable provisions of Section 19.402, the City shall remove the HCA designation from such disturbance areas on the NR Administrative Map, as provided in Subsection 19.402.15.B.

In the case of a request to develop within an HCA on a property where a prior development request was subject to the disturbance area limitations of Subsection 19.402.11.D.1, the calculation of the new amount of disturbance area allowed within the HCA on the property shall be based on the mapped location of the HCA at the time of the request, notwithstanding any previous calculation of allowed disturbance area.

2. Mitigation Requirements for Disturbance in HCAs

To achieve the goal of reestablishing forested canopy that meets the ecological values and functions described in Subsection 19.402.1, when development intrudes into an HCA, tree replacement and vegetation planting are required according to the following standards, unless the planting is also subject to wetlands mitigation requirements imposed by state and federal law.

These mitigation options apply to tree removal and/or site disturbance in conjunction with development activities that are otherwise permitted by Section 19.402. They do not apply to situations in which tree removal is exempt per Subsection 19.402.4 or approvable through Type I review.

An applicant shall meet the requirement of Mitigation Option 1 or 2, whichever results in more tree plantings; except that where the disturbance area is 1 acre or more, the applicant shall comply with Mitigation Option 2.

a. Mitigation Option 1

This mitigation requirement is calculated based on the number and size of trees that are removed from the site. Trees that are removed from the site shall be replaced as shown in Table 19.402.11.D.2.a. Conifers shall be replaced with conifers. Bare ground shall be planted or seeded with native grasses or herbs. Nonnative sterile wheat grass may also be planted or seeded, in equal or lesser proportion to the native grasses or herbs.

Table 19.402.11.D.2.a Tree Replacement	
Size of Tree to be Removed (inches in diameter)	Number of Trees and Shrubs to be Planted
6 to 12	2 trees and 3 shrubs
13 to 18	3 trees and 6 shrubs
19 to 24	5 trees and 12 shrubs
25 to 30	7 trees and 18 shrubs
over 30	10 trees and 30 shrubs

b. Mitigation Option 2

This mitigation requirement is calculated based on the size of the disturbance area within an HCA. Native trees and shrubs are required to be planted at a rate of 5 trees and 25 shrubs per 500 sq ft of disturbance area. This is calculated by

dividing the number of square feet of disturbance area by 500, multiplying that result times 5 trees and 25 shrubs, and rounding all fractions to the nearest whole number of trees and shrubs. For example, if there will be 330 sq ft of disturbance area, then 330 divided by 500 equals 0.66, and 0.66 times 5 equals 3.3, so 3 trees must be planted, and 0.66 times 25 equals 16.5, so 17 shrubs must be planted. Bare ground shall be planted or seeded with native grasses or herbs. Nonnative sterile wheat grass may also be planted or seeded, in equal or lesser proportion to the native grasses or herbs.

c. Adjustments to HCA Mitigation Requirements

Proposals to vary the number or size of trees and shrubs required as mitigation in Subsection 19.402.11.D.2 shall be subject to the Type II review process and the requirements of Subsection 19.402.12.C.2.

E. Standards for Special Uses

Unless they are exempt per Subsection 19.402.4, or do not meet the nondiscretionary standards for HCAs provided in 19.402.11.D, the special uses listed in Subsection 19.402.7.A are subject to Type II review if they comply with the applicable standards in Subsection 19.402.11.E. Otherwise, the special uses listed in Subsection 19.402.7.A are subject to Type III review and the general discretionary review criteria provided in Subsection 19.402.12.

1. General Standards for Special Uses

Except for stormwater management plans, all nonexempt special uses listed in Subsections 19.402.11.E.2 through 5 that do not meet the nondiscretionary standards for HCAs provided in Subsection 19.402.11.D shall comply with the specific applicable standards in Subsection 19.402.11.E, as well as with the following general standards:

- a. In addition to a construction management plan prepared according to the standards of Subsection 19.402.9; a mitigation plan shall be submitted per Subsection 19.402.11.D.2 or 19.402.12.C.2 for HCAs, as applicable, or per Subsection 19.402.11.C for WQRs. WQRs and HCAs shall be restored and maintained in accordance with the approved mitigation plan.
- b. Existing vegetation outside of approved work areas shall be protected and left in place. Work areas shall be carefully located and marked to reduce potential damage to WQRs and HCAs. Trees in WQRs or HCAs shall not be used as anchors for stabilizing construction equipment.
- c. Where existing vegetation has been removed, or the original land contours disturbed, the site shall be revegetated and the vegetation shall be established as soon as practicable. Interim erosion control measures, such as mulching, shall be used to avoid erosion on bare areas.

2. Public or Private Utility Facilities

In addition to the requirements of Subsection 19.402.11.E.1, the following disturbance area limitations apply to all new public and private utility facilities, as well as to facility upgrades that are not exempted by Subsection 19.402.4 or that do not meet the nondiscretionary standards for HCAs provided in Subsection 19.402.11.D.

- a. The disturbance area for the upgrade of existing utility facilities shall be no greater than 15 ft wide.

- b. The disturbance area for new underground utility facilities shall be no greater than 25 ft wide and disturb no more than 200 linear feet of WQR within any 1,000-linear-foot stretch of WQR. Such a disturbance area shall be restored with the exception of necessary access points to the utility facility.
- c. Disturbance areas shall be revegetated.
- d. No fill or excavation is allowed within the ordinary high water mark of a stream, unless a permit is obtained from the Corps through the Standard Local Operating Procedures for Endangered Species (SLOPES) process.

3. New Stormwater Facilities

In addition to the requirements of Subsection 19.402.11.E.1, new stormwater facilities that are not exempted by Subsection 19.402.4, or that do not meet the nondiscretionary standards for HCAs provided in Subsection 19.402.11.D, shall not encroach more than 25 ft into the outer boundary of the WQR adjacent to a primary protected water feature.

4. Walkways and Bike Paths

In addition to the requirements of Subsection 19.402.11.E.1; walkways and bike paths that are not exempted by Subsection 19.402.4, or that do not meet the nondiscretionary standards for HCAs provided in Subsection 19.402.11.D, and that are proposed to be constructed or improved with gravel, pavement, pavers, wood, or other materials, shall comply with the following standards:

- a. Walkways and bike paths within WQRs or HCAs shall not exceed a 10-ft width.
- b. If the proposed walkway or bike path will be located within a WQR and will be paved, then, for the purposes of evaluating the proposed project, the vegetated corridor shall be widened by the width of the walkway or bike path.
- c. The walkway or bike path shall be designed to avoid WQRs and HCAs, to the greatest extent practicable, and shall be constructed so as to minimize disturbance to existing vegetation and slope stability.
- d. The walkway or bike path shall be a minimum of 10 ft from the boundary of the protected water feature.
- e. Where practicable, any lights associated with the walkway or bike path shall be placed so that they do not shine directly into any WQR and/or HCA location. The type, size, and intensity of lighting shall be selected so that impacts to habitat functions are minimized.

5. Stormwater Management Plans

Stormwater management plans that authorize disturbance within the WQR or HCA may be approved if in compliance with all of the following standards:

- a. Stormwater facilities will be designed to provide an environmentally beneficial hydrological impact on protected water features.
- b. Protected water features will be protected from erosion by implementing a stream protection strategy and quantity control strategies.
- c. Watershed health will be improved through the use of vegetated facilities to meet pollution reduction, flow control, and infiltration goals. These facilities will be maintained in a manner that ensures a continued benefit to watershed health.

- d. Proposed stormwater management facilities will correct or improve conditions caused by past management and/or disturbance events, if any are present.
- e. Where there is no reasonable expectation of returning to natural conditions, beneficial habitat, vegetation, and stream function and hydrology will be restored to the fullest extent practicable within developed areas.

19.402.12 General Discretionary Review

This subsection establishes a discretionary process by which the City shall analyze the impacts of development on WQRs and HCAs, including measures to prevent negative impacts and requirements for mitigation and enhancement. The Planning Director may consult with a professional with appropriate expertise to evaluate an application, or they may rely on appropriate staff expertise to properly evaluate the report's conclusions.

A. Impact Evaluation and Alternatives Analysis

An impact evaluation and alternatives analysis is required to determine compliance with the approval criteria for general discretionary review and to evaluate development alternatives for a particular property. A report presenting this evaluation and analysis shall be prepared and signed by a knowledgeable and qualified natural resource professional, such as a wildlife biologist, botanist, or hydrologist. At the Planning Director's discretion, the requirement to provide such a report may be waived for small projects that trigger discretionary review but can be evaluated without professional assistance.

The alternatives shall be evaluated on the basis of their impact on WQRs and HCAs, the ecological functions provided by the resource on the property, and off-site impacts within the subwatershed (6th Field Hydrologic Unit Code) where the property is located. The evaluation and analysis shall include the following:

1. Identification of the ecological functions of riparian habitat found on the property, as described in Subsection 19.402.1.C.2.
2. An inventory of vegetation, sufficient to categorize the existing condition of the WQR per Table 19.402.11.C, including the percentage of ground and canopy coverage materials within the WQR.
3. An assessment of the water quality impacts related to the development, including sediments, temperature and nutrients, sediment control, and temperature control, or any other condition with the potential to cause the protected water feature to be listed on DEQ's 303(d) list.
4. An alternatives analysis, providing an explanation of the rationale behind choosing the alternative selected, listing measures that will be taken to avoid and/or minimize adverse impacts to designated natural resources, and demonstrating that:
 - a. No practicable alternatives to the requested development exist that will not disturb the WQR or HCA.
 - b. Development in the WQR and/or HCA has been limited to the area necessary to allow for the proposed use.
 - c. If disturbed, the WQR can be restored to an equal or better condition in accordance with Table 19.402.11.C; and the HCA can be restored consistent with the mitigation requirements of Subsection 19.402.11.D.2.
 - d. Road crossings will be minimized as much as possible.

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5. Evidence that the applicant has done the following, for applications proposing routine repair and maintenance, alteration, and/or total replacement of existing structures located within the WQR:
 - a. Demonstrated that no practicable alternative design or method of development exists that would have a lesser impact on the WQR than the one proposed. If no such practicable alternative design or method of development exists, the project shall be conditioned to limit its disturbance and impact on the WQR to the minimum extent necessary to achieve the proposed repair/maintenance, alteration, and/or replacement.
 - b. Provided mitigation to ensure that impacts to the functions and values of the WQR will be mitigated or restored to the extent practicable.
6. A mitigation plan for the designated natural resource that contains the following information:
 - a. A description of adverse impacts that will be caused as a result of development.
 - b. An explanation of measures that will be taken to avoid, minimize, and/or mitigate adverse impacts to the designated natural resource; in accordance with, but not limited to, Table 19.402.11.C for WQRs and Subsection 19.402.11.D.2 for HCAs.
 - c. Sufficient description to demonstrate how the following standards will be achieved:
 - (1) Where existing vegetation has been removed, the site shall be revegetated as soon as practicable.
 - (2) Where practicable, lights shall be placed so that they do not shine directly into any WQR and/or HCA location. The type, size, and intensity of lighting shall be selected so that impacts to habitat functions are minimized.
 - (3) Areas of standing trees, shrubs, and natural vegetation will remain connected or contiguous; particularly along natural drainage courses, except where mitigation is approved; so as to provide a transition between the proposed development and the designated natural resource and to provide opportunity for food, water, and cover for animals located within the WQR.
 - d. A map showing where the specific mitigation activities will occur. Off-site mitigation related to WQRs shall not be used to meet the mitigation requirements of Section 19.402.
 - e. An implementation schedule; including a timeline for construction, mitigation, mitigation maintenance, monitoring, and reporting; as well as a contingency plan. All in-stream work in fish-bearing streams shall be done in accordance with the allowable windows for in-water work as designated by ODFW.

B. Approval Criteria

1. Unless specified elsewhere in Section 19.402, applications subject to the discretionary review process shall demonstrate how the proposed activity complies with the following criteria:
 - a. Avoid

The proposed activity avoids the intrusion of development into the WQR and/or HCA to the extent practicable. The proposed activity shall have less detrimental impact to the designated natural resource than other practicable alternatives,

including significantly different practicable alternatives that propose less development within the resource area.

b. Minimize

If the applicant demonstrates that there is no practicable alternative that will avoid disturbance of the designated natural resource, then the proposed activity within the resource area shall minimize detrimental impacts to the extent practicable.

- (1) The proposed activity shall minimize detrimental impacts to ecological functions and loss of habitat, consistent with uses allowed by right under the base zone, to the extent practicable.
- (2) To the extent practicable within the designated natural resource, the proposed activity shall be designed, located, and constructed to:
 - (a) Minimize grading, removal of native vegetation, and disturbance and removal of native soils; by using the approaches described in Subsection 19.402.11.A, reducing building footprints, and using minimal excavation foundation systems (e.g., pier, post, or piling foundation).
 - (b) Minimize adverse hydrological impacts on water resources.
 - (c) Minimize impacts on wildlife corridors and fish passage.
 - (d) Allow for use of other techniques to further minimize the impacts of development in the resource area; such as using native plants throughout the site (not just in the resource area), locating other required landscaping adjacent to the resource area, reducing light spill-off into the resource area from development, preserving and maintaining existing trees and tree canopy coverage, and/or planting trees where appropriate to maximize future tree canopy coverage.

c. Mitigate

If the applicant demonstrates that there is no practicable alternative that will avoid disturbance of the designated natural resource, then the proposed activity shall mitigate for adverse impacts to the resource area. All proposed mitigation plans shall meet the following standards:

- (1) The mitigation plan shall demonstrate that it compensates for detrimental impacts to the ecological functions of resource areas, after taking into consideration the applicant's efforts to minimize such detrimental impacts.
- (2) Mitigation shall occur on the site of the disturbance, to the extent practicable. Off-site mitigation for disturbance of WQRs shall not be approved. Off-site mitigation for disturbance of HCAs shall be approved if the applicant has demonstrated that it is not practicable to complete the mitigation on-site and if the applicant has documented that they can carry out and ensure the success of the off-site mitigation as outlined in Subsection 19.402.11.B.5.

In addition, if the off-site mitigation area is not within the same subwatershed (6th Field Hydrologic Unit Code) as the related disturbed HCA, the applicant shall demonstrate that it is not practicable to complete the mitigation within the same subwatershed and that, considering the purpose of the mitigation, the mitigation will provide more ecological functional value if implemented outside of the subwatershed.

- (3) All revegetation plantings shall use native plants listed on the Milwaukie Native Plant List.
- (4) All in-stream work in fish-bearing streams shall be done in accordance with the allowable windows for in-water work as designated by ODFW.
- (5) A mitigation maintenance plan shall be included and shall be sufficient to ensure the success of the planting. Compliance with the plan shall be a condition of development approval.

2. Municipal Water Utility Facilities Standards

In addition to all other applicable criteria of Subsection 19.402.12.B, and if not already exempted by Subsection 19.402.4; municipal potable water, stormwater, and wastewater utility facilities (which may include, but are not limited to, water treatment plants, wastewater treatment plants, raw water intakes, pump stations, transmission mains, conduits or service lines, terminal storage reservoirs, and outfall devices) may be built, expanded, repaired, maintained, reconfigured, rehabilitated, replaced, or upsized in accordance with the following criteria:

- a. Such projects shall not be required to avoid the resource area per Subsection 19.402.12.B.1.a, provided that, where practicable, the project does not encroach closer to a protected water feature than existing operations and development; or, for new projects where there are no existing operations or development, provided that the project does not encroach closer to a protected water feature than practicable.
- b. Best management practices will be employed that accomplish all of the following:
 - (1) Account for watershed assessment information in project design.
 - (2) Minimize the trench area and tree removal within the resource area.
 - (3) Utilize and maintain erosion controls until other site stabilization measures are established, post-construction.
 - (4) Replant immediately after backfilling, or as soon as effective.
 - (5) Preserve wetland soils and retain soil profiles.
 - (6) Minimize compactions and the duration of the work within the resource area.
 - (7) Complete in-water construction during appropriate seasons, or as approved within requisite federal or State permits.
 - (8) Monitor water quality during the construction phases, if applicable.
 - (9) Implement a full inspection and monitoring program during and after project completion, if applicable.

C. Limitations and Mitigation for Disturbance of HCAs

1. Discretionary Review to Approve Additional Disturbance within an HCA

An applicant seeking discretionary approval to disturb more of an HCA than is allowed by Subsection 19.402.11.D.1 shall submit an Impact Evaluation and Alternatives Analysis, as outlined in Subsection 19.402.12.A, and shall be subject to the approval criteria provided in Subsection 19.402.12.B.

2. Discretionary Review to Approve Mitigation that Varies the Number and Size of Trees and Shrubs within an HCA

An applicant seeking discretionary approval to proportionally vary the number and size of trees and shrubs required to be planted under Subsection 19.402.11.D.2 (e.g., to plant fewer larger trees and shrubs or to plant more smaller trees and shrubs), but who will comply with all other applicable provisions of Subsection 19.402.11, shall be subject to the following process:

- a. The applicant shall submit the following information:
 - (1) A calculation of the number and size of trees and shrubs the applicant would be required to plant under Subsection 19.402.11.D.2.
 - (2) The number and size of trees and shrubs that the applicant proposes to plant.
 - (3) An explanation of how the proposed number and size of trees and shrubs will achieve, at the end of the third year after initial planting, comparable or better mitigation results than would be achieved if the applicant complied with all of the requirements of Subsection 19.402.11.D.2. Such explanation shall be prepared and signed by a knowledgeable and qualified natural resource professional or a certified landscape architect. It shall include discussion of site preparation including soil additives, removal of invasive and noxious vegetation, plant diversity, plant spacing, and planting season; and immediate post-planting care, including mulching, irrigation, wildlife protection, and weed control.
 - (4) A mitigation, site-monitoring, and site-reporting plan.
- b. Approval of the request shall be based on consideration of the following:
 - (1) Whether the proposed planting will achieve, at the end of the third year after initial planting, comparable or better mitigation results than would be achieved if the applicant complied with all of the requirements of Subsection 19.402.11.D.2.
 - (2) Whether the proposed mitigation adequately addresses the plant diversity, plant survival, and monitoring practices established in Subsection 19.402.11.B.

19.402.13 Land Division and Property Line Adjustments

The following standards apply to property line adjustments and all forms of land division defined in Chapter 17.08. These standards apply in addition to the applicable requirements provided in Title 17 Land Division and elsewhere in Title 19 Zoning. Lot consolidations, as defined in Chapter 17.08, are not subject to the provisions of Section 19.402.

A. Boundary Verification

Whether or not an applicant believes the NR Administrative Map is accurate, the applicant shall verify the boundaries of the WQR and HCA on the property according to Subsection 19.402.15.

B. Construction Management Plans

- 1. In accordance with Subsection 19.402.9, a construction management plan is required for applications for land division that will require physical site improvements (e.g., grading and/or construction of structures, streets, or utilities) within, or within 100 ft of, a WQR or HCA.

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2. A construction management plan is not required for applications for land division that do not require grading; constructing structures, streets, or utilities; or making other physical improvements to the site.

C. Impacts from Site Improvements

Applications for land division that will require physical site improvements (e.g., grading and/or the construction of streets, sidewalks, culverts, bridges, or utilities) within a WQR or HCA shall comply with the relevant standards for disturbance limitation and mitigation provided in Subsections 19.402.11 and/or 19.402.12, as applicable.

D. Mitigation for Future Structures or Improvements

Applications proposing a division of land on which future construction may impact a WQR or HCA shall comply with one of the following two standards:

1. Complete the mitigation requirements for any impacts to the WQR or HCA, in accordance with the requirements of Section 19.402, thereby exempting all subsequent development on lots containing a WQR and/or HCA from further review if in compliance with the related approval. When mitigation is required for new streets created as part of a subdivision, as outlined in Subsection 19.402.13.I, such mitigation shall be completed prior to approval of the final plat for the subdivision, unless the Planning Commission's approval establishes a different schedule.
2. Not complete the mitigation requirements, thus requiring that any subsequent development be subject to review under Section 19.402.

E. Property Line Adjustments

Applications for property line adjustment, when any of the properties include HCAs, shall address the resulting change in the percentage of HCA coverage on each property and demonstrate compliance with one of the following standards:

1. The proposed property line adjustment will result in no more than a 30-point difference in the percentage of HCA coverage on each property. Such an adjustment shall be subject to the Type I review process.
2. The proposed property line adjustment will not contravene a condition of approval related to HCA distribution from a previously approved land division. Such an adjustment shall be subject to the Type I review process.
3. The proposed property line adjustment cannot meet the standard of Subsection 19.402.13.E.1, above, but will result in the smallest practicable difference in the percentage of HCA coverage on each property. Furthermore, the new boundary configuration will mitigate, to the extent practicable, the potential future impacts to the HCA from access and development. Such an adjustment shall be subject to the Type II review process.

F. Replats

For the purpose of compliance with Section 19.402, replats that result in 3 or fewer lots shall be processed as partitions; replats that result in 4 or more lots shall be processed as subdivisions.

G. Low-Impact Partitions

Applications for partitions are subject to Type II review if they demonstrate compliance with the following standards:

1. For properties that contain HCAs, but no WQRs, and where the HCA covers 85% or less of the total lot area, the partition shall achieve either of the following results:
 - a. There shall be no more than a 30-point difference in the percentage of HCA coverage on each of the new parcels. For example, a 2-lot partition that would produce one parcel that is 55% HCA and the other that is 30% HCA is permissible with Type II review; whereas, a 2-lot partition that would produce one parcel that is 75% HCA and the other that is 40% HCA is not permissible with Type II review and shall be subject to the standards of Subsection 19.402.13.H.
 - b. At least 90% of the original property's HCA is on a separate unbuildable parcel, protected by a conservation restriction.
2. For properties that contain WQRs, the applicant shall place 100% of the WQR in a separate unbuildable tract, protected by a conservation restriction.
3. For properties that contain both WQRs and HCAs, the applicant shall comply with both of the standards listed above in Subsections 19.402.13.G.1 and 2.
4. For properties where the HCA covers more than 85% of the total lot area, the proposed partition shall be subject to the standards and review process established in Subsection 19.402.13.H.

H. All Other Partitions

Applications for partitions that cannot comply with Subsection 19.402.13.G are subject to Type III review and shall comply with one of the following two standards:

1. For properties that do not contain any WQRs, but for which it is not practicable to comply with the partition standards in Subsection 19.402.13.G.1, and where the HCA covers 85% or less of the total lot area, the application shall meet the following standards and is not subject to the requirements of Subsection 19.402.12:
 - a. The partition plan shall result in the smallest practicable percentage point difference in HCA coverage on the parcels created by the partition.
 - b. To the extent practicable, the parcel configuration shall mitigate the potential future impacts to the HCA from access and development.
2. For properties that contain WQRs but cannot comply with Subsection 19.402.13.G.2, that contain both WQRs and HCAs but cannot comply with Subsection 19.402.13.G.3, or where the HCA covers more than 85% of the total lot area, the application shall comply with the following standards:
 - a. To the extent practicable, the parcel configuration shall mitigate the potential future impacts to WQRs from access and development.
 - b. An Impact Evaluation and Alternatives Analysis shall be prepared in accordance with the relevant portions of Subsection 19.402.12.A.
 - c. For properties where the HCA covers more than 85% of the total lot area, the Impact Evaluation and Alternatives Analysis shall address how the applicant's proposal retains the greatest practicable degree of contiguity of the HCA across the new parcels.

I. Subdivisions

Applications for subdivisions are subject to Type III review and shall comply with one of the following two standards:

1. At least 90% of the property's HCA and 100% of the property's WQR shall be located in a separate tract. Applications that meet this standard are not subject to the discretionary review requirements of Subsection 19.402.12.
2. If a subdivision cannot comply with the standards in Subsection 19.402.13.1.1, the application shall comply with the following standards:
 - a. All proposed lots shall have adequate buildable area outside of the WQR and HCA.
 - b. To the extent practicable, the lot and access configurations shall mitigate the potential future impacts to the WQR and HCA from access and development.
 - c. An Impact Evaluation and Alternatives Analysis shall be prepared in accordance with the relevant portions of Subsection 19.402.12.A.
 - d. For properties where the HCA covers more than 85% of the total lot area, the Impact Evaluation and Alternatives Analysis shall address how the applicant's proposal retains the greatest practicable degree of contiguity of the HCA across the new lots.

J. Resource Area as a Separate Tract

Where required by Section 19.402, the new subdivision or partition plat shall delineate and show all WQRs and HCAs as being located in a separate unbuildable tract(s) according to the following process:

1. Prior to preliminary plat approval, the designated natural resource (whether WQR, HCA, or both) shall be shown as a separate tract(s), which shall not be part of any lot or parcel used for construction of any structures.
2. Prior to final plat approval, ownership of the separate natural resource tract(s) shall be identified to distinguish it from lots or parcels intended for sale. Ownership in common or by a homeowners association is strongly discouraged. The tract(s) may be identified as any one of the following:
 - a. Private natural area held by the owner with a restrictive covenant and/or conservation easement.
 - b. For residential subdivisions, private natural area subject to an easement conveying storm and surface water management rights to the City of Milwaukie, Clackamas County Water Environment Services, and/or any other relevant jurisdiction, and preventing the owner of the tract from activities and uses inconsistent with the purposes of Section 19.402.
 - c. Public natural area where the tract has been dedicated to the City of Milwaukie or a private nonprofit with the mission of land conservation.
3. The boundaries of all such separate tracts shall be demarcated with stakes, flags, or some similar means so that the boundaries between tracts and adjacent properties are defined in perpetuity. Fences that prevent the unfettered passage of wildlife shall not be installed along the boundary of any tract.

19.402.14 Adjustments and Variances

To encourage applicants to avoid or minimize impacts to WQRs and/or HCAs, several types of adjustments and variances are available for use on any property that includes a WQR or HCA. These include adjustments to specific base zone and lot design standards, discretionary variances, and allowances for residential cluster development.

A. Adjustments

The adjustments provided in Subsection 19.402.14.A shall not be used to avoid the requirement to submit a construction management plan, if deemed applicable per Subsection 19.402.3. The following adjustments are allowed by right as part of any Type I, II, or III application:

1. Adjustments to Base Zone Standards

a. Yard Setback (General)

Yard setback standards may be adjusted by up to 10%. This allowance applies only to the yard requirements established in base zones and does not apply to additional yard requirements for conditional uses or community service uses, yard exceptions established in Subsection 19.501.2, or transition area measures established in Subsection 19.504.6.

b. Rear Yard Setback (Limited)

For residential development, if the subject property is adjacent to a separate tract that was established according to the standards of Subsection 19.402.13.J, and the tract is adjacent to the rear yard of the subject property, the minimum rear yard requirement may be reduced to 10 ft.

2. Adjustments to Lot Design Standards

When property boundaries are changed and/or land divided per Title 17 Land Division, an applicant may utilize the following adjustments to avoid or minimize impacts to a WQR or HCA:

- a. The minimum base zone standards for lot width and lot depth may be reduced by up to 10%.
- b. The minimum lot frontage required on a public street may be reduced by up to 10%.

B. Variances

- 1. Requests to vary any standards beyond the adjustments allowed in Subsections 19.402.14.A or B shall be subject to the review process and approval criteria for variances established in Section 19.911.
- 2. In granting any variance request related to Section 19.402, the Planning Commission may impose such conditions as are deemed necessary to minimize adverse impacts that may result from granting the variance. Examples of such conditions include, but are not limited to, maintaining a minimum width of the vegetated corridor alongside a primary protected water feature and limiting the amount of WQR for which the adjacent vegetated corridor width can be reduced.

C. Residential Cluster Development

For residential proposals, development may be clustered so that land can be developed at allowed densities while avoiding or minimizing impacts to WQRs or HCAs. The intent of this section is to encourage creative and flexible site design that enables the allowable density to be transferred elsewhere on a site to protect environmentally sensitive areas and preserve open space and natural features. A residential cluster development may be permitted in any residential or mixed use zoning district, subject to Type III review and approval by the Planning Commission. A cluster development proposal may be considered

in conjunction with a proposal for land division or property line adjustment as provided in Subsection 19.402.13.

1. Calculation of Permitted Number of Dwelling Units

- a. The maximum number of dwelling units proposed for a residential cluster development shall not exceed the number of dwelling units otherwise permitted for the residential zoning district in which the parcel is located. The number of units allowed on a parent lot may be transferred to one or more newly created lots or parcels on the site. The cumulative density for all lots or parcels shall not exceed the density allowed for the parent lot.
- b. The number of permitted dwelling units on a site shall be calculated in the following manner:
 - (1) Measure the gross area of the proposed cluster development site in acres and tenths of an acre.
 - (2) From the gross area, subtract the area of public streets, other publicly dedicated improvements, and common open space (whether or not it is conveyed pursuant to Subsection 19.402.14.C.2.c), measured in acres and tenths of an acre. The remainder shall be the net buildable area.
 - (3) Convert the net buildable area from acres to square feet, using the equivalency of 43,560 sq ft = 1 acre.
 - (4) Divide the net buildable area by the smallest minimum lot size (in square feet) per unit for a dwelling unit permitted in the zoning district. This figure shall be rounded to the nearest lower number to establish the maximum number of dwelling units permitted in the cluster development.

2. Development Standards

- a. All principal and accessory uses authorized in the underlying zoning district(s) shall be allowed in the cluster development. In addition, single-family attached dwellings, multifamily dwellings, and townhouses may be permitted for a cluster development located in a residential zoning district that does not otherwise allow attached dwelling units.
- b. Maximum lot coverage, building height, and off-street parking requirements for the applicable zoning district shall apply to the cluster development. Maximum lot coverage, floor area ratios, and off-street parking requirements shall be applied to the entire site rather than to any individual lot.
- c. The following provisions shall apply to any residential cluster development, regardless of the general requirements of the applicable residential zoning district:
 - (1) The adjustments allowed by Subsection 19.402.14.A shall be available for cluster development proposals.
 - (2) Minimum lot width and lot depth standards shall not apply.
 - (3) A minimum separation of 10 ft shall be provided between all principal buildings and structures.
 - (4) A minimum yard or common open space shall be provided, with a minimum depth of 25 ft, as measured from all public streets and from the side and rear lot lines of the entire cluster development.

- (5) Each lot shall provide at least 12 ft of frontage on a public street.
- (6) More than 1 principal building or structure may be placed on a lot.
- (7) No less than 25% of the site shall be conveyed as common open space.
- (8) No less than 50% of the designated natural resources on the site shall be included in calculating the common open space.

3. Site Plan Requirements

The preliminary and final site plans for a residential cluster development shall include the following information, in addition to the items listed on the City's Site Plan Requirements:

- a. The maximum number and type of dwelling units proposed.
- b. The areas of the site on which the dwelling units are to be constructed or are currently located and their size. This may take the form of the footprint of the dwelling unit or a building envelope showing the general area in which the dwelling unit is to be located.
- c. The calculations for the permitted number of dwelling units, derived pursuant to Subsection 19.402.14.C.2.
- d. The areas of the site on which other principal and accessory uses are proposed to be located and their size.
- e. The areas of the site designated for common open space and their size.

4. Approval Criteria

- a. Proposals for residential cluster development shall demonstrate compliance with the following criteria:
 - (1) The site plan satisfies the requirements of Subsections 19.402.14.C.1 and 2.
 - (2) Buildings and structures are adequately grouped so that at least 25% of the total area of the site is set aside as common open space. To the greatest degree practicable, common open space shall be designated as a single tract and not divided into unconnected small parcels located in various parts of the development. Common open space shall be conveyed as allowed by Subsection 19.402.13.J.
 - (3) Individual lots, buildings, structures, streets, and parking areas are situated to minimize the alteration of natural features, natural vegetation, and topography.
 - (4) Impacts to WQRs and HCAs are avoided or minimized to the greatest degree practicable.
 - (5) The cluster development advances the purposes established in Subsection 19.402.1.
- b. The Planning Commission may apply such conditions or stipulations to its approval as may be required to maintain harmony with neighboring uses and promote the objectives and purposes of the Comprehensive Plan and the Zoning and Land Division Ordinances.
- c. If the Planning Commission finds that the criteria in Subsection 19.402.14.C.4.a are met, it shall approve the residential cluster development, subject to any conditions established pursuant to Subsection 19.402.14.C.4.b.

19.402.15 Boundary Verification and Map Administration

The NR Administrative Map shows the locations of WQRs and HCAs. For WQRs, the NR Administrative Map is a general indicator of protected water features and their associated vegetated corridors; the location of actual WQRs is determined according to the parameters established in Table 19.402.15. With respect to HCA locations, the NR Administrative Map is assumed to be correct unless demonstrated otherwise.

Table 19.402.15 Determination of WQR Location			
Protected Water Feature Type	Slope Adjacent to Protected Water Feature	Starting Point for Measurements from Protected Water Feature	Width of Vegetated Corridor²
Primary Protected Water Features ¹	< 25%	<ul style="list-style-type: none"> Bankful stage (top of bank) or 2-year recurrence interval flood elevation Delineated edge of Title 3 wetland 	50'
Primary Protected Water Features ¹	≥ 25% for 150' or more ³	<ul style="list-style-type: none"> Bankful stage or 2-year flood elevation Delineated edge of Title 3 wetland 	200'
Primary Protected Water Features ¹	≥ 25% for less than 150' ³	<ul style="list-style-type: none"> Bankful stage or 2-year flood elevation Delineated edge of Title 3 wetland 	Distance from starting point of measurement to top of ravine (break in ≥ 25% slope) ⁴ plus 50' ⁵
Secondary Protected Water Features ⁶	< 25%	<ul style="list-style-type: none"> Bankful stage or 2-year flood elevation 	15'
Secondary Protected Water Features ⁶	≥ 25% ³	<ul style="list-style-type: none"> Bankful stage or 2-year flood elevation 	50'

¹ Primary protected water features include: all perennial streams, streams draining 100 or more acres, Title 3 wetlands, and natural lakes and springs. See Section 19.201 for the full definition.

² Vegetated corridor width shall be applied to the outer boundaries of water features, such as the edge of a wetland and both banks of a watercourse.

³ Vegetated corridors in excess of 50 ft for primary protected features, or in excess of 15 ft for secondary protected features, apply on steep slopes only in the uphill direction from the protected water feature.

⁴ Where the protected water feature is confined by a ravine or gully, the top of ravine is the break in the ≥ 25% slope.

⁵ A maximum reduction of 25 ft may be permitted in the width of the vegetated corridor beyond the slope break if a geotechnical report demonstrates that the slope is stable. To establish the width of the vegetated corridor, slope should be measured in 25-ft increments away from the water feature until the slope is less than 25% (top of ravine).

⁶ Secondary protected water features include intermittent streams draining 50 to 100 acres. See Section 19.201 for the full definition.

A. Boundary Verification

To determine whether the standards of Section 19.402 apply to a proposed activity at any given location, the boundaries of any designated natural resource(s) on or near the site shall be verified.

Agreement with the accuracy of the NR Administrative Map does not constitute or require a land use decision. However, for activities proposed within 100 ft of a wetland or its

associated vegetated corridor, the boundary verification process outlined in Subsection 19.402.15.A.2.a(1)(b) shall be followed to identify the specific location of wetlands on the subject property. The Planning Director may waive the requirement for official wetland delineation, depending on the specific circumstances of the site and the proposed activity. Such circumstances may include, but are not limited to, the scale and potential impacts of the proposed activity, the proximity of the proposed activity to the mapped resource, and the Director's confidence in the accuracy of the NR Administrative Map relative to the resource in question.

An applicant may challenge the accuracy of the NR Administrative Map through either of the boundary verification processes outlined in Subsections 19.402.15.A.1 and 2.

1. Type I Boundary Verification

The following minor corrections to mapped HCAs may be proposed according to one of the following procedures, and are subject to Type I review per Section 19.1004:

a. Simple Incongruities

In some cases, the vegetative cover data shown on the NR Administrative Map might not align with the location of existing legally established development or tree cover. An applicant who believes that the NR Administrative Map is inaccurate, based on such an obvious misalignment, shall submit the following information regarding the property:

- (1) A detailed property description and site plan of the property that includes all existing conditions plans listed on the City's Site Plan Requirements.
- (2) A copy of the applicable NR Administrative Map section.
- (3) The latest available aerial photograph of the property, with lot lines shown, at a scale of at least 1 map inch equal to 50 ft for lots of 20,000 or fewer square feet, and a scale of 1 map inch equal to 100 ft for larger lots.
- (4) A documented demonstration of the misalignment between the NR Administrative Map and the property's tax lot boundary lines and/or the location of existing legally established development.
- (5) Any other factual information that the applicant wishes to provide to support boundary verification.

b. Legal Development Prior to Adoption Date

If a property was legally developed between the summer of 2002 (when the aerial photograph used to determine the regional habitat inventory was taken) and September 15, 2011, the effective date of Ordinance #2036, the applicant shall submit the following information regarding the property:

- (1) The information described in Subsection 19.402.15.A.1.a.
- (2) A summer 2002 aerial photograph of the property, with lot lines shown, at a scale of at least 1 map inch equal to 50 ft for lots of 20,000 or fewer square feet, and a scale of 1 map inch equal to 100 ft for larger lots.
- (3) Any approved building permits or other development plans and drawings related to the development of the property that took place between summer 2002 and September 15, 2011, the effective date of Ordinance #2036.

- (4) A clear explanation and documentation, such as supporting maps or drawings or a more recent aerial photograph, indicating the new development that has occurred and where previously identified habitat no longer exists because it is now part of a developed area.

2. Type II Boundary Verification

Corrections to mapped WQRs and/or detailed verification of mapped HCAs may be proposed according to the following procedures, and are subject to Type II review per Section 19.1005.

a. Corrections to WQRs

(1) Submittal Requirements

To propose a correction to a WQR shown on the NR Administrative Map, the applicant shall submit the following information, depending on the type of water feature in question:

(a) Drainages

In the case of drainages; including rivers, streams, springs, and natural lakes; the applicant shall submit a hydrology report, prepared by a professional engineer, demonstrating whether or not the drainage meets the definition of a protected water feature. If the drainage is demonstrated to be a protected water feature, the applicant shall provide a topographic map of the site, with contour intervals of 5 ft or less, that shows the specific location of the drainage on the subject property.

(b) Wetlands

In the case of wetlands, the applicant shall submit a wetland delineation report, prepared by a professional wetland specialist in accordance with the 1996 Oregon Freshwater Wetland Assessment Methodology and following the wetlands delineation process established by DSL, demonstrating the location of any wetlands on the site. The delineation report will be accepted only after approval by DSL. If the wetland is demonstrated to be a primary protected water feature, the applicant shall provide a topographic map of the site, with contour intervals of 5 ft or less, that shows the specific location of the wetland on the subject property.

The Planning Director shall confer with DSL and Metro to confirm delineation and hydrology reports, as may be needed, prior to issuing a notice of decision on a requested map correction.

(2) Approval Criteria

The City shall update the NR Administrative Map if the wetland or hydrology report submitted demonstrates any of the following:

- (a) That there was an error in the original mapping.
- (b) That the boundaries of the WQR have changed since the most recent update to the NR Administrative Map.
- (c) That a primary protected water feature no longer exists because the area has been legally filled, culverted, or developed prior to January 16, 2003, the effective date of Ordinance #1912.

b. Detailed Verification of HCAs

An applicant who believes that an HCA shown on the NR Administrative Map should be corrected for a reason other than those described in Subsections 19.402.15.A.1.a or b may propose a detailed verification.

(1) Submittal Requirements

The applicant shall submit a report prepared and signed by either a knowledgeable and qualified natural resource professional; such as a wildlife biologist, botanist, or hydrologist; or a civil or environmental engineer registered in Oregon to design public sanitary or storm systems, stormwater facilities, or other similar facilities. The report shall include:

- (a) A description of the qualifications and experience of all persons that contributed to the report and, for each person that contributed, a description of the elements of the analysis to which the person contributed.
- (b) The information described in Subsection 19.402.15.A.1.a.
- (c) The information described in Subsection 19.402.15.A.1.b, if the applicant believes such information is relevant to the verification of habitat location on the subject lot or parcel.
- (d) Additional aerial photographs, if the applicant believes they provide better information regarding the property, including documentation of the date and process used to take the photos and an expert's interpretation of the additional information they provide.
- (e) A map showing the topography of the property shown by 2-ft vertical contours in areas of slopes less than 15%, and at 5-ft vertical contours of slopes 15% or greater.
- (f) Any additional information necessary to address each of the detailed verification criteria provided in Subsection 19.402.15.A.2.b(2); a description of where any HCAs are located on the property, based on the application of the detailed verification criteria; and factual documentation to support the analysis.

(2) Approval Criteria

A boundary verification request submitted under Subsection 19.402.15.A.2.b shall be evaluated according to the following three-step process:

(a) Verify Boundaries of Inventoried Riparian Habitat

Locating habitat and determining the riparian habitat class of the designated natural resource is a four-step process:

- (i) Locate the water feature that is the basis for identifying riparian habitat.
 - Locate the top of bank of all streams, rivers, and open water within 200 ft of the property.
 - Locate all flood areas within 100 ft of the property.

- Locate all wetlands within 150 ft of the property, based on the NR Administrative Map. Identified wetlands shall be further delineated consistent with methods currently accepted by DSL and the Corps.
- (ii) Identify the vegetative cover status of all areas on the property that are within 200 ft of the top of bank of streams, rivers, and open water; are wetlands or are within 150 ft of wetlands; and are flood areas and within 100 ft of flood areas.
- Vegetative cover status shall be as identified on the latest Metro Vegetative Cover Map (available from the City and/or the Metro Data Resource Center).
 - The vegetative cover status of a property may be adjusted only if: (1) the property was legally developed prior to September 15, 2011, the effective date of Ordinance #2036 (see Subsection 19.402.15.A.1.b); or (2) an error was made at the time the vegetative cover status was determined. To assert the latter type of error, applicants shall submit an analysis of the vegetative cover on their property, using the aerial photographs on which the latest Metro Vegetative Cover Map is based and the definitions of the different vegetative cover types identified in Table 19.402.15.A.2.b(2)(a)(iv).
- (iii) Determine whether the degree that the land slopes upward from all streams, rivers, and open water within 200 ft of the property is greater than or less than 25%, using the methodology outlined in Table 19.402.15.
- (iv) Identify the riparian habitat classes applicable to all areas on the property using Table 19.402.15.A.2.b(2)(a)(iv) and the data identified in Subsections 19.402.15.A.2.b(2)(a)(i) through (iii).

**Table 19.402.15.A.2.b(2)(a)(iv)
Method for Determining Classification of Riparian Areas**

Distance from Protected Water Feature	Development/Vegetation Status ¹		
	Low Structure Vegetation or Open Soils ²	Woody Vegetation (shrub and scattered forest canopy) ³	Forest Canopy (closed to open forest canopy) ⁴
Surface Streams			
0'-50'	Class I ⁵	Class I	Class I
51'-100'	Class II ⁶	Class I	Class I
101'-150'	Class II ⁶ if slope>25%	Class II ⁶ if slope>25%	Class II ⁶
151'-200'	Class II ⁶ if slope>25%	Class II ⁶ if slope>25%	Class II ⁶ if slope>25%
Wetlands (wetland feature itself is a Class I riparian area)			
0'-100'	Class II ⁶	Class I	Class I
101'-150'			Class II ⁵
Flood Areas			
Within 300' of river or surface stream	Class I	Class I	Class I
More than 300' from river or surface stream	Class II ⁶	Class II ⁶	Class I
0'-100' from edge of flood area		Class II ^{6, 7}	Class II ⁶

¹ The vegetative cover type assigned to any particular area was based on two factors: the type of vegetation observed in aerial photographs and the size of the overall contiguous area of vegetative cover to which a particular piece of vegetation belonged.

² “Low structure vegetation or open soils” means areas that are part of a contiguous area 1 acre or larger of grass, meadow, croplands, or areas of open soils located within 300 ft of a surface stream. Low structure vegetation areas may include areas of shrub vegetation less than 1 acre in size; if they are contiguous with areas of grass, meadow, croplands, orchards, Christmas tree farms, holly farms, or areas of open soils located within 300 ft of a surface stream; and if those contiguous areas together together form an area of 1 acre in size or larger.

³ “Woody vegetation” means areas that are part of a contiguous area 1 acre or larger of shrub or open or scattered forest canopy (less than 60% crown closure) located within 300 ft of a surface stream.

⁴ “Forest canopy” means areas that are part of a contiguous grove of trees of 1 acre or larger in area with approximately 60% or greater crown closure, irrespective of whether the entire grove is within 200 ft of the relevant water feature.

⁵ Except that areas within 50 ft of surface streams shall be Class II riparian areas if their vegetation status is “low structure vegetation or open soils,” and they are high gradient streams. High gradient streams are identified on the Metro Vegetative Cover Map. If a property owner believes the gradient of a stream was incorrectly identified, then the property owner may demonstrate the correct classification by identifying the channel type using the methodology described in the *Oregon Watershed Assessment Manual*, published by OWEB, and appended to Metro’s *Riparian Corridor and Wildlife Habitat Inventories Report*, Attachment 1 to Exhibit F to Metro Ordinance No. 05-1077C.

⁶ Areas that have been identified as habitats of concern, as designated on the Metro Habitats of Concern Map (on file in the Metro Council office), shall be treated as Class I riparian habitat areas in all cases; subject to the provision of additional information that establishes that they do not meet the criteria used to identify habitats of concern as described in Metro’s *Technical Report for Fish and Wildlife*. Examples of habitats of concern include: Oregon white oak woodlands, bottomland hardwood forests, wetlands, native grasslands, riverine islands or deltas, and important wildlife migration corridors.

⁷ Only if within 300 ft of a river or surface stream.

(b) Determine the Property's Urban Development Value

The urban development value of property designated as regionally significant habitat is depicted on the Metro Habitat Urban Development Value Map (available from the Metro Data Resource Center).

- (i) A property's urban development value designation shall be adjusted upward if the Metro 2040 Design Type designation for the property lot or parcel has changed from one with a lower urban development value to one with a higher urban development value. 2040 Design Type designations are identified on the Metro 2040 Applied Concept Map (available from the Metro Data Resource Center).
- (ii) Properties in areas designated on the 2040 Applied Concept Map as Central City, Regional Centers, Town Centers, and Regionally Significant Industrial Areas are considered to be of high urban development value; properties in areas designated as Main Streets, Station Communities, Other Industrial Areas, and Employment Centers are of medium urban development value; and properties in areas designated as Inner and Outer Neighborhoods and Corridors are of low urban development value.
- (iii) As designated in Title 13 of the UGMFP, properties owned by a regionally significant educational or medical facility are designated as high urban development value.

(c) Cross-Reference Habitat Class with Urban Development Value

City verification of the locations of HCAs shall be consistent with Table 19.402.15.A.2.b(2)(c).

Table 19.402.15.A.2.b(2)(c) Method for Identifying Habitat Conservation Areas (HCAs)				
Fish & Wildlife Habitat Classification	High Urban Development Value¹	Medium Urban Development Value²	Low Urban Development Value³	Other Areas: Parks and Open Spaces (no design types outside UGB)
Class I Riparian	HCA	HCA	HCA	HCA
Class II Riparian	HCA	HCA	HCA	HCA
Class A Upland Wildlife	No HCA	No HCA	No HCA	No HCA/HCA ⁴
Class B Upland Wildlife	No HCA	No HCA	No HCA	No HCA/HCA ⁴

NOTE: The default urban development value of property is as depicted on the Metro Habitat Urban Development Value Map. The Metro 2040 Design Type designations provided in the following footnotes are only for use when a city or county is determining whether to make an HCA adjustment.

¹ Primary 2040 design type: Central City, Regional Centers, Town Centers, and Regionally Significant Industrial Areas.

² Secondary 2040 design type: Main Streets, Station Communities, Other Industrial areas, and Employment Centers.

³ Tertiary 2040 design type: Inner and Outer Neighborhoods, Corridors.

⁴ All Class A and B upland wildlife habitat in publicly-owned parks and open spaces shall be considered HCA, except for parks and open spaces where the acquiring agency clearly identified that it was acquiring the property to develop it for active recreational uses.

(3) Notification to Metro and DLCD

When an application for boundary verification proposes corrections to mapped HCAs that would result in a change in HCA designation of 1 acre or more, the City shall notify Metro and the Oregon Department of Land Conservation and Development within 7 days after the application has been deemed complete, in accordance with the Type II referral procedure outlined in Subsection 19.1005.3.A.

B. Map Administration

1. Updates to the NR Administrative Map

When a boundary verification, conducted in accordance with the standards of Subsection 19.402.1.A, demonstrates an error in the location of a WQR or HCA shown on the NR Administrative Map, the City shall update the NR Administrative Map to incorporate the corrected information as soon as practicable. Changes to the NR Administrative Map are not considered amendments to the City's Comprehensive Plan, to Comprehensive Plan Map 5 (Natural Resources), or to the Zoning Map.

2. Mapping Implications of Allowed Disturbances

a. WQRs

Permanent disturbances within a WQR, whether they occurred prior to the adoption of the Zoning Ordinance or are allowed according to the standards of Section 19.402, do not affect the way related WQRs are shown on the NR Administrative Map.

b. HCAs

When disturbances are allowed within HCAs, in accordance with the applicable standards of Section 19.402, the City may update the NR Administrative Map to show that the permanently disturbed area is no longer considered an HCA.

3. Designation of Annexed Areas

When land annexed to the City includes WQRs and/or HCAs, as designated by Clackamas County, those same designations shall be shown on the City's NR Administrative Map at the time of annexation. Verification of the boundaries of such WQRs and/or HCAs shall be processed in accordance with the applicable provisions established in Subsection 19.402.15.A; not necessarily at the time of annexation, but at such time as a new activity is proposed on the annexed property.

~~Strikeout/Underline~~ Amendments

COMPREHENSIVE PLAN

CHAPTER 3 — ENVIRONMENTAL AND NATURAL RESOURCES

OPEN SPACES, SCENIC AREAS, AND NATURAL RESOURCES ELEMENT

GOAL STATEMENT: To conserve open space and protect and enhance natural and scenic resources in order to create an aesthetically pleasing urban environment, while preserving and enhancing significant natural resources.

Background and Planning Concepts

The 1979 Comprehensive Plan designated several areas as “significant natural.” A comprehensive inventory of these areas had not been conducted at the time, however. ~~Part of the Periodic Review Process of the City's Comprehensive Plan requires the review of~~ In 1981, the State of Oregon adopted new Oregon Administrative Rules (OARS) regarding State Goal 5, Natural Resources, Open Space, Scenic and Historic Areas, and Open Spaces Resources, which was adopted in 1981. These rules require the City to inventory and evaluate resources, identify conflicts, prepare an Environmental, Social, Economic, and Energy (ESEE) analysis, and develop a program for resource protection.

~~Using the new administrative rules~~ In 1987, Milwaukie began completion of the a natural resources review process in October of 1987. At that time, a Natural Resources Task Force (NRTF) was organized to advise the Comprehensive Plan Review Committee (CPRC)-. An inventory was also completed, analyzing and rating 26 different natural resource sites either within or adjacent to the City. The City did an ESEE analysis for all sites inventoried. Some sites were dropped as designated natural areas because of other values (i.e., economic, social). This original Natural Resource Sites map is included in the Comprehensive Plan, within Appendix 2 Natural Resources Property List, solely for historical and informational purposes.

The natural resources inventory included areas with unique and diverse natural and vegetative features, areas important for wildlife habitat, and areas with soil and/or wetness constraints which may contribute to erosion control, aquifer recharge, or other natural values. The following resources or features are not present in Milwaukie: mineral and aggregate resources, energy sources, wilderness areas, and federal wild and scenic waterways.

The purpose of the Open Spaces, Scenic Areas, and Natural Resources Element is to protect areas that are necessary to the long-term health of the natural environment and community, such as fish and wildlife habitat areas, ecological areas, and open space. The intent of the policies is to protect these resources for their intrinsic value. However, there are other values associated with open space, in addition to provision of fish and wildlife habitat, which have been identified as important. Some of these values include groundwater recharge and discharge, air quality, community identity, education, recreation, property value enhancement, flood control, water quality, micro-climate control, sedimentation control, and noise attenuation. The City recognizes that natural resources are limited and is committed to restricting inappropriate land uses and associated impacts, such as erosion and resulting sedimentation that can irreparably damage wetland, riparian, and upland habitat areas. Therefore, in association with future development, conservation and restoration of the community's significant natural features will be encouraged for the enjoyment of City residents. The natural resource policies serve as

Proposed Code Amendment

constraints upon future development and define the parameters for determining where and how that development should occur.

Due to Milwaukie's physical setting and current level of development, few major natural resource features remain undisturbed and visible within the City. Areas along Kellogg Lake, parts of Kellogg Creek, some riparian areas along the Willamette River, the steep slopes south of Lake Road, small bands of riparian vegetation along Johnson Creek, parts of Spring Creek which flows through Milwaukie, and other scattered wetland and upland resources have sufficient natural vegetation to allow the natural processes of habitat development and vegetative successional stages to occur. In addition, Elk Rock Island, although not within Milwaukie, but owned by the City of Portland, offers good wildlife habitat due to its sufficient ground cover and its proximity to the Willamette River. ~~The general lack of adequate wildlife habitat in Milwaukie, therefore, limits wildlife residency. On the other hand,~~ Active fish habitat exists within the City in the Willamette River, Kellogg Creek, and Johnson Creek. These waterways contain anadromous fish species.

~~There are other values, however, associated with open space, in addition to provision of fish and wildlife habitat, which have been identified as important. Some of these values include groundwater recharge and discharge, air quality, community identity, education, recreation, property value enhancement, flood control, water quality, micro-climate control, sedimentation control, and noise attenuation. Designated natural areas are identified on Map 5. Publicly owned lands are identified on the Land Use Plan Map 7. There are currently approximately 65 acres of City owned parkland in Milwaukie. These areas, as well as 50 acres of public school grounds and 150 acres of privately owned natural areas, total 265 acres of open space remaining in the City. Some of this will diminish as property develops under City regulations. Typical public open space standards for a population of 20,000 suggest over 450 acres should be available: obviously an unrealistic expectation due to the extensive level of development which has already occurred within the City.~~

Milwaukie's future role as an urban community with a healthy mix of industrial, commercial, and residential uses, is compatible with the conservation of the City's remaining open spaces and natural resources. Policies in this element and the Willamette Greenway Element will allow certain types of development to occur providing natural resources, to the extent possible, are protected.

~~Therefore, although urban development will continue, conservation of the area's significant natural features will be encouraged for the enjoyment of City residents. The natural resource policies serve as constraints upon future development and define the parameters for determining where and how that development should occur.~~

OBJECTIVE #1 — OPEN SPACE

To protect the open space resources of Milwaukie to improve the quality of the environment, ~~The purpose of open space will be to provide a diversity of natural visual character within the City, and to provide residents with ecological, educational, and recreational experiences in a variety of environmental settings.~~

Within this plan, the term "open space" is intended to define and designate vacant land which will remain undeveloped in accordance with the Willamette Greenway Program, natural area designation, or other land use requirements. Open space includes those areas designated as Public will be designated on the Land Use Plan Map (Map 7) as Public Lands and as "water quality resources" and "habitat conservation areas" on the Natural Resources Map (Map 5) as Natural Resources. Those areas designated Natural Resources include natural resource areas and State Recreational Trails. These areas will likely remain in private ownership, but the option

~~remains for dedicating easements for public access in areas listed in Policy 3. Placement and methods of development will be regulated in these areas. Public open spaces include existing City-owned parks and City-owned lands in natural areas. Development in these areas would be subject to the Zoning Ordinance requirements for natural resources, if in a natural area, and/or the Parks and Recreation Master Plan, which guides park development within the City. Within this plan, open space is intended to define and designate vacant land which will remain undeveloped in accordance with the Willamette Greenway Program, natural area designation, or other land use requirements. In most instances, open space will remain in private ownership.~~

Many of the designated natural resources are, and will likely remain, in private ownership; but the option remains for dedicating easements for public access in the significant natural areas listed in Policy 3, below, where the: Placement and methods of development will be regulated and within which ~~Within significant natural areas, however,~~ the right to public access or even full public ownership will be considered. Another Goal 5 resource, a State-designated recreational trail, the 40-Mile Loop, passes through two separate sections of North Milwaukie, following the right-of-way for the Portland Traction Corp. railroad. This will also be designated Open Space - Natural Resources. (See corresponding discussion within the Recreational Needs Element.)

Policies

1. Open space will be provided within the City through implementation of parks and recreation policies, natural area policies, and the Willamette Greenway Program.
2. When economically feasible, the City will provide incentives to the private sector so open space can be conserved without undue hardships to private land owners.
3. The natural resources ~~areas~~ along Johnson Creek, Kellogg Creek, and Kellogg Lake, ~~as shown on Map 5 and defined under Objective #2,~~ will be considered open space of special importance to all City residents. Passive recreational public use of these areas for walking trails, nature parks, and the like will be encouraged.
4. The City will encourage the dedication of public easements to and through important Open Space - Natural Resource areas. Tax deferral program and/or density transfer (so that full development potential may be realized) will be utilized so that open space can be conserved and easements dedicated without undue hardships for private land owners.
5. The City will encourage property owners within designated open space areas and other appropriate areas to take advantage of Clackamas County's open space property tax deferral program.
6. The City will participate with the appropriate agencies in implementing the proposed 40-Mile Loop System, a State Recreational Trail.
7. The City will work with Clackamas County and local residents to establish a continuous pedestrian connection linking the Willamette River and the North Clackamas Park.
8. The City will utilize the Open Space - Natural Resources designation of the Comp Plan map as one of the guides for open space dedication, when feasible, during the development process.
9. The Parks and Recreation Master Plan will outline methods in detail for acquiring new Public Open Space. Specific methods used will be approved by the City Council. ~~The Natural Resource Overlay Zone (NR) within the Zoning Ordinance will outline methods for protecting privately owned lands designated as Open Space—Natural Resources.~~

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10. The City will consider the following for designation of lands as ~~n~~Natural ~~r~~Resources: flood plains, wetlands, water bodies and riparian areas, wooded or vegetated uplands, or other natural resources ~~areas~~ as determined by the Goal 5 process. Areas so designated will be identified on the Natural Resources Map, (Map 5). ~~The City will regulate the development and use of these lands so as to protect natural resource values and significant natural features in the community.~~
11. With the exception of the Kellogg Creek Sewage Treatment Plant and the land surrounding the plant, the City will designate as Public Lands those areas which are existing parks or publicly utilized areas, or City owned properties containing natural resources ~~areas~~, and will assure that these areas are managed according to open space policies, natural resource policies, and parks and recreation policies, as appropriate. Areas designated Public Lands shall be identified on the Land Use ~~Plan~~ Map, (Map 7).
12. The City will participate with the appropriate agencies in implementing the Elk Rock Island Natural Area Management Plan.

OBJECTIVE #2 — NATURAL RESOURCES ~~AREAS~~

To preserve and maintain important natural habitats and vegetation by protecting and enhancing major drainageways, springs, existing wetlands, riparian areas, ~~and~~ water bodies, and significant tree and vegetative cover while retaining their functions and values related to flood protection, sediment and erosion control, groundwater discharge and recharge, aesthetics, education, recreation, vegetation, and wildlife habitat. Regulate development within designated water bodies, riparian areas, wetlands, uplands, ~~and~~ drainage areas.

Planning Concepts

The character of Milwaukie is profoundly influenced by the natural resources and processes occurring in resource areas. The natural environment provides control of stormwater runoff, erosion prevention and enhanced water quality, better air quality, wildlife habitat, recreation, educational opportunities, flood reduction, ~~and~~ community identity. The wetlands, water bodies, riparian areas, drainageways, springs, ~~and~~ uplands identified in the inventory completed in 1987 may contain one of more of these resource values which need protection.

Between 1990 and 2002, natural resources were protected through Milwaukie Zoning Ordinance Section 19.322 Natural Resource Overlay Zone. In the fall of 2002, the City adopted revised regulations that strengthen wetland and riparian resource protections. In 2011, the City adopted revised regulations for natural resources that add protections for habitat conservation areas outside of the protected riparian and wetland areas. These regulations ~~Adopted to~~ implement Titles 3 and 13 of the Metro Urban Growth Functional Plan, the Water Quality Resource Regulations ~~and~~ compliment and support long held ~~C~~city policies for environmental protection. The Natural Resources Map (Map 5) shows the City's designated water quality resources and habitat conservation areas as indicators of lands that are regulated by State Goal 6 (Air, Water, and Land Resources Quality) and Goal 5 (Natural Resources, Scenic and Historic Areas, and Open Spaces), respectively.

The Natural Resource Overlay Zone was removed from the ~~Z~~zoning ~~M~~map with adoption of the Water Quality Resource Regulations in 2002. ~~However, t~~The Natural Resource Sites Map (formerly Comp Plan Map 5) has been moved into Appendix 2-Natural Resource Inventory, where both the map and inventory list are ~~and Map 5-Natural Resources have been retained in the Comprehensive Plan solely~~ for historical and informational purposes.

Policies

1. Protect designated natural resources ~~areas~~ and their associated values through preservation, intergovernmental coordination, conservation, mitigation, and acquisition of resources.
 - Notify and coordinate review of development proposals and plans within natural resources ~~areas~~ with affected State, local, and federal regulatory agencies.
 - Develop a review process for development within natural ~~resources~~areas, which requires mitigation or other means of preservation of natural resource values.
 - The City shall pursue funding for the acquisition, protection, or enhancement of natural resources ~~areas~~ through private environmental groups, federal or State agencies, or local groups.
 - Regulate activities within natural resources ~~areas~~ ~~which~~ that may be detrimental to the provision of food, water, and cover for wildlife.
2. Provide protection to important wetland and water body areas through designation of riparian area buffers between natural resources and other urban development activities. Restrict non-water dependent development within the riparian buffer area.
3. Maintain and improve water quality of wetlands and water bodies through regulating the placement and design of stormwater drainage facilities.
4. Protect existing upland areas and values related to wildlife habitat, groundwater recharge, and erosion control.
 - Encourage the development of open spaces and increased vegetation for wildlife habitats.
 - Protect steep slopes from erosion through the use of vegetation.
 - Provide protection between the resource and other urban development.
5. The City will continue to work with Metro and other jurisdictions to establish and implement drainage plans and policies for Johnson Creek, designated by Metro as an area of Significant Environmental Concern.
6. ~~Provide greater protection and more stringent development review to those sites deemed most valuable to the community.~~ Maintain and improve existing stormwater detention and treatment standards to ensure that the impact of new development does not degrade water quality and wildlife habitat.
7. Provide protection to inventoried natural resource sites currently outside the City limits as these sites are annexed.

~~Strikeout~~/Underline Amendments
MUNICIPAL CODE TITLE 19 ZONING
CHAPTER 19.100
INTRODUCTORY PROVISIONS

19.107 ZONING

19.107.1 Zone Classifications

For the purposes of this title, the following base zones and overlay zones are established in the City per Table 19.107.1:

Table 19.107.1 Classification of Zones	
Zone Description	Abbreviated Description
Base Zones	
Residential	R-10
Residential	R-7
Residential	R-5
Residential	R-3
Residential	R-2.5
Residential	R-2
Residential	R-1
Residential-Business Office	R-1-B
Residential-Office-Commercial	R-O-C
Downtown Storefront	DS
Downtown Commercial	DC
Downtown Office	DO
Downtown Residential	DR
Downtown Open Space	DOS
Neighborhood Commercial	C-N
Limited Commercial	C-L
General Commercial	C-G
Community Shopping Commercial	C-CS
Manufacturing	M
Business Industrial	BI
Planned Development	PD

Table 19.107.1 CONTINUED Classification of Zones	
Zone Description	Abbreviated Description
Overlay Zones	
Willamette Greenway	WG
Water Quality Resource	WQR
Historic Preservation	HP
Mixed Use	MU
Aircraft Landing Facility	L-F

19.108 SPECIAL AREAS

19.108.1 Special Area Classifications

For the purposes of this title, the following special areas are established in the City per Table 19.108.1:

<u>Table 19.108.1 Classification of Special Areas</u>	
<u>Special Area Description</u>	<u>Abbreviated Description</u>
<u>Natural Resources</u>	<u>NR</u>

19.108.2 Special Area Maps

The special areas described in Subsection 19.108.1 are not displayed on the City's Zoning Map. They are shown on specific administrative maps.

Natural resources are displayed on the Natural Resource (NR) Administrative Map, which is adopted by reference. Provisions for administering the NR Administrative Map are established in Subsection 19.402.15.

19.108.3 Classification of Annexed Areas

Land annexed to the City shall be assigned a special area designation consistent with the special area designations established by this title at the time of annexation. Annexations shall be adopted by ordinance pursuant to Chapter 19.1100.

Land annexed to the City shall be assigned a natural resource designation as applicable in accordance with the provisions established in Subsection 19.402.15.

19.108.4 Classification of Public Rights-of-Way

The special area designations applied to the public rights-of-way within the City boundaries, as shown on any specific administrative map, do not directly regulate the improvements or structures that are allowed in these rights-of-way. Improvements and structures in public rights-of-way are regulated by other rules, regulations, and ordinances maintained by the City and other road authorities, such as Chapter 19.700 Public Facility Improvements, the Public Works Standards, and the Transportation System Plan.

CHAPTER 19.200

DEFINITIONS AND MEASUREMENTS

19.201 DEFINITIONS

“Bankful stage” means the stage or elevation at which water overflows the natural banks of a stream or other waters of the state and begins to inundate upland areas. In the absence of physical evidence, the ~~two-year recurrent~~ recurrence interval flood elevation may be used to approximate the bankful stage. Also referred to as “top of bank.”

“Change in use” means a change in the primary use from one use to another or the addition of other uses, not including accessory uses. A change in use determination shall reference the uses listed in this chapter, or the City’s base zones and overlay zones or special areas, as a guide. A proposal to change or add new uses may require land use approval. See also “use.”

“Designated natural resource” means any “water quality resource” or “habitat conservation area” as defined in Section 19.201 and established in Section 19.402.

“Direct stormwater discharge” means stormwater that does not infiltrate before reaching a designated natural resource.

“Disturb” means to make changes, whether temporary or permanent, to the existing physical status of the land ~~that are made~~ in connection with development. The following changes are excluded from the definition: enhancement or restoration of ~~the a~~ Water Quality Resource Area or habitat conservation area and planting native cover identified in the Milwaukie Native Plant List, as established in Section 19.402.

“Downed Tree” means any tree that is no longer standing upright, as the result of natural forces, and that has come to rest, whether leaning or completely down, within a protected water feature, a water quality resource, or a habitat conservation area.

“Habitat conservation area (HCA)” means any significant Goal 5 wetland, riparian area, and fish and wildlife habitat, as established in Section 19.402.

“Invasive nonnative or noxious vegetation” means plant species that have been introduced and, due to aggressive growth patterns and lack of natural enemies in the area where introduced, spread into native plant communities. Includes vegetation categorized as a nuisance species on the Milwaukie Native Plant List.

“Major pruning” means removal of more than 20% of a tree’s canopy, or injury or cutting of over 10% of the root system, during any 12-month period.

“Native vegetation or native plant” means any vegetation native to the Portland metropolitan area or listed on the Milwaukie Native Plant List, provided that it is not categorized as a nuisance plant on the Milwaukie Native Plant List.

“Net acre” means an area measuring 43,560 sq ft excluding the following: rights-of-way; floodplains; protected water features and their associated vegetated corridors, as established in Section 19.402; natural resources ~~areas~~ protected under Statewide Planning Goal 5; slopes in excess of 25%; and publicly owned land designated for park, open space, and resource protection. These excluded areas do not include lands for which the Zoning Ordinance provides a density bonus or other mechanism that allows the transfer of the allowable density or use to another area or to development elsewhere on the same site.

"Practicable" means capable of being realized after considering cost, existing technology, logistics, and other relevant considerations; such as ecological functions, scenic views, natural features, existing infrastructure, and/or adjacent uses.

"Title 3 wetlands" means wetlands of metropolitan concern, as shown on the Metro Water Quality and Flood Management Resource Area map, and other wetlands added to the City's- or County-adopted Water Quality Natural Resource Area Administrative Maps, consistent with the criteria in Metro Urban Growth Management Functional Plan Title 3, Section 3.07.340(E)(3).

"Tree" means a woody plant characterized by one main stem or trunk of at least 6-in diameter, according to the measurement standards established in Subsection 19.202.3.

"Vegetated corridor" means the area of setback between the top of the bank of a protected water feature, or the edge of a delineated wetland, and the delineated edge of the wWater gQuality rResource, Area as defined in Tables 19.322.9.A and E 19.402.15.

~~"Water quality and floodplain management area" means the area that identifies where the Water Quality Resource Area and floodplain management area overlay zone is applied.~~

"Water gQuality rResource (WQR) Areas" means a protected water feature(s) and the adjacent vegetated corridors, and the adjacent water feature as established in Section 19.402. The following definitions relate to WQRs and HCAs in particular:

"Mitigation" means the reduction of adverse effects ~~effrom~~ a proposed project on the natural environment by considering, in this order: (1) avoiding the impact altogether by not taking a certain action or parts of an action; (2) minimizing impacts by limiting the degree or magnitude of the action and its implementation; (3) rectifying the impact by repairing, rehabilitating, or restoring the affected environment; (4) reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action by monitoring and taking appropriate measures; and/or (5) compensating for the impact by replacing or providing comparable substitute WQRs ~~Water Quality Resource Areas or HCAs.~~

"Significant negative impact" means an impact that affects the natural environment, considered individually or cumulatively with other impacts on the ~~WQR Water Quality Resource Area and/or HCA,~~ to the point where the existing ~~water quality~~ functions and values of water quality and/or fish and wildlife habitat are degraded.

"Watershed" means a geographic unit defined by the flows of rainwater or snowmelt. All land in a watershed drains to a common outlet, such as a stream, lake, or wetland.

"Wetlands" means those areas inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances ~~that do~~ support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands are those areas identified and delineated by a qualified wetland specialist as set forth in the 1987 Corps of Engineers *Wetland Delineation Manual.*

19.202 MEASUREMENTS

19.202.3 Measuring Tree Diameter

A. Existing Trees

Existing trees are measured at a height 4.5 ft above the mean ground level at the base of the tree, also sometimes referred to as "diameter at breast height." Trees on slopes are measured from the ground level on the lower side of the tree. If a tree splits into

Proposed Code Amendment

multiple trunks below 4.5 ft above ground level, the diameter is measured at its most narrow point below the split.

B. New Trees

New trees are measured in caliper inches, which is the diameter of the trunk 6 in above the mean ground level at the base of the tree.

CHAPTER 19.400

OVERLAY ZONES AND SPECIAL AREAS

SECTIONS:

19.401 Willamette Greenway Zone WG

19.402 ~~Water Quality Regulations~~ Natural Resources NR

19.402 Historic Preservation Overlay Zone HP

19.404 Mixed Use Overlay Zone MU

19.405 Aircraft Landing Facility L-F

19.402 ~~WATER QUALITY RESOURCE REGULATIONS~~ NATURAL RESOURCES

(Repeal entire section and replace with new section per Exhibit B, Proposed Section 19.402.)

19.404 MIXED USE OVERLAY ZONE MU

19.404.10 Consistency with Underlying Zones

The MU Overlay Zone is anticipated to overlay a number of different zones. The following subsection addresses areas where the MU overlay will control development.

C. NR Zone Natural Resources

The requirements established in Section 19.402 for of the nNatural rResources Areas Overlay Zone and those of the MU Overlay Zone both apply to a property which is subject to both overlay zones designations. Any required Natural Resource Review application must be processed prior to, or concurrent with, a development proposal under the MU Overlay Zone. If a project is determined not to be subject to requirements of the MU Overlay Zone but is also on a property that includes natural resources regulated by Section 19.402 an NR Zone property, a separate determination of the applicability of the NR Zone Section 19.402 must be made.

CHAPTER 19.600

OFF-STREET PARKING AND LOADING

19.606 PARKING AREA DESIGN AND LANDSCAPING

19.606.3 Additional Design Standards

F. Lighting

4. Where practicable, lights shall be placed so they do not shine directly into any WQR and/or HCA location. The type, size, and intensity of lighting shall be selected so that impacts to habitat functions are minimized.

**CHAPTER 19.900
LAND USE APPLICATIONS**

19.901 INTRODUCTION

Table 19.901 Land Use Applications		
Application Type	Municipal Code Location	Review Types
Water Quality Natural Resource Review	Section 19.402	I, II, III, IV

19.905 CONDITIONAL USES

19.905.2 Applicability

- A. This section applies to the establishment of a use identified as a conditional use in the base zone in Chapter 19.300 and any overlay zones or special areas in Chapter 19.400 that are applicable to the property on which the use is proposed.
- B. This section applies to the major or minor modification of existing conditional uses.
- C. This section does not apply to modification of uses that received conditional use approval at one time but are currently allowed outright by the property’s base zone and any overlay zones or special areas.

19.905.4 Approval Criteria

- A. Establishment of a new conditional use, or major modification of an existing conditional use, shall be approved if the following criteria are met:
 - 5. The proposed use will comply with all applicable development standards and requirements of the base zone, any overlay zones or special areas, and the standards in Section 19.905.
- B. Minor modification of an existing conditional use shall be approved if the following criteria
 - 2. The proposed modification will comply with all applicable development standards and requirements of the base zone, any overlay zones or special areas, and the standards in Section 19.905.

19.905.9 Standards Governing Conditional Uses

A conditional use shall comply with the standards of the base zone, and any overlay zones or special areas, in which it is located, except as these standards have been modified by the Planning Commission when authorizing the conditional use and as otherwise modified by the standards in this subsection.

19.906 DEVELOPMENT REVIEW

19.906.4 Approval Criteria

The criteria in this subsection are the approval criteria for Type I and Type II development review applications. The criteria are based on a review of development standards throughout Title 19 Zoning. Not all of the standards within the chapters listed below are applicable to a

proposal, and the City will identify the applicable standards through the development review process. Though the criteria are the same for Type I and Type II development review, the standards evaluated in a Type I review will be clear and objective or require limited professional judgment, while the Type II review will involve discretionary standards and/or criteria.

An application for Type I or Type II development review shall be approved when all of the following criteria have been met:

- A. The proposal complies with all applicable base zone standards in Chapter 19.300.
- B. The proposal complies with all applicable overlay zone and special area standards in Chapter 19.400.

19.908 EXTENSIONS TO EXPIRING APPROVALS

19.908.4 Approval Criteria

An extension shall be approved when all of the following criteria have been met:

- A. There have been no significant changes on the subject property, in the vicinity of the subject property, or to any relevant regulations since the original application was approved.
- B. No modifications are proposed to the approved application or to the conditions of approval.
- C. If the previously approved application included a transportation impact study or a ~~water~~ quality natural resource report, an updated report was provided with the extension application that shows no significant changes on the subject property or in the vicinity of the subject property. A letter from a recognized professional will also satisfy this criterion if it states that conditions have not changed since the original approval and that no new analysis is warranted.

19.911 VARIANCES

19.911.5 Use Exceptions

- A. Applicability

A use exception is a type of variance intended to allow uses that are not allowed outright or conditionally by a property's base zone, ~~or overlay zones~~, or special areas. Use exceptions shall not be granted to allow uses that are specifically prohibited by a property's base zone, ~~or overlay zones~~, or special areas.

CHAPTER 19.1000

REVIEW PROCEDURES

19.1001 GENERAL PROVISIONS

19.1001.7 Decisions

- E. Expiration of Approved Decisions
 - 3. The following land use approvals are exempt from expiration:
 - a. Amendments to Comprehensive Plan maps or text; amendments to Titles 14, 17, or 19; or any other amendment to a land use regulation per Section 19.902.
 - b. Code interpretations and Director determinations per Section 19.903.

- c. Annexations per Chapter 19.1100.
- d. Boundary verification of designated natural resources per Subsection 19.402.

CHAPTER 19.1100

ANNEXATIONS AND BOUNDARY CHANGES

19.1104 EXPEDITED PROCESS

19.1104.1 Administration and Approval Process

F. For an expedited annexation request, the City's special area designations shall be applied consistently with the applicable sections of Title 19 Zoning.

Natural resource designations shall be applied consistently with the provisions established in Subsection 19.402.15 for administering the NR Administrative Map.

~~F~~G. An expedited process cannot be used if a necessary party gives written notice to contest the decision, pursuant to Metro Code Subsection 3.09.045(b) or, in the case of an annexation petition, if the requested zoning designation does not comply with the automatic Comprehensive Plan designation listed above in Table 19.1104.1.E.

MUNICIPAL CODE (non-Planning titles)

REFERENCE UPDATES

The following amendments are also proposed to update references:

13.14.025.B:

All users of the public stormwater system, and any person or entity whose actions may affect the system, shall comply with all applicable federal, State, and local laws, including ~~Section 19.402 Water Quality Resource Regulations~~ Natural Resources. Compliance with the requirements of this chapter shall in no way substitute for, or eliminate the necessity for compliance with, applicable federal, State, and local laws.

16.28.020.C:

3. For any lot ~~designated a Natural Resource Overlay Zone pursuant to Milwaukie Zoning Ordinance Section 322~~ that includes natural resources regulated by Milwaukie Zoning Ordinance Section 19.402 Natural Resources, an erosion control permit shall be required prior to placement of fill, site clearing, or land disturbances, including but not limited to grubbing, clearing or removal of ground vegetation, grading, excavation, or other activities, any of which has the potential for, or results in visible and measurable erosion, regardless of the area of disturbance.

16.28.020:

- D. An erosion control permit shall not be issued for activities on lots ~~zoned Natural Resource Overlay that include natural resources regulated by Section 19.402~~, where the site activity has not been authorized, or is not exempt under the provisions of Milwaukie Zoning Ordinance ~~Section 322~~ 19.402 Natural Resources Overlay Zone, as determined by the Planning Director. This provision does not apply where the erosion control permit is associated with correction of a violation of the City Code or as necessary for public safety, or the protection of property or water quality.

18.04.150.F.2.d:

- (2) The proposed excavation is authorized under applicable municipal code provisions including Section 19.402 ~~Water Quality Resource Regulations~~ Natural Resources; and

Clean Amendments

COMPREHENSIVE PLAN

CHAPTER 3 — ENVIRONMENTAL AND NATURAL RESOURCES

OPEN SPACES, SCENIC AREAS, AND NATURAL RESOURCES ELEMENT

GOAL STATEMENT: To conserve open space and protect and enhance natural and scenic resources in order to create an aesthetically pleasing urban environment, while preserving and enhancing significant natural resources.

Background and Planning Concepts

The 1979 Comprehensive Plan designated several areas as “significant natural.” A comprehensive inventory of these areas had not been conducted at the time, however. In 1981, the State of Oregon adopted new Oregon Administrative Rules (OARS) regarding State Goal 5, Natural Resources, Scenic and Historic Areas, and Open Spaces. These rules require the City to inventory and evaluate resources, identify conflicts, prepare an Environmental, Social, Economic, and Energy (ESEE) analysis, and develop a program for resource protection.

In 1987, Milwaukie began a natural resources review process. At that time, a Natural Resources Task Force (NRTF) was organized to advise the Comprehensive Plan Review Committee (CPRC). An inventory was also completed, analyzing and rating 26 different natural resource sites either within or adjacent to the City. The City did an ESEE analysis for all sites inventoried. Some sites were dropped as designated natural areas because of other values (i.e., economic, social). This original Natural Resource Sites map is included in the Comprehensive Plan, within Appendix 2 Natural Resources Property List, solely for historical and informational purposes.

The natural resources inventory included areas with unique and diverse natural and vegetative features, areas important for wildlife habitat, and areas with soil and/or wetness constraints which may contribute to erosion control, aquifer recharge, or other natural values. The following resources or features are not present in Milwaukie: mineral and aggregate resources, energy sources, wilderness areas, and federal wild and scenic waterways.

The purpose of the Open Spaces, Scenic Areas, and Natural Resources Element is to protect areas that are necessary to the long-term health of the natural environment and community, such as fish and wildlife habitat areas, ecological areas, and open space. The intent of the policies is to protect these resources for their intrinsic value. However, there are other values associated with open space, in addition to provision of fish and wildlife habitat, which have been identified as important. Some of these values include groundwater recharge and discharge, air quality, community identity, education, recreation, property value enhancement, flood control, water quality, micro-climate control, sedimentation control, and noise attenuation. The City recognizes that natural resources are limited and is committed to restricting inappropriate land uses and associated impacts, such as erosion and resulting sedimentation that can irreparably damage wetland, riparian, and upland habitat areas. Therefore, in association with future development, conservation and restoration of the community's significant natural features will be encouraged for the enjoyment of City residents. The natural resource policies serve as constraints upon future development and define the parameters for determining where and how that development should occur.

Due to Milwaukie's physical setting and current level of development, few major natural resource features remain undisturbed and visible within the City. Areas along Kellogg Lake, parts of Kellogg Creek, some riparian areas along the Willamette River, the steep slopes south of Lake Road, small bands of riparian vegetation along Johnson Creek, parts of Spring Creek, and other scattered wetland and upland resources have sufficient natural vegetation to allow the natural processes of habitat development and vegetative successional stages to occur. In addition, Elk Rock Island, although not within Milwaukie, but owned by the City of Portland, offers good wildlife habitat due to its sufficient ground cover and its proximity to the Willamette River. Active fish habitat exists within the City in the Willamette River, Kellogg Creek, and Johnson Creek. These waterways contain anadromous fish species.

Milwaukie's future role as an urban community with a healthy mix of industrial, commercial, and residential uses, is compatible with the conservation of the City's remaining open spaces and natural resources. Policies in this element and the Willamette Greenway Element will allow certain types of development to occur providing natural resources, to the extent possible, are protected.

OBJECTIVE #1 — OPEN SPACE

To protect the open space resources of Milwaukie to improve the quality of the environment, provide a diversity of natural visual character within the City, and provide residents with ecological, educational, and recreational experiences in a variety of environmental settings.

Within this plan, the term "open space" is intended to define and designate vacant land which will remain undeveloped in accordance with the Willamette Greenway Program, natural area designation, or other land use requirements. Open space includes those areas designated as Public on the Land Use Map (Map 7) and as "water quality resources" and "habitat conservation areas" on the Natural Resources Map (Map 5). Public open spaces include existing City-owned parks and City-owned lands in natural areas. Development in these areas would be subject to Zoning Ordinance requirements for natural resources, if in a natural area, and/or the Parks and Recreation Master Plan, which guides park development within the City.

Many of the designated natural resources are, and will likely remain, in private ownership; but the option remains for dedicating easements for public access in the significant natural areas listed in Policy 3, below, where the placement and methods of development will be regulated and within which the right to public access or even full public ownership will be considered. Another Goal 5 resource, a State-designated recreational trail, the 40-Mile Loop, passes through two separate sections of North Milwaukie, following the right-of-way for the Portland Traction Corp. railroad. This will also be designated Open Space - Natural Resource. (See corresponding discussion within the Recreational Needs Element.)

Policies

1. Open space will be provided within the City through implementation of parks and recreation policies, natural area policies, and the Willamette Greenway Program.
2. When economically feasible, the City will provide incentives to the private sector so open space can be conserved without undue hardships to private land owners.
3. The natural resources along Johnson Creek, Kellogg Creek, and Kellogg Lake will be considered open space of special importance to all City residents. Passive recreational public use of these areas for walking trails, nature parks, and the like will be encouraged.
4. The City will encourage the dedication of public easements to and through important Open Space - Natural Resource areas. Tax deferral program and/or density transfer (so that full

development potential may be realized) will be utilized so that open space can be conserved and easements dedicated without undue hardships for private land owners.

5. The City will encourage property owners within designated open space areas and other appropriate areas to take advantage of Clackamas County's open space property tax deferral program.
6. The City will participate with the appropriate agencies in implementing the proposed 40-Mile Loop System, a State Recreational Trail.
7. The City will work with Clackamas County and local residents to establish a continuous pedestrian connection linking the Willamette River and the North Clackamas Park.
8. The City will utilize the Open Space - Natural Resource designation of the Comp Plan map as one of the guides for open space dedication, when feasible, during the development process.
9. The Parks and Recreation Master Plan will outline methods in detail for acquiring new Public Open Space. Specific methods used will be approved by the City Council.
10. The City will consider the following for designation of lands as natural resources: flood plains, wetlands, water bodies and riparian areas, wooded or vegetated uplands, or other natural resources as determined by the Goal 5 process. Areas so designated will be identified on the Natural Resources Map (Map 5).
11. With the exception of the Kellogg Creek Sewage Treatment Plant and the land surrounding the plant, the City will designate as Public Lands those areas which are existing parks or publicly utilized areas, or City owned properties containing natural resources, and will assure that these areas are managed according to open space policies, natural resource policies, and parks and recreation policies, as appropriate. Areas designated Public Lands shall be identified on the Land Use Map (Map 7).
12. The City will participate with the appropriate agencies in implementing the Elk Rock Island Natural Area Management Plan.

OBJECTIVE #2 — NATURAL RESOURCES

To preserve and maintain important natural habitats and vegetation by protecting and enhancing major drainageways, springs, existing wetlands, riparian areas, water bodies, and significant tree and vegetative cover while retaining their functions and values related to flood protection, sediment and erosion control, groundwater discharge and recharge, aesthetics, education, recreation, vegetation, and wildlife habitat. Regulate development within designated water bodies, riparian areas, wetlands, uplands, and drainage areas.

Planning Concepts

The character of Milwaukie is profoundly influenced by the natural resources and processes occurring in resource areas. The natural environment provides control of stormwater runoff, erosion prevention and enhanced water quality, better air quality, wildlife habitat, recreation, educational opportunities, flood reduction, and community identity. The wetlands, water bodies, riparian areas, drainageways, springs, and uplands identified in the inventory completed in 1987 may contain one or more of these resource values which need protection.

Between 1990 and 2002, natural resources were protected through Milwaukie Zoning Ordinance Section 19.322 Natural Resource Overlay Zone. In the fall of 2002, the City adopted revised regulations that strengthen wetland and riparian resource protections. In 2011, the City adopted revised regulations for natural resources that add protections for habitat conservation areas outside of the protected riparian and wetland areas. These regulations implement Titles 3

and 13 of the Metro Urban Growth Functional Plan and compliment and support long held City policies for environmental protection. The Natural Resources Map (Map 5) shows the City's designated water quality resources and habitat conservation areas as indicators of lands that are regulated by State Goal 6 (Air, Water, and Land Resources Quality) and Goal 5 (Natural Resources, Scenic and Historic Areas, and Open Spaces), respectively.

The Natural Resource Overlay Zone was removed from the Zoning Map with adoption of the Water Quality Resource Regulations in 2002. The Natural Resource Sites Map (formerly Comp Plan Map 5) has been moved into Appendix 2-Natural Resource Inventory, where both the map and inventory list are retained in the Comprehensive Plan solely for historical and informational purposes.

Policies

1. Protect designated natural resources and their associated values through preservation, intergovernmental coordination, conservation, mitigation, and acquisition of resources.
 - Notify and coordinate review of development proposals and plans within natural resources with affected State, local, and federal regulatory agencies.
 - Develop a review process for development within natural resources, which requires mitigation or other means of preservation of natural resource values.
 - The City shall pursue funding for the acquisition, protection, or enhancement of natural resources through private environmental groups, federal or State agencies, or local groups.
 - Regulate activities within natural resources that may be detrimental to the provision of food, water, and cover for wildlife.
2. Provide protection to important wetland and water body areas through designation of riparian area buffers between natural resources and other urban development activities. Restrict non-water dependent development within the riparian buffer area.
3. Maintain and improve water quality of wetlands and water bodies through regulating the placement and design of stormwater drainage facilities.
4. Protect existing upland areas and values related to wildlife habitat, groundwater recharge, and erosion control.
 - Encourage the development of open spaces and increased vegetation for wildlife habitats.
 - Protect steep slopes from erosion through the use of vegetation.
 - Provide protection between the resource and other urban development.
5. The City will continue to work with Metro and other jurisdictions to establish and implement drainage plans and policies for Johnson Creek, designated by Metro as an area of Significant Environmental Concern.
6. Maintain and improve existing stormwater detention and treatment standards to ensure that the impact of new development does not degrade water quality and wildlife habitat.
7. Provide protection to inventoried natural resource sites currently outside the City limits as these sites are annexed.

Clean Amendments
MUNICIPAL CODE TITLE 19 ZONING
CHAPTER 19.100
INTRODUCTORY PROVISIONS

19.107 ZONING

19.107.1 Zone Classifications

For the purposes of this title, the following base zones and overlay zones are established in the City per Table 19.107.1:

Table 19.107.1 Classification of Zones	
Zone Description	Abbreviated Description
Base Zones	
Residential	R-10
Residential	R-7
Residential	R-5
Residential	R-3
Residential	R-2.5
Residential	R-2
Residential	R-1
Residential-Business Office	R-1-B
Residential-Office-Commercial	R-O-C
Downtown Storefront	DS
Downtown Commercial	DC
Downtown Office	DO
Downtown Residential	DR
Downtown Open Space	DOS
Neighborhood Commercial	C-N
Limited Commercial	C-L
General Commercial	C-G
Community Shopping Commercial	C-CS
Manufacturing	M
Business Industrial	BI
Planned Development	PD

Table 19.107.1 CONTINUED Classification of Zones	
Zone Description	Abbreviated Description
Overlay Zones	
Willamette Greenway	WG
Historic Preservation	HP
Mixed Use	MU
Aircraft Landing Facility	L-F

19.108 SPECIAL AREAS

19.108.1 Special Area Classifications

For the purposes of this title, the following special areas are established in the City per Table 19.108.1:

Table 19.108.1 Classification of Special Areas	
Special Area Description	Abbreviated Description
Natural Resources	NR

19.108.2 Special Area Maps

The special areas described in Subsection 19.108.1 are not displayed on the City's Zoning Map. They are shown on specific administrative maps.

Natural resources are displayed on the Natural Resource (NR) Administrative Map, which is adopted by reference. Provisions for administering the NR Administrative Map are established in Subsection 19.402.15.

19.108.3 Classification of Annexed Areas

Land annexed to the City shall be assigned a special area designation consistent with the special area designations established by this title at the time of annexation. Annexations shall be adopted by ordinance pursuant to Chapter 19.1100.

Land annexed to the City shall be assigned a natural resource designation as applicable in accordance with the provisions established in Subsection 19.402.15.

19.108.4 Classification of Public Rights-of-Way

The special area designations applied to the public rights-of-way within the City boundaries, as shown on any specific administrative map, do not directly regulate the improvements or structures that are allowed in these rights-of-way. Improvements and structures in public rights-of-way are regulated by other rules, regulations, and ordinances maintained by the City and other road authorities, such as Chapter 19.700 Public Facility Improvements, the Public Works Standards, and the Transportation System Plan.

CHAPTER 19.200

DEFINITIONS AND MEASUREMENTS

19.201 DEFINITIONS

“Bankful stage” means the stage or elevation at which water overflows the natural banks of a stream or other waters of the state and begins to inundate upland areas. In the absence of physical evidence, the 2 year recurrence interval flood elevation may be used to approximate the bankful stage. Also referred to as “top of bank.”

“Change in use” means a change in the primary use from one use to another or the addition of other uses, not including accessory uses. A change in use determination shall reference the uses listed in this chapter, or the City’s base zones and overlay zones or special areas, as a guide. A proposal to change or add new uses may require land use approval. See also “use.”

“Designated natural resource” means any “water quality resource” or “habitat conservation area” as defined in Section 19.201 and established in Section 19.402.

“Direct stormwater discharge” means stormwater that does not infiltrate before reaching a designated natural resource.

“Disturb” means to make changes, whether temporary or permanent, to the existing physical status of the land in connection with development. The following changes are excluded from the definition: enhancement or restoration of a water quality resource or habitat conservation area and planting native cover identified in the Milwaukie Native Plant List, as established in Section 19.402.

“Downed Tree” means any tree that is no longer standing upright, as the result of natural forces, and that has come to rest, whether leaning or completely down, within a protected water feature, a water quality resource, or a habitat conservation area.

“Habitat conservation area (HCA)” means any significant Goal 5 wetland, riparian area, and fish and wildlife habitat, as established in Section 19.402.

“Invasive nonnative or noxious vegetation” means plant species that have been introduced and, due to aggressive growth patterns and lack of natural enemies in the area where introduced, spread into native plant communities. Includes vegetation categorized as a nuisance species on the Milwaukie Native Plant List.

“Major pruning” means removal of more than 20% of a tree’s canopy, or injury or cutting of over 10% of the root system, during any 12-month period.

“Native vegetation or native plant” means any vegetation native to the Portland metropolitan area or listed on the Milwaukie Native Plant List, provided that it is not categorized as a nuisance plant on the Milwaukie Native Plant List.

“Net acre” means an area measuring 43,560 sq ft excluding the following: rights-of-way; floodplains; protected water features and their associated vegetated corridors, as established in Section 19.402; natural resources protected under Statewide Planning Goal 5; slopes in excess of 25%; and publicly owned land designated for park, open space, and resource protection. These excluded areas do not include lands for which the Zoning Ordinance provides a density bonus or other mechanism that allows the transfer of the allowable density or use to another area or to development elsewhere on the same site.

Proposed Code Amendment

"Practicable" means capable of being realized after considering cost, existing technology, logistics, and other relevant considerations; such as ecological functions, scenic views, natural features, existing infrastructure, and/or adjacent uses.

"Title 3 wetlands" means wetlands of metropolitan concern, as shown on the Metro Water Quality and Flood Management Area map, and other wetlands added to the City's Natural Resource Administrative Map, consistent with the criteria in Metro Urban Growth Management Functional Plan Title 3, Section 3.07.340(E)(3).

"Tree" means a woody plant characterized by one main stem or trunk of at least 6-in diameter, according to the measurement standards established in Subsection 19.202.3.

"Vegetated corridor" means the area of setback between the top of the bank of a protected water feature, or the edge of a delineated wetland, and the edge of the water quality resource, as defined in Table 19.402.15.

"Water quality resource (WQR)" means a protected water feature(s) and the adjacent vegetated corridors, as established in Section 19.402. The following definitions relate to WQRs and HCAs in particular:

"Mitigation" means the reduction of adverse effects from a proposed project on the natural environment by considering, in this order: (1) avoiding the impact altogether by not taking a certain action or parts of an action; (2) minimizing impacts by limiting the degree or magnitude of the action and its implementation; (3) rectifying the impact by repairing, rehabilitating, or restoring the affected environment; (4) reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action by monitoring and taking appropriate measures; and/or (5) compensating for the impact by replacing or providing comparable substitute WQRs or HCAs.

"Significant negative impact" means an impact that affects the natural environment, considered individually or cumulatively with other impacts on the WQR and/or HCA, to the point where the existing functions and values of water quality and/or fish and wildlife habitat are degraded.

"Watershed" means a geographic unit defined by the flows of rainwater or snowmelt. All land in a watershed drains to a common outlet, such as a stream, lake, or wetland.

"Wetlands" means those areas inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands are those areas identified and delineated by a qualified wetland specialist as set forth in the 1987 Corps of Engineers *Wetland Delineation Manual*.

19.202 MEASUREMENTS

19.202.3 Measuring Tree Diameter

A. Existing Trees

Existing trees are measured at a height 4.5 ft above the mean ground level at the base of the tree, also sometimes referred to as "diameter at breast height." Trees on slopes are measured from the ground level on the lower side of the tree. If a tree splits into multiple trunks below 4.5 ft above ground level, the diameter is measured at its most narrow point below the split.

B. New Trees

New trees are measured in caliper inches, which is the diameter of the trunk 6 in above the mean ground level at the base of the tree.

CHAPTER 19.400

OVERLAY ZONES AND SPECIAL AREAS

SECTIONS:

- 19.401 Willamette Greenway Zone WG**
- 19.402 Natural Resources NR**
- 19.402 Historic Preservation Overlay Zone HP**
- 19.404 Mixed Use Overlay Zone MU**
- 19.405 Aircraft Landing Facility L-F**

19.402 NATURAL RESOURCES

(Repeal entire section and replace with new section per Exhibit B, Proposed Section 19.402.)

19.404 MIXED USE OVERLAY ZONE MU

19.404.10 Consistency with Underlying Zones

The MU Overlay Zone is anticipated to overlay a number of different zones. The following subsection addresses areas where the MU overlay will control development.

C. Natural Resources

The requirements established in Section 19.402 for natural resources and those of the MU Overlay Zone both apply to a property which is subject to both designations. Any required Natural Resource Review application must be processed prior to, or concurrent with, a development proposal under the MU Overlay Zone. If a project is determined not to be subject to requirements of the MU Overlay Zone but is also on a property that includes natural resources regulated by Section 19.402, a separate determination of the applicability of Section 19.402 must be made.

CHAPTER 19.600

OFF-STREET PARKING AND LOADING

19.606 PARKING AREA DESIGN AND LANDSCAPING

19.606.3 Additional Design Standards

F. Lighting

4. Where practicable, lights shall be placed so they do not shine directly into any WQR and/or HCA location. The type, size, and intensity of lighting shall be selected so that impacts to habitat functions are minimized.

CHAPTER 19.900
LAND USE APPLICATIONS

19.901 INTRODUCTION

Table 19.901 Land Use Applications		
Application Type	Municipal Code Location	Review Types
Natural Resource Review	Section 19.402	I, II, III, IV

19.905 CONDITIONAL USES

19.905.2 Applicability

- A. This section applies to the establishment of a use identified as a conditional use in the base zone in Chapter 19.300 and any overlay zones or special areas in Chapter 19.400 that are applicable to the property on which the use is proposed.
- B. This section applies to the major or minor modification of existing conditional uses.
- C. This section does not apply to modification of uses that received conditional use approval at one time but are currently allowed outright by the property's base zone and any overlay zones or special areas.

19.905.4 Approval Criteria

- A. Establishment of a new conditional use, or major modification of an existing conditional use, shall be approved if the following criteria are met:
 - 5. The proposed use will comply with all applicable development standards and requirements of the base zone, any overlay zones or special areas, and the standards in Section 19.905.
- B. Minor modification of an existing conditional use shall be approved if the following criteria
 - 2. The proposed modification will comply with all applicable development standards and requirements of the base zone, any overlay zones or special areas, and the standards in Section 19.905.

19.905.9 Standards Governing Conditional Uses

A conditional use shall comply with the standards of the base zone, and any overlay zones or special areas, in which it is located, except as these standards have been modified by the Planning Commission when authorizing the conditional use and as otherwise modified by the standards in this subsection.

19.906 DEVELOPMENT REVIEW

19.906.4 Approval Criteria

The criteria in this subsection are the approval criteria for Type I and Type II development review applications. The criteria are based on a review of development standards throughout Title 19 Zoning. Not all of the standards within the chapters listed below are applicable to a

proposal, and the City will identify the applicable standards through the development review process. Though the criteria are the same for Type I and Type II development review, the standards evaluated in a Type I review will be clear and objective or require limited professional judgment, while the Type II review will involve discretionary standards and/or criteria.

An application for Type I or Type II development review shall be approved when all of the following criteria have been met:

- A. The proposal complies with all applicable base zone standards in Chapter 19.300.
- B. The proposal complies with all applicable overlay zone and special area standards in Chapter 19.400.

19.908 EXTENSIONS TO EXPIRING APPROVALS

19.908.4 Approval Criteria

An extension shall be approved when all of the following criteria have been met:

- A. There have been no significant changes on the subject property, in the vicinity of the subject property, or to any relevant regulations since the original application was approved.
- B. No modifications are proposed to the approved application or to the conditions of approval.
- C. If the previously approved application included a transportation impact study or a natural resource report, an updated report was provided with the extension application that shows no significant changes on the subject property or in the vicinity of the subject property. A letter from a recognized professional will also satisfy this criterion if it states that conditions have not changed since the original approval and that no new analysis is warranted.

19.911 VARIANCES

19.911.5 Use Exceptions

- A. Applicability

A use exception is a type of variance intended to allow uses that are not allowed outright or conditionally by a property's base zone, overlay zones, or special areas. Use exceptions shall not be granted to allow uses that are specifically prohibited by a property's base zone, overlay zones, or special areas.

CHAPTER 19.1000

REVIEW PROCEDURES

19.1001 GENERAL PROVISIONS

19.1001.7 Decisions

- E. Expiration of Approved Decisions
 - 3. The following land use approvals are exempt from expiration:
 - a. Amendments to Comprehensive Plan maps or text; amendments to Titles 14, 17, or 19; or any other amendment to a land use regulation per Section 19.902.
 - b. Code interpretations and Director determinations per Section 19.903.
 - c. Annexations per Chapter 19.1100.

- d. Boundary verification of designated natural resources per Subsection 19.402.

CHAPTER 19.1100

ANNEXATIONS AND BOUNDARY CHANGES

19.1104 EXPEDITED PROCESS

19.1104.1 Administration and Approval Process

- F. For an expedited annexation request, the City's special area designations shall be applied consistently with the applicable sections of Title 19 Zoning.

Natural resource designations shall be applied consistently with the provisions established in Subsection 19.402.15 for administering the NR Administrative Map.

- G. An expedited process cannot be used if a necessary party gives written notice to contest the decision, pursuant to Metro Code Subsection 3.09.045(b) or, in the case of an annexation petition, if the requested zoning designation does not comply with the automatic Comprehensive Plan designation listed above in Table 19.1104.1.E.

MUNICIPAL CODE (non-Planning titles)

REFERENCE UPDATES

The following amendments are also proposed to update references:

13.14.025.B:

All users of the public stormwater system, and any person or entity whose actions may affect the system, shall comply with all applicable federal, State, and local laws, including Section 19.402 Natural Resources. Compliance with the requirements of this chapter shall in no way substitute for, or eliminate the necessity for compliance with, applicable federal, State, and local laws.

16.28.020.C:

3. For any lot that includes natural resources regulated by Milwaukie Zoning Ordinance Section 19.402 Natural Resources, an erosion control permit shall be required prior to placement of fill, site clearing, or land disturbances, including but not limited to grubbing, clearing or removal of ground vegetation, grading, excavation, or other activities, any of which has the potential for, or results in visible and measurable erosion, regardless of the area of disturbance.

16.28.020:

- D. An erosion control permit shall not be issued for activities on lots that include natural resources regulated by Section 19.402, where the site activity has not been authorized, or is not exempt under the provisions of Milwaukie Zoning Ordinance Section 19.402 Natural Resources, as determined by the Planning Director. This provision does not apply where the erosion control permit is associated with correction of a violation of the City Code or as necessary for public safety, or the protection of property or water quality.

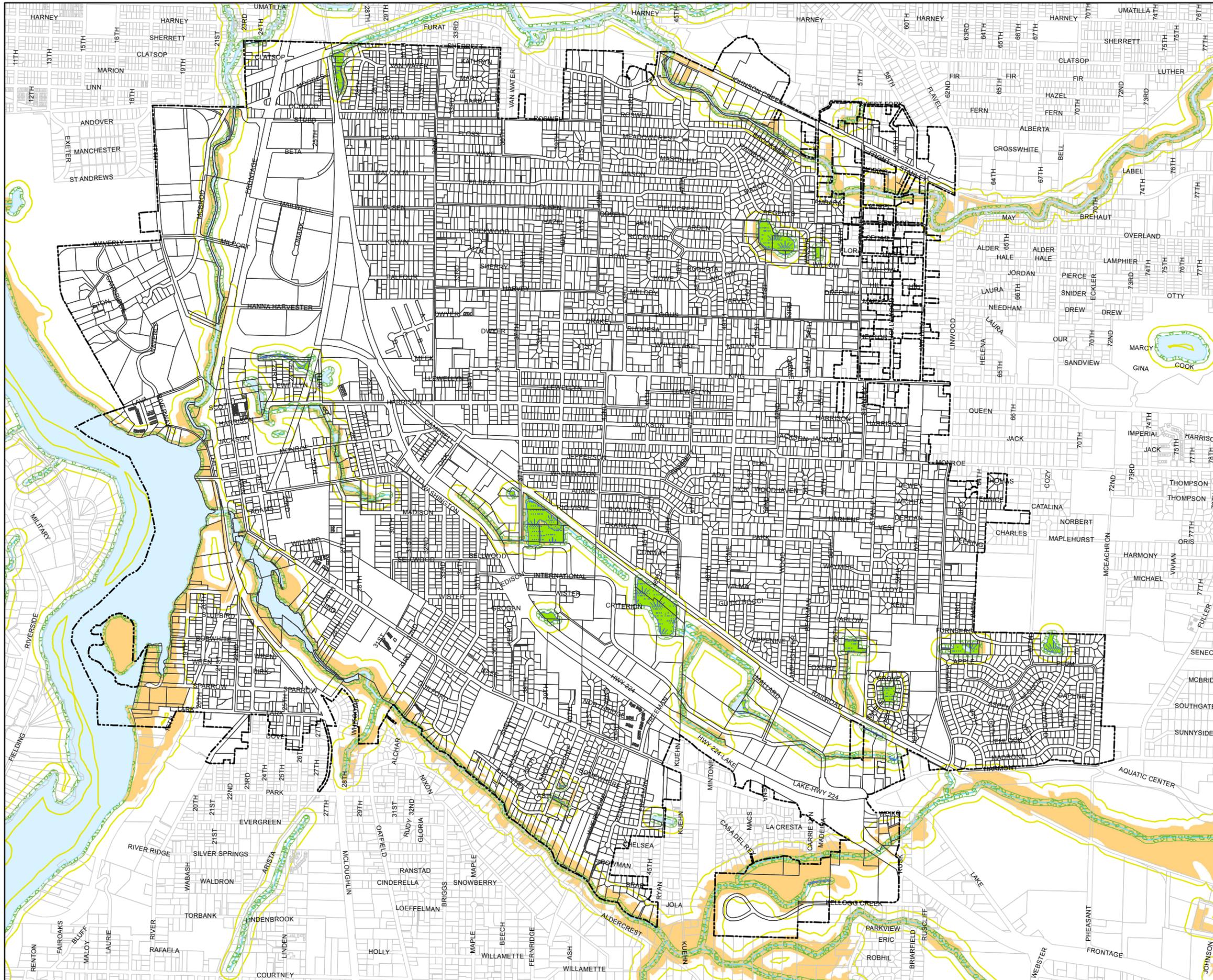
18.04.150.F.2.d:

- (2) The proposed excavation is authorized under applicable municipal code provisions including Section 19.402 Natural Resources; and

City of Milwaukie

Natural Resource (NR) Administrative Map

(Last updated August 16, 2011)



-  City Boundary
-  100-ft Compliance Line
-  Habitat Conservation Areas
- Water Quality Resources**
-  Rivers, Streams, and Ponds
-  Wetlands
-  Vegetated Corridor



Adopted by reference with Ord. 2036
August 16, 2011

Data Sources: City of Milwaukie GIS
Clackamas County GIS
Metro Data Resource Center



NATURAL RESOURCES

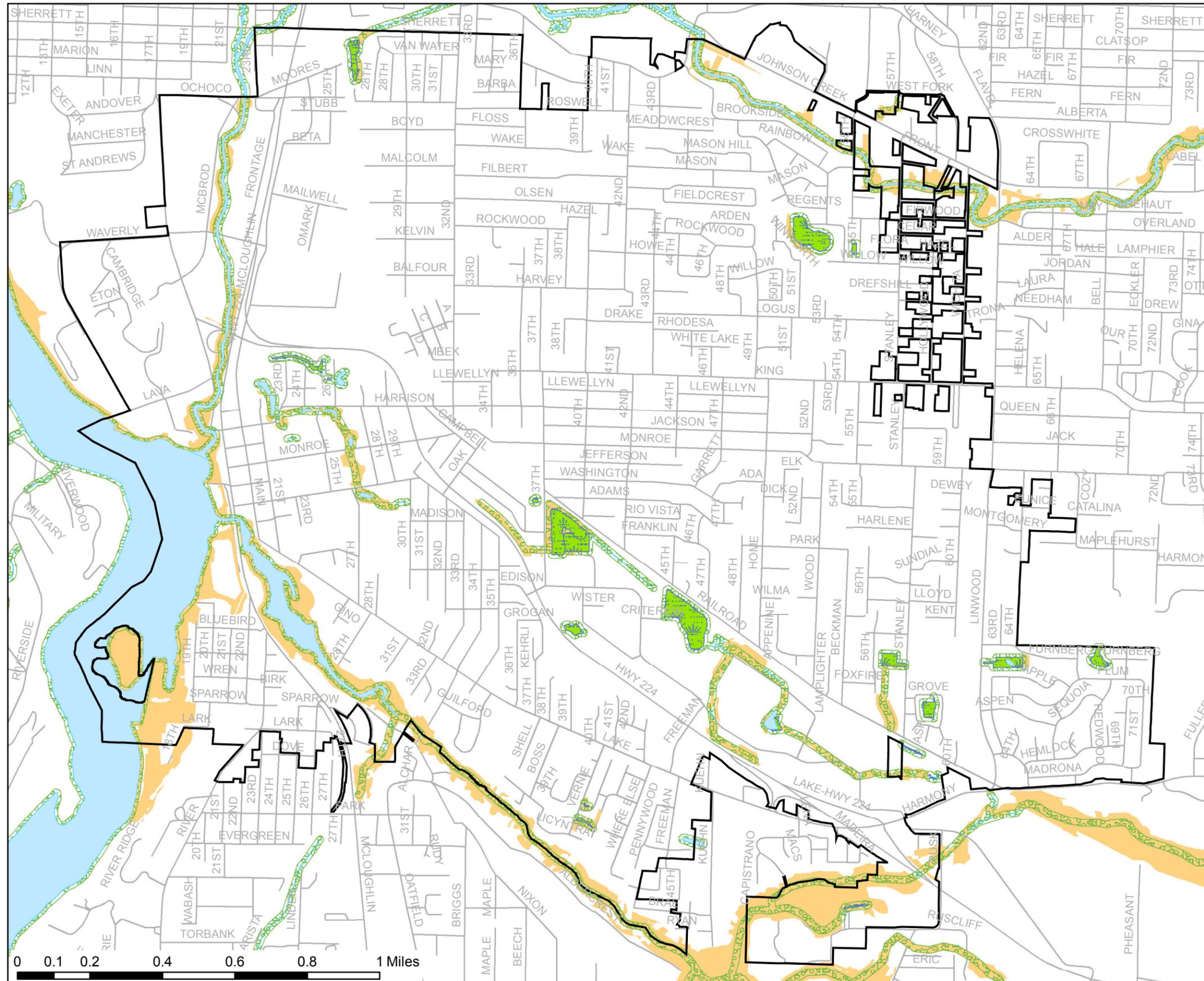
Milwaukie Comprehensive Plan
Map 5

-  City Boundary
-  Habitat Conservation Areas
- Water Quality Resources**
-  Rivers, Streams, and Ponds
-  Wetlands
-  Vegetated Corridor



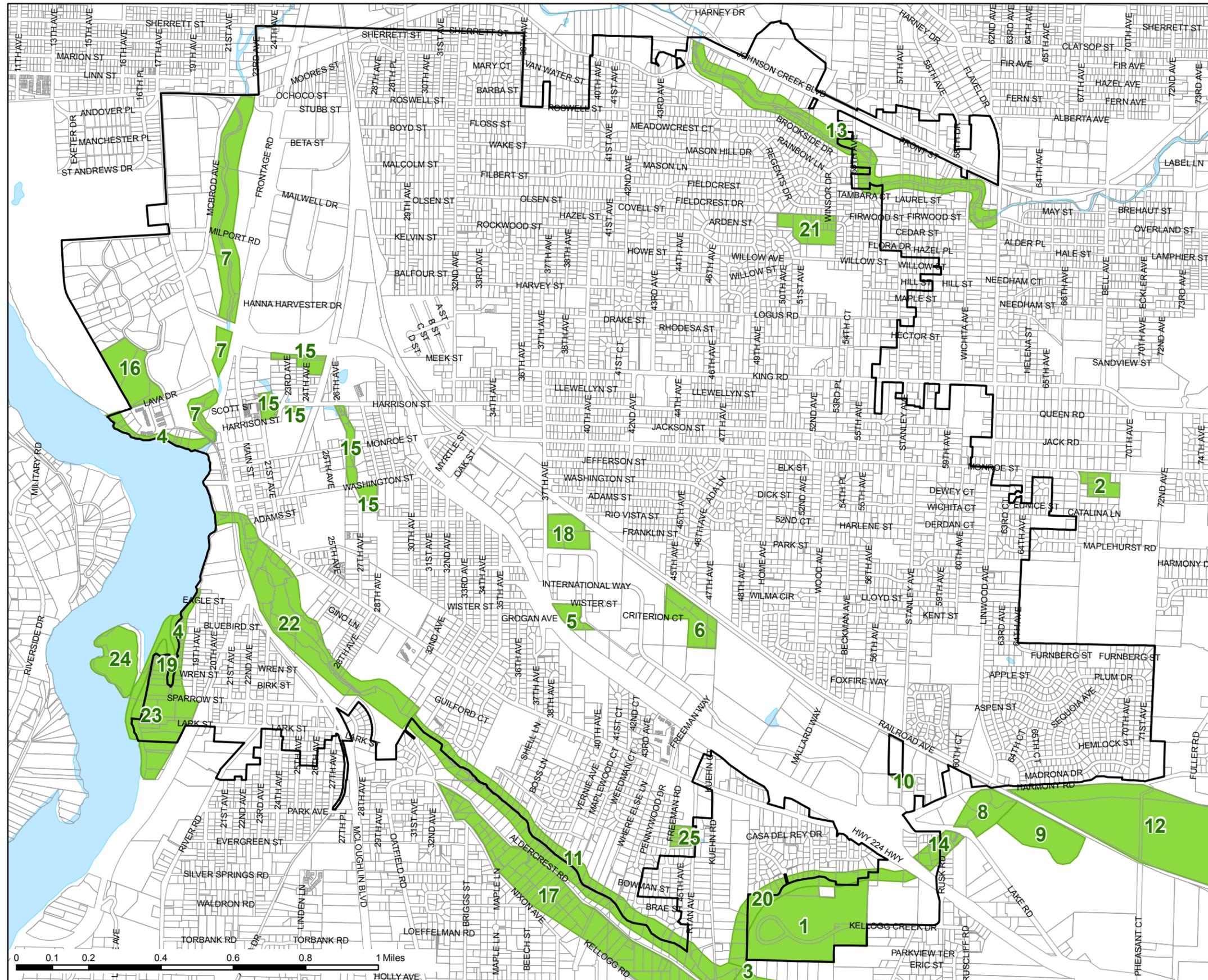
Adopted Ord. 2036 August 16, 2011

Data Sources: City of Milwaukie GIS
Clackamas County GIS
Metro Data Resource Center



NATURAL RESOURCE SITES

Appendix 2 Map



- Natural Resource Site
- City Boundary
- Water Body



Adopted Ord. 1666 November 7, 1989
 Revised Ord. 2036 August 16, 2011
 (Moved to Appendix 2)

Data Sources: City of Milwaukie GIS
 Clackamas County GIS
 Metro Data Resource Center

