



CITY OF MILWAUKIE

AGENDA

March 11, 2025

PLANNING COMMISSION

milwaukieoregon.gov

Hybrid Meeting Format: The Planning Commission will hold this meeting both in person at City Hall and through Zoom video. The public is invited to watch the meeting in person at City Hall, online through the City of Milwaukie YouTube page (https://www.youtube.com/channel/UCRFbfqe3OnDWLQKSB_m9cAw), or on Comcast Channel 30 within city limits.

If you wish to provide comments, the city encourages written comments via email at planning@milwaukieoregon.gov. Written comments should be submitted before the Planning Commission meeting begins to ensure that they can be provided to the Planning Commissioners ahead of time. To speak during the meeting, visit the meeting webpage (<https://www.milwaukieoregon.gov/planning/planning-commission-2>) and follow the Zoom webinar login instructions.

1.0 Call to Order – Procedural Matters — 6:30 PM

- 1.1 Native Lands Acknowledgment

2.0 Planning Commission Minutes – Motion Needed

- 2.1 February 11, 2025

3.0 Information Items

4.0 Audience Participation — This is an opportunity for the public to comment on any item not on the agenda

Hearing Items

5.0

- 5.1 MLP-2025-001 – 9201 SE McLoughlin Blvd.

Summary: Type II Minor Land Partition; Type III Natural Resource Review; Type III Variance

Staff: Senior Planner Vera Kolias

6.0 Community Involvement Advisory Committee (CIAC)

7.0 Planning Department Other Business/Updates

- 7.1 Planning Commission Elections

8.0 Forecast for Future Meetings

April 8, 2025

Work Session Items: Annual Joint Meeting with the Neighborhood District Associations;
Planning Commission Orientation

April 22, 2025

1. Hearing Item: Natural Resource Code Update (tentative)

Milwaukie Planning Commission Statement

The Planning Commission serves as an advisory body to, and a resource for, the City Council in land use matters. In this capacity, the mission of the Planning Commission is to articulate the Community's values and commitment to socially and environmentally responsible uses of its resources as reflected in the Comprehensive Plan.

1. **PROCEDURAL MATTERS.** If you wish to register to provide spoken comment at this meeting or for background information on agenda items please send an email to planning@milwaukieoregon.gov.
2. **PLANNING COMMISSION and CITY COUNCIL MINUTES.** City Council and Planning Commission minutes can be found on the City website at www.milwaukieoregon.gov/meetings.
3. **FORECAST FOR FUTURE MEETINGS.** These items are tentatively scheduled but may be rescheduled prior to the meeting date. Please contact staff with any questions you may have.
4. **TIME LIMIT POLICY.** The Commission intends to end each meeting by 10:00pm. The Planning Commission will pause discussion of agenda items at 9:45pm to discuss whether to continue an agenda item to a future date or finish the item.

Public Hearing Procedure

Those who wish to testify should attend the Zoom meeting posted on the city website, state their name and city of residence for the record, and remain available until the Chairperson has asked if there are any questions from the Commissioners. Speakers are asked to submit their contact information to staff via email so they may establish standing.

1. **STAFF REPORT.** Each hearing starts with a brief review of the staff report by staff. The report lists the criteria for the land use action being considered, as well as a recommended decision with reasons for that recommendation.
2. **CORRESPONDENCE.** Staff will report any verbal or written correspondence that has been received since the Commission was presented with its meeting packet.
3. **APPLICANT'S PRESENTATION.**
4. **PUBLIC TESTIMONY.** Comments or questions from interested persons and testimony from those in support or opposition of the application.
5. **QUESTIONS FROM COMMISSIONERS.** The commission will have the opportunity to ask for clarification from staff, the applicant, or those who have already testified.
6. **REBUTTAL TESTIMONY FROM APPLICANT.** After all public testimony, the commission will take rebuttal testimony from the applicant.
7. **CLOSING OF PUBLIC HEARING.** The Chairperson will close the public portion of the hearing. The Commission will then enter into deliberation. From this point in the hearing the Commission will not receive any additional testimony from the audience but may ask questions of anyone who has testified.
8. **COMMISSION DISCUSSION AND ACTION.** It is the Commission's intention to make a decision this evening on each issue on the agenda. Planning Commission decisions may be appealed to the City Council. If you wish to appeal a decision, please contact the Planning Department for information on the procedures and fees involved.
9. **MEETING CONTINUANCE.** Prior to the close of the first public hearing, any person may request an opportunity to present additional information at another time. If there is such a request, the Planning Commission will either continue the public hearing to a date certain or leave the record open for at least seven days for additional written evidence, argument, or testimony. The Planning Commission may ask the applicant to consider granting an extension of the 120-day time period for making a decision if a delay in making a decision could impact the ability of the City to take final action on the application, including resolution of all local appeals.

Meeting Accessibility Services and Americans with Disabilities Act (ADA) Notice

The city is committed to providing equal access to public meetings. To request listening and mobility assistance services contact the Office of the City Recorder at least 48 hours before the meeting by email at ocr@milwaukieoregon.gov or phone at 503-786-7502. To request Spanish language translation services email espanol@milwaukieoregon.gov at least 48 hours before the meeting. Staff will do their best to respond in a timely manner and to accommodate requests. Most Council meetings are broadcast live on the city's YouTube channel and Comcast Channel 30 in city limits.

Servicios de Accesibilidad para Reuniones y Aviso de la Ley de Estadounidenses con Discapacidades (ADA)

La ciudad se compromete a proporcionar igualdad de acceso para reuniones públicas. Para solicitar servicios de asistencia auditiva y de movilidad, favor de comunicarse a la Oficina del Registro de la Ciudad con un mínimo de 48 horas antes de la reunión por correo electrónico a ocr@milwaukieoregon.gov o llame al 503-786-7502. Para solicitar servicios de traducción al español, envíe un correo electrónico a espanol@milwaukieoregon.gov al menos 48 horas antes de la reunión. El personal hará todo lo posible para responder de manera oportuna y atender las solicitudes. La mayoría de las reuniones del Consejo de la Ciudad se transmiten en vivo en el canal de YouTube de la ciudad y el Canal 30 de Comcast dentro de los límites de la ciudad.

Milwaukie Planning Commission:

Jacob Sherman, Chair
Joseph Edge, Vice Chair
Juli Garvey
Leesa Gratreak
Nicolas Hess
Ryan Lowther
Max Penneck

Planning Department Staff:

Laura Weigel, Planning Manager
Brett Kelter, Senior Planner
Vera Kolias, Senior Planner
Adam Heroux, Associate Planner
Ryan Dyar, Associate Planner
Petra Johnson, Administrative Specialist II



CITY OF MILWAUKIE

PLANNING COMMISSION MINUTES

City Hall Council Chambers
10501 SE Main Street
www.milwaukieoregon.gov

February 11, 2025

Present: Joseph Edge, Vice Chair
Tina Fuenmayor
Leesa Gratreak
Max Penneck

Staff: Ryan Dyar, Associate Planner
Justin Gericke, City Attorney
Laura Weigel, Planning Manager

Absent: Jacob Sherman, Chair

(00:13:22)

1.0 Call to Order — Procedural Matters*

Chair Sherman called the meeting to order at 6:30 p.m., read the conduct of meeting format into the record, and Native Lands Acknowledgment.

Note: The information presented constitutes summarized minutes only. The meeting video is available by clicking the Video link at <http://www.milwaukieoregon.gov/meetings>.

(00:14:18)

2.0 Planning Commission Minutes

The January 28th, 2025, minutes were approved as presented.

(00:14:58)

3.0 Information Items

No information was presented for this portion of the meeting.

(00:15:11)

4.0 Audience Participation

Canby resident, **Charles Baz**, expressed concerns regarding frontage improvement requirements for new businesses in Milwaukie. Staff responded that specifications vary based on location and type of business but committed to investigating any discrepancies if provided with a list of the businesses. Milwaukie resident, **Bernie Stout**, highlighted issues with unauthorized home modifications in residential neighborhoods. Staff acknowledged the concerns and mentioned they would discuss them with code enforcement.

(00:25:34)

5.0 Hearing Items

(00:25:40)

5.1 HR-2024-002 – Historic Resource Review 1620 SE Waverly Dr. (continuation)

Associate Planner, Ryan Dyar, announced the applicable sections of the Milwaukie Municipal Code (MMC): MMC 19.301, MMC 19.403, MMC 19.1006. **Dyar** presented the staff report via a power point presentation. This was a continuation from prior hearings on December 10, 2024, and January 28, 2025. Updated plans were submitted and reviewed, addressing previous concerns. Staff recommended approval of the application. The commission asked for clarification regarding window material. The applicant's representative replied that the applicant is not that far in the process yet. **Vice Chair Edge** closed the public testimony.

Commission Discussion:

Commissioner Gratreak recommended using true divided lights instead of faux muntins. **Gratreak** expressed concern with the proposed alignment of a first story Palladian window. The commission and staff discussed conditions of approval vs nonbinding commission recommendations, the applicant's representative was invited to respond to the questions regarding the window alignment and style. After continued deliberation the commission agreed to make nonbinding recommendations, not conditions of approval. **Gratreak** motioned to approve application HR-2024-002 as amended with recommendations. **Commissioner Max Penneck** seconded. The motion passed with a 4-0 vote.

(01:20:49)

6.0 Community Involvement Advisory Committee (CIAC)

No information was presented for this portion of the meeting.

(01:21:21)

7.0 Planning Department/Planning Commission Other Business/Updates

Planning Manager, Laura Weigel, provided an update on the planning commission applicants and the upcoming planning commission orientation.

(01:21:32)

8.0 Forecast for Future Meetings

February 25, 2025, Work Session: Transportation System Plan update

March 11, 2025, Hearing Item: MLP-2025-001 9201 SE McLoughlin Blvd.

March 25, 2025: Meeting Canceled (Spring Break)

Meeting adjourned at approximately 8:00 p.m.

Respectfully submitted,

Petra Johnson, Administrative Specialist II



CITY OF MILWAUKIE

To: Planning Commission

Through: Laura Weigel, Planning Manager

From: Vera Kolias, Senior Planner

Date: March 4, 2025, for March 11, 2025 Public Hearing

Subject: **File(s):** MLP-2025-001; VR-2025-001; NR-2025-001
Applicant: Oregon Liquor and Cannabis Commission (OLCC)
Owner(s): Same
Address: 9201 SE McLoughlin Blvd
Legal Description (Map & Tax Lot): 11E26AA00100
NDA: N/A

ACTION REQUESTED

Open the public hearing, take public testimony, deliberate, and approve applications MLP-2025-001, VR-2025-001, and NR-2025-001 and adopt the Findings and Conditions of Approval found in Attachments 1 and 2. This action would allow for the partition of the subject property into two parcels.

BACKGROUND INFORMATION

A. Site and Vicinity

The site is located at 9201 SE McLoughlin Blvd. The 14.5-acre site is divided by Johnson Creek and is developed with the OLCC office and warehouse and distribution facilities (east of the creek) and the Clackamas County Community Corrections facilities (west of the creek along McBrod Ave). The entire site is owned by OLCC.



Figure 1. Site and vicinity

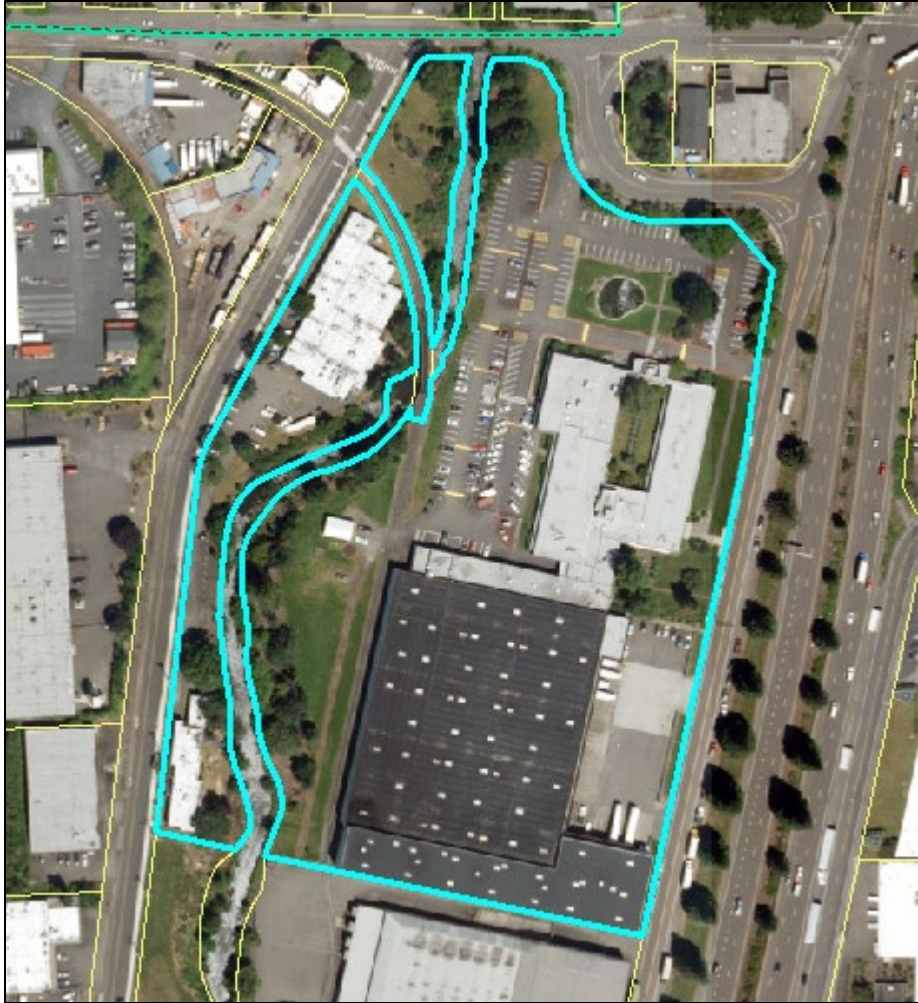


Figure 2. Site showing property lines

B. Zoning Designation

The site is in the North Milwaukie Employment Zone (NME). The site also contains Water Quality Resource Areas (WQR) and Habitat Conservation Areas (HCA).



Figure 3. Site showing WQR (green) and HCA (orange)

C. Comprehensive Plan Designation

Industrial – I

D. Land Use History

- **C-1970-002, C-1979-005, C-1982-003, CSO-1985-007, CSO-1991-004, and CSO-1991-001:** The Clackamas County facilities on the west side of Johnson Creek have provided residential correctional and substance abuse treatment services since the early 1970s and were approved for a total of 114 beds. The northern building on the site (9000 SE McBrod Ave) operates as the Clackamas Substance Abuse Program with 80 beds. The southern building (9200 SE McBrod Ave) was approved for 34 beds.
- **CSU-2024-001:** A Type I application for a change in use from a 34-bed treatment center to a crisis assistance center at 9200 SE Mc Brod Ave.

- **C-1976-013:** Approval to construct a 29,040 sq ft addition to the existing OLCC warehouse at 9021 SE McLoughlin Blvd. The original 84,000 sq ft warehouse was constructed in 1955.
- **C-1977-006:** Approval to install a receive/only ground terminal television microwave antenna, install a studio microwave antenna on an existing water tower, and construct a new equipment building at 9021 SE McLoughlin Blvd for the Oregon Educational and Public Broadcast Service.

E. Proposal

The proposal is to divide the subject property along the center line of Johnson Creek, retaining the eastern section of the property for OLCC and creating a new parcel for Clackamas County's existing community correction facilities on the West side of Johnson Creek. If the request is granted, Clackamas County would own the land where their buildings and improvements are located instead of leasing the land from current or future owners.

Once divided, the county property west of the creek would have an area of approximately 3.6 acres. The remaining OLCC property would have an area of approximately 10.9 acres. No development is proposed as part of this application. No changes to access, circulation, parking, or structures are proposed. No removal of any vegetation is proposed.

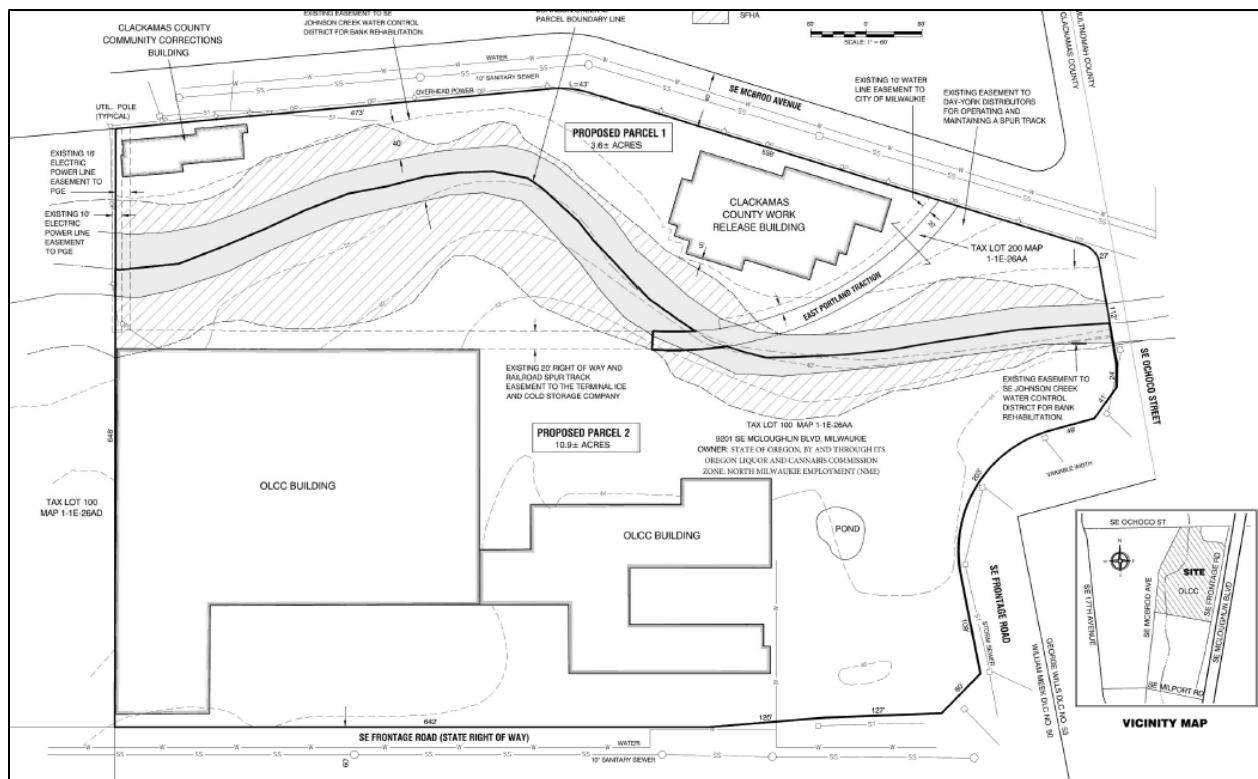


Figure 4. Proposed partition.

The project requires approval of the following applications:

1. MLP-2025-001: Type II Minor Land Partition
2. NR-2025-001: Type III Natural Resources Land Division
3. VR-2025-001: Type III Variance (place resource areas in restricted easements rather than separate tracts)

Analysis

MMC 19.402.13 requires that, as part of a partition, 100% of the WQR must be placed in a separate unbuildable tract protected by a conservation restriction. If this standard cannot be met then an impact evaluation and alternatives analysis must be prepared. The applicant has submitted a satisfactory impact evaluation and alternatives analysis, and has requested a variance to the requirement of the unbuildable tract. The applicant has requested a variance from the requirement for the unbuildable tract and has proposed a restricted development area with a restrictive easement instead.

Staff has identified the following question for the Commission's deliberation. Aspects of the proposal not listed below are addressed in the Findings (see Attachment 1) and generally require less analysis and discretion.

A. Is the request for the restricted development area and restrictive easement variance reasonable and approvable?

The proposed partition includes a parcel configuration that is designed to take advantage of the natural flow patterns of Johnson Creek. The site includes existing development, some of which already encroaches on the WQR. Therefore, the WQR cannot be fully preserved on site. The submitted plans identified the WQR and HCA and also delineate future protection areas which will preserve existing native vegetation. As noted above, no new development is proposed as part of this application and the site has been lawfully developed for decades.

The application materials include two preliminary natural resource maps that were prepared by a survey or team including a natural resource plan and a restricted development area plan. The natural resource plan shows combined HCA and WQR areas, while the restricted development plan shows the combined areas that would be restricted from future development in perpetuity. Please refer to Figures 5 and 6.

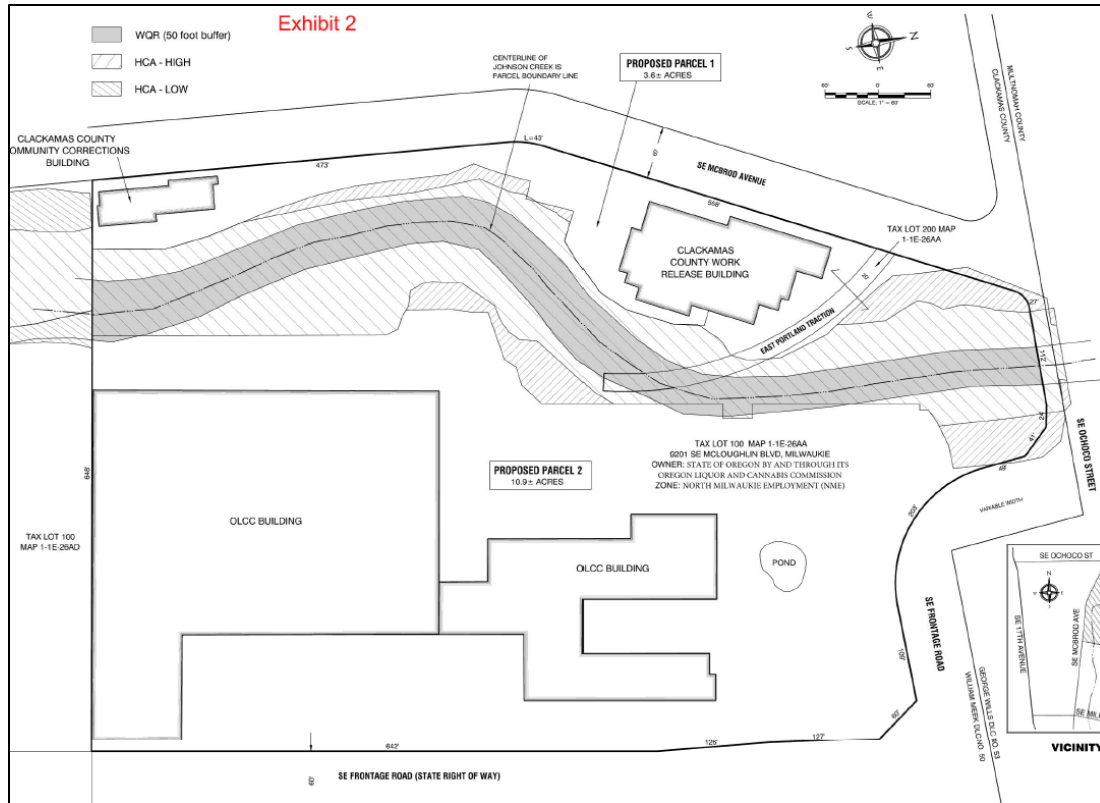


Figure 5. Natural Resources Plan

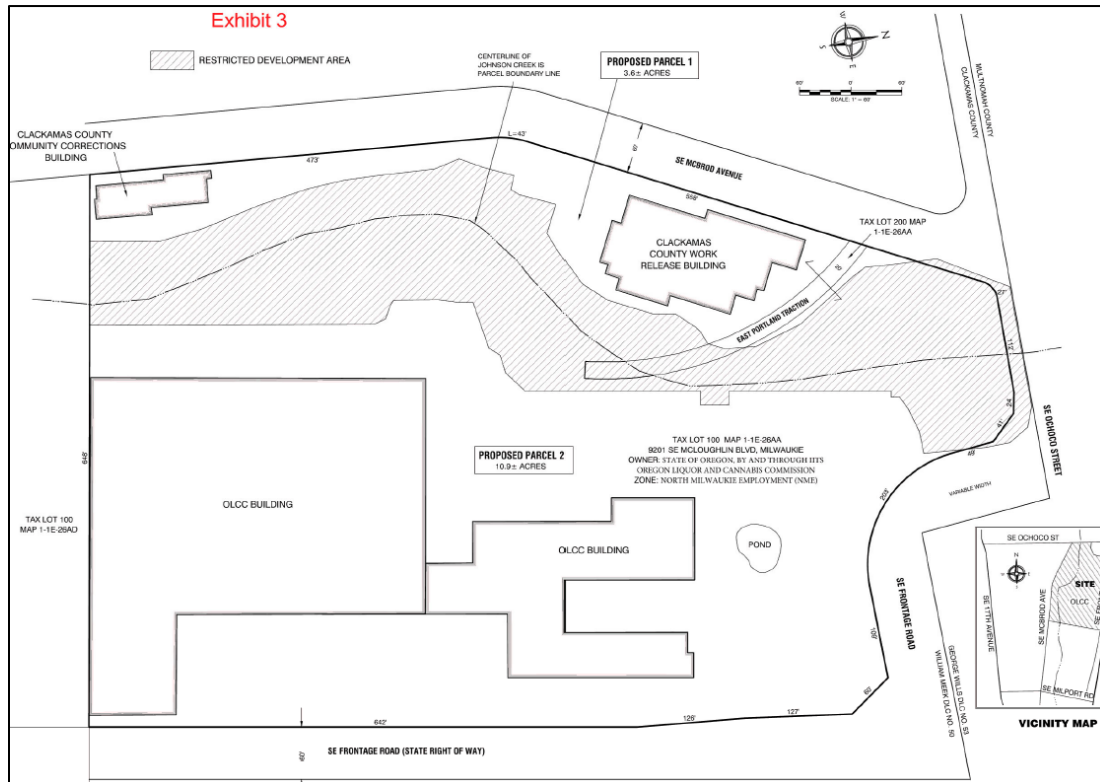


Figure 6. Restricted Development Area

The restrictive easement is requested rather than a separate tract because a separate tract would cause hardships on the property owners. The cost to create, operate, and maintain a separate entity to manage the tract could be substantial. Creating a separate tract would require the creation of a separate legal entity to hold shared ownership within both parcels that could cause legal issues in the future. It could be difficult to coordinate how two separate governmental entities would be responsible for various aspects of the tract.

The restrictive easement will accomplish the same level of protection that would be provided in a separate tract without the complication of a separate entity involved. The proposed restrictive easement was included in the application materials and prohibits any disturbance, construction, or vegetation removal in the restricted development area without the approval of the City. The restrictive easement would be held in perpetuity and will have the benefit of a responsible government agency as the underlying owner. OLCC would be responsible for protecting lands east of Johnson Creek and Clackamas County would be responsible for protecting lands West of Johnson Creek.

In conclusion, given that hardship and complexity in creating a separate resource tract within two separate parcels of land under different ownership, the request for a restricted development area and a complementary restrictive easement is a reasonable alternative that will have the same, and possibly better, protections for the resource areas and for Johnson Creek.

CONCLUSIONS

A. Staff recommendation to the Planning Commission is as follows:

1. Approve the applications and adopt the recommended findings and conditions of approval found in Attachments 1 and 2.

CODE AUTHORITY AND DECISION-MAKING PROCESS

The proposal is subject to the following provisions of the Milwaukie Municipal Code (MMC).

- MMC Title 17 Land Division, including:
 - MMC Chapter 17.12 Application Procedure & Approval Criteria
 - MMC Chapter 17.16 Application Requirements and Procedures
 - MMC Chapter 17.20 Preliminary Plat
 - MMC Chapter 17.28 Design Standards
 - MMC Chapter 17.32 Improvements
- MMC Section 19.312 North Milwaukie Employment Zone (NME)
- MMC Section 19.402 Natural Resources
- MMC Chapter 19.700 Public Facility Improvements
- MMC Section 19.911 Variances

- MMC Section 19.1006 Type III Review

This application is subject to Type III review, which requires the Planning Commission to consider whether the applicant has demonstrated compliance with the code sections shown above. In Type III reviews, the Commission assesses the application against review criteria and development standards and evaluates testimony and evidence received at the public meeting.

The Commission has 4 decision-making options as follows:

- A. Approve the application subject to the recommended Findings.
- B. Approve the application with modified Findings and Conditions of Approval. Such modifications need to be read into the record.
- C. Deny the application upon finding that it does not meet approval criteria.
- D. Continue the hearing.

The final decision on these applications, which includes any appeals to the City Council, must be made by June 4, 2025, in accordance with the Oregon Revised Statutes and the Milwaukie Zoning Ordinance. The applicant can waive the time period in which the application must be decided.

COMMENTS

Notice of the proposed project was given to the following agencies and persons: City of Milwaukie City Manager, Community Development, Building, and Engineering Departments, Clackamas Fire District #1, Johnson Creek Watershed Council, and properties within 300 ft of the subject site.

No comments were received.

ATTACHMENTS

Attachments are provided as indicated by the checked boxes. All material is available for viewing upon request.

	Early PC Mailing	PC Packet	Public Copies	Packet
1. Recommended Findings in Support of Approval	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
2. Recommended Conditions of Approval	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
3. Applicant's Narrative and Supporting Documentation received January 23, 2025.				
a. Narrative, including Natural Resources analysis	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
b. Proposed Partition plats	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
c. Proposed Restricted Development Easements	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

Key:

Early PC Mailing = materials provided to PC at the time of application referral.

PC Packet = materials provided to PC 7 days prior to the hearing.

Public Copies = paper copies of the packet available for review at City facilities and at the PC meeting.

Packet = packet materials available online at <https://www.milwaukieoregon.gov/bc-pc/planning-commission-75>.

EXHIBIT 1
Findings in Support of Approval
Primary File #MLP-2025-001 (9201 SE McLoughlin Blvd)

Sections of the Milwaukie Municipal Code not addressed in these findings are found to be inapplicable to the decision on this application.

1. The applicant, Jeffrey Munns, on behalf of the Oregon Liquor and Cannabis Commission (OLCC), has applied for approval to partition the existing property into two properties with the centerline of Johnson Creek (the creek) as the dividing line. The subject property is addressed as 9201 SE McLoughlin Blvd, with 9000 SE McBrod Ave, and is zoned North Milwaukie Employment zone (NME). The primary land use application file numbers are MLP-2025-001, with NR-2025-001 and VR-2025-001.
2. The subject property is 14.5 acres, is divided by Johnson Creek, and is developed with the OLCC office and warehouse and distribution facilities (east of the creek) and the Clackamas County Community Corrections facilities (west of the creek along McBrod Ave). The proposal is to divide the subject property along the center line of Johnson Creek, retaining the eastern section of the property for OLCC and creating a new parcel for Clackamas County's existing community correction facilities on the West side of Johnson Creek. If the request is granted, Clackamas County would own the land where the buildings and improvements are located instead of leasing the land from current or future owners.

Once divided, the county property west of the creek would have an area of approximately 3.6 acres. The remaining OLCC property would have an area of approximately 10.9 acres. No development is proposed as part of this application. No changes to access, circulation, parking, or structures are proposed. No removal of any vegetation is proposed.

MMC 19.402.13 requires that, as part of a partition, 100% of the Water Quality Resource Area (WQR) must be placed in a separate unbuildable tract protected by a conservation restriction. The applicant has requested a variance from the requirement for the unbuildable tract and has proposed a restricted development area with a restrictive easement instead.

3. The proposed land division constitutes a partition as per the definitions in Milwaukie Municipal Code (MMC) Chapter 17.08. The proposal is subject to the following provisions of the MMC:
 - MMC Title 17 Land Division, including:
 - MMC Chapter 17.12 Application Procedure & Approval Criteria
 - MMC Chapter 17.16 Application Requirements and Procedures
 - MMC Chapter 17.20 Preliminary Plat
 - MMC Chapter 17.28 Design Standards
 - MMC Chapter 17.32 Improvements
 - MMC Section 19.312 North Milwaukie Employment Zone (NME)

- MMC Section 19.402 Natural Resources
- MMC Chapter 19.700 Public Facility Improvements
- MMC Section 19.911 Variances
- MMC Section 19.1006 Type III Review

The application has been processed and public notice provided in accordance with MMC Section 19.1006 Type III Review. A public hearing with the Planning Commission was held on March 11, 2025, as required by law.

4. MMC Title 17 Land Division

MMC Title 17 establishes the standards and procedures for land division and property boundary changes.

a. MMC Chapter 17.12 Application Procedure and Approval Criteria

MMC 17.12 specifies the process, procedures, and approval criteria for lot consolidation, property line adjustment, partition, subdivision, and replat.

The subject property is a 14.5-acre lot. The proposed land division will create two new parcels. This action constitutes a partition and is subject to Type II review as per the guidance of MMC Table 17.12.020. However, because other aspects of the proposal are subject to Type III review, the full application is reviewed by the Planning Commission.

MMC Section 17.12.040 establishes the approval criteria for preliminary plat. The proposed partition meets these criteria as described below.

- (1) The proposed preliminary plat complies with Title 19 and other applicable ordinances, regulations, and design standards.

As demonstrated by the applicant's submittal materials and evidenced by these findings, the proposed partition complies with all applicable standards of MMC Titles 17 and 19. As proposed, this criterion is met.

- (2) The proposed division will allow reasonable development and will not create the need for a variance of any land division or zoning standard.

The proposed partition will establish two parcels. In addition, a restricted development area with a restrictive easement has been proposed in lieu of a separate unbuildable tract to preclude further development in the resource areas. The proposed partition does not create the need for any variances, except for the requested variance related to the development restriction. As proposed, this criterion is met.

- (3) The proposed subdivision plat name is not duplicative and the plat otherwise satisfies the provisions of Oregon Revised Statutes (ORS) 92.090(1).

The proposed partition will be assigned a filing number by the Clackamas County Surveyor and does not require a plat name. As required for the final plat submittal, the plat will meet all applicable provisions of the ORS. As proposed, this criterion is met.

- (4) The streets and roads are laid out so as to conform to the plats of subdivisions already approved for adjoining property as to width, general direction, and in all other respects unless the City determines it is in the public interest to modify the street or road pattern.

No new streets or roads are included in the proposed partition. This standard is not applicable.

- (5) A detailed narrative description demonstrating how the proposal conforms to all applicable code sections and design standards.

The applicant's submittal materials include a narrative that addresses all applicable code sections and design standards.

- (6) Approval of a preliminary plat for a middle housing land division will be granted if the Planning Manager finds that the applicant has met all of the following criteria:

The proposed partition does not involve a middle housing land division.

This standard is not applicable.

As proposed, the Planning Commission finds that the preliminary plat meets the applicable criteria.

b. MMC Chapter 17.16 Application Requirements and Procedures

MMC Section 17.16.060 establishes the application requirements for preliminary plat, including completed application forms and checklists, applicable fees, and the information specified in MMC Chapter 17.20 Preliminary Plat.

The applicant's submittal materials include the necessary forms, checklists, and fees, as well as a narrative, preliminary plat document, and other information sufficient to demonstrate compliance with the applicable standards and criteria.

As proposed, the Planning Commission finds that the application meets the applicable requirements for preliminary plat submittal.

c. MMC Chapter 17.20 Preliminary Plat

MMC 17.20 establishes the information required for a preliminary plat, including general information to be shown on the plat and existing and proposed conditions.

The applicant's preliminary plat submittal is to scale and includes a map of existing conditions, contour lines, utilities, and other general information.

As proposed, the Planning Commission finds that the proposed preliminary plat includes the relevant and necessary information as outlined in MMC 17.20.

d. MMC Chapter 17.28 Design Standards

MMC 17.28, particularly MMC Section 17.28.040, establishes standards for lot design for land divisions and boundary changes. These standards do not apply to units of

land that are created for purposes other than land development, including parks and natural areas.

- (1) MMC Subsection 17.28.040.A requires that the lot size, width, shape, and orientation must be appropriate for the location and the type of use contemplated, as well as that minimum lot standards must conform to Title 19.

As discussed in Finding 6, the proposed new parcels both meet the minimum area and dimensional requirements for the underlying NME zone. As proposed, this standard is met.

- (2) MMC Subsection 17.28.040.B requires that lot shape must be rectilinear, except where not practicable due to location along a street radius, or existing lot shape. The sidelines of lots, as far as practicable, must run at right angles to the street upon which the lots face. As far as practicable, the rear lot line must run parallel to the street.

Given the existing lot shape, street locations, presence of Johnson Creek, and the historic development patterns on the site, rectilinear lots are not possible.

As proposed, this standard is met given the noted exceptions for existing conditions.

- (3) MMC Subsection 17.28.040.C limits compound lot lines for side or rear lot lines. Cumulative lateral changes in direction exceeding 10% of the distance between opposing lot corners along a given lot line may only be permitted through the variance provisions of MMC Subsection 19.911.

The proposed partition includes side lot lines with true east-west direction, or along the long curve of Ochoco St. The share rear lot line will be the centerline of Johnson Creek, which forms a natural, meandering boundary that cannot be avoided. A variance is not warranted. This standard is met.

- (4) MMC Subsection 17.28.040.D allows lot shape standards to be varied pursuant to MMC 19.911.

No variance to the lot shape standards is requested in this application. This standard is not applicable.

- (5) MMC Subsection 17.28.040.E limits double frontage and reversed frontage lots, stating that they should be avoided except in certain situations.

The existing lot has frontages on McLoughlin Blvd, McBrod Ave, and Ochoco St. Neither of the proposed parcels will be a double frontage or reversed frontage lot. This standard is met.

- (6) MMC Subsection 17.28.040.F requires that, pursuant to the definition and development standards contained in Title 19 for frontage, required frontage shall be measured along the street upon which the lot takes access. This standard applies when a lot has frontage on more than one street.

The underlying NME zone does not require street frontage, although both proposed lots will have ample street frontage. This standard does not apply.

As proposed, the Planning Commission finds that the new parcels presented in the applicant's preliminary plat meet the applicable design standards established in MMC 17.28.

e. MMC Chapter 17.32 Improvements

MMC 17.32 establishes procedures for public improvements, including a requirement that work will not begin until plans have been approved by the City.

As discussed in Finding 7, there are existing accessways serving the proposed parcels based on existing development. As per the provisions of MMC Chapter 19.700, discussed in Finding 7, as no new development is proposed on either parcel, no improvements are required. As proposed, the Planning Commission finds that the applicable standards of MMC 17.32 are met.

The Planning Commission finds that the proposed partition meets all applicable standards of MMC Title 17.

5. MMC Section 19.312 North Milwaukie Employment Zone (NME)

MMC 19.312 establishes standards for the North Milwaukie Employment Zone (NME). The application meets the applicable standards of this section as described below.

a. MMC Subsection 19.312.2 Allowed Uses

MMC 19.312.2 establishes the uses allowed in the NME zone, including offices, warehousing and distribution, and manufacturing as permitted uses, and Community Service Uses (CSU).

The subject property is currently developed with the OLCC facility which is a wholesale, warehousing and distribution facility. The County facilities are existing Community Service Uses.

b. MMC Subsection 19.312.5 Development Standards

MMC 19.312.5 establishes development standards for the NME zone. There are no minimum standards for lot size, street frontage, or setbacks.

No additional development is proposed as part of this application. The parcel is developed with approved development since the 1970s. As developed, and with no changes proposed, the proposed partition meets all applicable development standards of this subsection.

The Planning Commission finds that the proposed partition meets all applicable development standards of MMC 19.312.

6. MMC Section 19.402 Natural Resources

MMC 19.402 establishes regulations for designated natural resource areas. The standards and requirements of MMC 19.402 are an acknowledgment that many of the riparian, wildlife, and wetland resources in the community have been adversely impacted by

development over time. The regulations are intended to minimize additional negative impacts and to restore and improve natural resources where possible.

a. MMC Subsection 19.402.3 Applicability

MMC 19.402.3 establishes applicability of the Natural Resource (NR) regulations, including all properties containing Water Quality Resources (WQRs) and Habitat Conservation Areas (HCAs) as shown on the City's Natural Resource (NR) Administrative Map.

The subject property is bisected by Johnson Creek. The City's NR Administrative Map shows both WQR and HCA designations on the subject property. As per MMC Table 19.402.3.K, property line adjustments, partitions, and subdivisions involving properties that include WQR and/or HCA resources are subject to the provisions of MMC Section 19.402, specifically the provisions of MMC Subsection 19.402.13.

The Planning Commission finds that the proposed partition is subject to the provisions of MMC 19.402, including the requirements of MMC 19.402.13.

b. MMC Subsection 19.402.13 Land Division and Property Line Adjustments

MMC 19.402.13 establishes standards and requirements for property line adjustments and all forms of land division defined in MMC Chapter 17.08 for properties that include WQR and/or HCA resources.

(1) MMC Subsection 19.402.13.G Low-Impact Partitions

MMC 19.402.13.G establishes a Type II review process for "low-impact partitions" that can demonstrate compliance with specific standards. For properties that contain WQRs, 100% of the WQR must be placed in a separate unbuildable tract, protected by a conservation restriction. For properties that contain HCAs on 85% or less of the total lot area, the applicant must either (1) ensure that there is no more than a 30-point difference in the percentage of HCA coverage on each of the parcels or (2) place at least 90% of the original property's HCA in a separate unbuildable tract that is protected by a conservation restriction.

Because some of the previously developed areas encroach into the WQR, a low-impact partition is not possible.

The Planning Commission finds that the proposed partition does not qualify as a low-impact partition, and is therefore, subject to Type III review.

(2) MMC Subsection 19.402.13.H All Other Partitions

MMC 19.402.13.G establishes a Type III review process for partitions that cannot meet the requirements for "low-impact partitions" that can demonstrate compliance with specific standards. 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.

The proposed parcel configuration takes full advantage of the natural flow patterns of Johnson Creek. No new development is proposed as part of the partition and all areas not already developed are proposed to be included in a Restricted Development Area (RDA) with a restrictive easement to prevent any future development of the site's WQR and/or HCA areas.

- (b) An Impact Evaluation and Alternatives Analysis shall be prepared in accordance with the relevant portions of Subsection 19.402.12.A.

A full Impact and Alternatives Analysis was submitted as part of the application materials.

The WQR, a 50-foot vegetative buffer offset from the edge of Johnson Creek, is roughly 151,500 sq ft in area (3.48 Acres). Within the buffer, tree canopy comprises roughly 63,900 sq ft of the total buffer area, or 42%. Ground cover and shrubs cover roughly 56,600 of the total WQR, or 37%. Combined, all tree canopy, ground cover, and shrubs total roughly 78,660 sq ft, or 51% of the total WQR. Based on the existing vegetation and impaired nature of this section of Johnson Creek, the existing condition of the WQR on the site is considered poor.

No new development is proposed as part of the partition and the natural resources are proposed to be preserved as is, in perpetuity. The existing development has remained unchanged for several decades, and there have been no substantial changes to the site overall. Much of the Johnson Creek watershed is already "impaired" and has been the subject of many regional restoration efforts. There will be no net impact to the creek with this partition, as no new development is proposed, and the existing vegetation will be preserved in an RDA and protected by restrictive covenant.

- (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.

The HCA covers far less than 85% of the total lot area. This criterion does not apply.

The Planning Commission finds that the proposed partition meets the applicable criteria for a natural resource partition.

- (3) MMC Subsection 19.402.13.J Resource Area as a Separate Tract

MMC 19.402.13.J establishes standards for placing WQR and/or HCA resources in a separate unbuildable tract when required. The separate tract must not be

part of any lot or parcel used for construction of any structures. Prior to final plat approval, ownership of the separate tract must be identified to distinguish it from lots or parcels intended for development, with ownership in common or by a homeowners association being strongly discouraged. Options include the tract remaining a privately held natural area with a restrictive covenant or conservation easement.

The applicant has submitted natural resources maps identifying the natural resources areas and a restricted development area. The natural resource plan shows combined HCA and WQRs, while the Restricted Development Plan shows the combined areas, which are proposed to be restricted from future development in perpetuity. The applicant has requested a variance to this section in order to place the Natural Resource areas in an RDA. These areas will be protected in perpetuity with protective covenants. The proposed restricted development easement prohibits any construction, disturbance, or plant removal, unless authorized by the City of Milwaukie.

As conditioned, and subject to approval of a variance, the Planning Commission finds that this standard is met.

As proposed and conditioned, the Planning Commission finds that the applicable standards of MMC 19.402.13 are met.

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

7. MMC Chapter 19.700 Public Facility Improvements

MMC 19.700 establishes provisions to ensure that development provides public facilities that are safe, convenient, and adequate in rough proportion to their public facility impacts.

a. MMC Section 19.702 Applicability

MMC Section 19.702 establishes the applicability of MMC 19.700, including for land divisions, new construction, and modification or expansion of an existing structure or a change or intensification in use that results in any projected increase in vehicle trips or any increase in gross floor area on the site.

The applicant proposes to partition the subject property to create two parcels. The proposed partition is subject to the requirements of MMC 19.700.

b. MMC Section 19.703 Review Process

MMC 19.703 establishes the review process for development that is subject to MMC 19.700, including requiring a preapplication conference, establishing the type of application required, and establishing approval criteria.

A preapplication conference for this proposal was waived by the Planning Manager.

This standard does not apply.

c. MMC Section 19.704 Transportation Impact Evaluation

MMC 19.704 establishes that the City Engineer will determine whether a proposed development has impacts on the transportation system by using existing transportation data. If the City Engineer cannot properly evaluate a proposed development's impacts without a more detailed study, a TIS will be required to evaluate the adequacy of the transportation system to serve the proposed development and determine proportionate mitigation of impacts.

The City Engineer has determined that a TIS is not required, as no new development is proposed.

This standard is met.

d. MMC Section 19.708 Transportation Facility Requirements

MMC 19.708 establishes the City's requirements and standards for improvements to public streets, including pedestrian, bicycle, and transit facilities. MMC Subsection 19.708.1 requires compliance with MMC Chapter 12.16 and establishes general requirements and standards for streets, including access management, clear vision, street design, connectivity, and intersection design and spacing standards. MMC Table 19.708.2 provides more specific street design standards for various street classifications, including for arterial and neighborhood routes. All streets, sidewalks, necessary public improvements, and other public transportation facilities located in the public ROW and abutting the development site must be adequate at the time of development or must be made adequate in a timely manner. The City's street design standards are based on the street classification system described in the City's Transportation System Plan (TSP).

The subject property is already developed, and no new development is proposed. The construction of physical frontage improvements or collection of a fee in lieu of construction (FILOC) is not warranted at this juncture; a requirement for improvements or FILOC can be more accurately evaluated and justified at the time of any future development.

This standard is met.

The Planning Commission finds that the applicable standards of MMC 19.700 are met.

8. MMC Section 19.911 Variances

MMC Section 19.911 establishes the variance process for seeking relief from specific code sections that have the unintended effect of preventing reasonable development or imposing undue hardship.

a. MMC Subsection 19.911.2 Applicability

MMC 19.911.2 establishes applicability standards for variance requests.

Variances may be requested to any standard of MMC Title 19, provided the request is not specifically listed as ineligible in MMC Subsection 19.911.2.B. Ineligible variances include requests that result in any of the following: change of a review type, change

or omission of a procedural step, change to a definition, increase in density, allowance of a building code violation, allowance of a use that is not allowed in the base zone, or the elimination of restrictions on uses or development that contain the word “prohibited.”

The applicant has requested relief from MMC 19.402.13.J.2, specifically the requirement to create a separate resource area “tract”, proposing instead a restricted development area.

The requested variance meets the eligibility requirements established in MMC 19.911.2.

b. MMC Subsection 19.911.3 Review Process

MMC 19.911.3 establishes review processes for different types of variances. Subsection 3-B establishes the Type II review process for limited variations to certain numerical standards. Subsection 3-C establishes the Type III review process for larger or more complex variations to standards that require additional discretion and warrant a public hearing.

The requested variance is not identified in MMC 19.911.3.B as being eligible for Type II review. Therefore, the requested variance is subject to the Type III review process and the approval criteria established in MMC Subsection 19.911.4.B.

c. MMC Subsection 19.911.4 Approval Criteria

MMC 19.911.4 establishes approval criteria for variance requests. Specifically, MMC Subsection 19.911.4.B.1 provides the following approval criteria for Type III variances where the applicant elects to utilize the Discretionary Relief Criteria:

- (1) The applicant’s alternatives analysis provides, at a minimum, an analysis of the impacts and benefits of the variance proposal as compared to the baseline code requirements.

The proposed Restricted Development Plan shows the combined WQR and HCA areas on the site, which are proposed to be restricted from future development in perpetuity. The applicant has requested a variance to this section in order to place the Natural Resource areas in an RDA. These areas will be protected in perpetuity and be protective covenants.

Separate resource area tracts are a useful instrument for some residential land divisions, or land divisions that will create new building sites. However, the subject property is already developed and, as described by the applicant, they propose a hardship to the OLCC property given that the entire site is already developed. The applicant proposes to preserve all of the undeveloped HCA and WQR, but requests the final plat show a Restrictive Development Area (RDA) or Restrictive Easement with associated restrictive covenant(s) being recorded simultaneously. The RDA or restrictive easement will accomplish the same level of protection that would be provided within a separate tract. It will be held in perpetuity and will have the benefit of a responsible government agency as the underlying owner.

RDAs or Restrictive Easements can accomplish the same exact protections that are set forth in MMC 19.402, but will ensure that each owner is expressly responsible for the maintenance of their respective natural resource areas. Another adverse impact of creating tracts, the tract/owner/entity may dissolve or otherwise not be answerable to the stated conditions therein, and difficult to contact. Some Homeowners Associations run into this type of ownership issue, several years after the plat is recorded. There is no response from the entity, and the City may need to talk with the tract owner, may need an easement, or may see an opportunity to enhance the Natural Resource area. The benefit of having an RDA or restrictive easement means that the underlying owners, the County or OLCC, (or their successors/heirs) will always be available to work with the City or other agencies, when it comes to enhancing these areas or allowing permission on to the protected area.

The Planning Commission finds that the applicant's submittal provides an adequate analysis of the impacts and benefits of the requested variance compared to the baseline requirements. This criterion is met.

- (2) The proposed variance is determined to be both reasonable and appropriate, and it meets one or more of the following criteria:
 - (a) The proposed variance avoids or minimizes impacts to surrounding properties.
 - (b) The proposed variance has desirable public benefits.
 - (c) The proposed variance responds to the existing built or natural environment in a creative and sensitive manner.

The proposed variance allowing an RDA has more benefit and utility than a tract. An RDA or Restrictive Easement makes it easier to work with underlying owners. Furthermore, if any future opportunities arise to enhance the resource area, securing easements (e.g. stormwater, sewer, etc.), or simply contacting the underlying property owner, will be relatively easy compared to working with a third party or property association for a tract.

The same protections are available in the RDA as compared to a separate tract without the burdens of a separate property under different management and ownership. In addition, the property is already developed with two separate governmental facilities. It does not appear that other similar properties in the NME zone have separate resource area tracts.

The Planning Commission finds that the requested variance is reasonable and appropriate and that it meets one or more of the criteria provided in MMC Subsection 19.911.B.1.b.

- (3) Impacts from the proposed variance will be mitigated to the extent practicable.

There are no identified impacts from allowing the resource areas to be protected via an RDA rather than in a separate tract. The same amount of land would be preserved and protected.

As proposed, the Planning Commission finds that the requested variance meets the approval criteria established in MMC 19.911.4.B.1 for Type III variances seeking discretionary relief.

As conditioned, the Planning Commission finds that the requested variance is allowable as per the applicable standards of MMC 19.911.

9. The application was referred to the following departments and agencies on February 5, 2025:

- Milwaukie Community Development Department
- Milwaukie Building Department
- Milwaukie Engineering Department
- Clackamas Fire District #1 (CFD#1)
- NW Natural

In addition, notice of the public hearing was mailed to owners and residents of properties within 300 ft of the subject property on February 19, 2025. The Johnson Creek Watershed Council was notified on February 25, 2025.

No comments were received.

Exhibit 2
Conditions of Approval
Primary File #MLP-2025-001 – OLCC Partition

Conditions

1. The applicant's final plat application must include the items listed on the City of Milwaukie Final Plat Checklist. The following specific items and changes are required as part of the application:
 - a. A written narrative describing any changes made to the final plat that are not related to these conditions of approval.
 - b. A final plat that substantially conforms to the plans received by the Planning Department on January 23, 2025 and approved by this action, except as modified by these conditions of approval.
 - c. The final plat must include spaces for signatures by the Milwaukie Planning Manager and Milwaukie City Engineer, and a note indicating that this partition is subject to the requirements of City of Milwaukie Land Use Application MLP-2025-001.
 - d. The final plat must include the Restricted Development Area. The restricted development easement must be recorded and noted on the final plat.

Other requirements

The following items are not conditions of approval necessary to meet applicable land use review criteria. They relate to other development standards and permitting requirements contained in the Milwaukie Municipal Code and Public Works Standards that are required at various points in the development and permitting process. They are included for the applicant's convenience and do not necessarily represent all standards or requirements that may be applicable.

1. The Time Limit on Approval established in MMC 19.1001.7.E applies to this proposed partition.
 - a. MMC 19.1001.7.E.1.c: For boundary adjustments and land divisions approved under Title 17 Land Division, evidence of recording of the required instruments must be provided to the city within two years of the original approval.
 - b. MMC 19.1001.7.E.2.a: Approvals may be extended pursuant to MMC 19.908.
2. MMC Section 17.04.120 Recording

As per MMC Section 17.04.120, partition plats must be recorded by plat. An application for final plat must be submitted to both the City Planning Department and the County Surveyor. Once approved by the County Surveyor, a copy of the recorded final plat must be submitted to the City Planning Department.

Appendix A

**MILWAUKIE PLANNING**

6101 SE Johnson Creek Blvd
Milwaukie OR 97206
503-786-7630
planning@milwaukieoregon.gov

Application for Land Use Action

Master File #: MLP-2025-001; NR-2025-001

Review type*: ☐ I ☒ II ☐ III ☐ IV ☐ V

VR-2025-001

CHECK ALL APPLICATION TYPES THAT APPLY:☐ Amendment to Maps and/or

Ordinances:

- ☐ Comprehensive Plan Text Amendment
- ☐ Comprehensive Plan Map Amendment
- ☐ Zoning Text Amendment
- ☐ Zoning Map Amendment

☐ Code Interpretation☐ Community Service Use☐ Conditional Use☐ Development Review☐ Director Determination☐ Downtown Design Review☐ Extension to Expiring Approval☐ Historic Resource:

- ☐ Alteration
- ☐ Demolition
- ☐ Status Designation
- ☐ Status Deletion

☒ Land Division:

- ☐ Final Plat
- ☐ Lot Consolidation
- ☒ Partition
- ☐ Property Line Adjustment
- ☐ Replat
- ☐ Subdivision
- ☐ Miscellaneous:
 - ☐ Barbed Wire Fencing
 - ☐ Mixed Use Overlay Review
 - ☐ Modification to Existing Approval
 - ☒ Natural Resource Review**
 - ☐ Nonconforming Use Alteration
- ☐ Parking:
 - ☐ Quantity Determination
 - ☐ Quantity Modification
 - ☐ Shared Parking
 - ☐ Structured Parking
 - ☐ Planned Development

☐ Residential Dwelling:

- ☐ Accessory Dwelling Unit
- ☐ Duplex
- ☐ Manufactured Dwelling Park
- ☐ Temporary Dwelling Unit
- ☐ Sign Review

☐ Transportation Facilities Review☒ Variance:

- ☐ Use Exception
- ☐ Variance
- ☐ Willamette Greenway Review

☐ Other:☐ Use separate application forms for:
Annexation and/or Boundary Change

- Compensation for Reduction in Property
- Value (Measure 37)
- Daily Display Sign
- Appeal
- Appeal

RESPONSIBLE PARTIES:**APPLICANT** (owner or other eligible applicant—see reverse): Oregon Liquor and Cannabis Commission (OLCC)

Mailing address: 9079 SE MCLOUGHLIN BLVD, MILWAUKIE, OR State/Zip: OR, 97222

Phone(s): 503-655-8717

Email:

Please note: The information submitted in this application may be subject to public records law.

APPLICANT'S REPRESENTATIVE (if different than above): Clackamas County (Attn: Jeffrey Munns)

Mailing address: 2051 Kaen Road Oregon City, OR 97045 State/Zip: OR, 97045

Phone(s): 503-655-8362

Email: J Munns@clackamas.us

SITE INFORMATION:

Address: 9201 SE MCLOUGHLIN BLVD Map & Tax Lot(s): 11E26AA00100

Comprehensive Plan Designation: Industrial Zoning: NME Size of property: 13.5 Acres

PROPOSAL (describe briefly):

A partition to divide the property along centerline of Johnson Creek. Also, a Natural Resource

Review (accounting for Johnson Creek), and a Variance Request to Title 19.402.13(J).

SIGNATURE:

ATTEST: I am the property owner or I am eligible to initiate this application per Milwaukie Municipal Code (MMC) Subsection 19.1001.6.A. If required, I have attached written authorization to submit this application. To the best of my knowledge, the information provided within this application package is complete and accurate.

Submitted by:

Date: 11/21/24

IMPORTANT INFORMATION ON REVERSE SIDE

*For multiple applications, this is based on the highest required review type. See MMC Subsection 19.1001.6.B.1.

WHO IS ELIGIBLE TO SUBMIT A LAND USE APPLICATION (excerpted from MMC Subsection 19.1001.6.A):

Type I, II, III, and IV applications may be initiated by the property owner or contract purchaser of the subject property, any person authorized in writing to represent the property owner or contract purchaser, and any agency that has statutory rights of eminent domain for projects they have the authority to construct.

Type V applications may be initiated by any individual.

PREAPPLICATION CONFERENCE:

A preapplication conference may be required or desirable prior to submitting this application. Please discuss with Planning staff.

REVIEW TYPES:

This application will be processed per the assigned review type, as described in the following sections of the Milwaukie Municipal Code:

- Type I: Section 19.1004
- Type II: Section 19.1005
- Type III: Section 19.1006
- Type IV: Section 19.1007
- Type V: Section 19.1008

****Note:** Natural Resource Review applications **may require a refundable deposit**. Deposits require completion of a Deposit Authorization Form, found at www.milwaukieoregon.gov/building/deposit-authorization-form.

THIS SECTION FOR OFFICE USE ONLY:

FILE TYPE	FILE NUMBER	AMOUNT (after discount, if any)	PERCENT DISCOUNT	DISCOUNT TYPE	DATE STAMP
Master file	MLP-2025-001	\$ 2,000			
Concurrent application files	VR-2025-001	\$ 1,500	25%		
	NR-2025-001	\$ 1,500	25%		
		\$			
		\$			
Deposit (NR only)				<input type="checkbox"/> Deposit Authorization Form received	
TOTAL AMOUNT RECEIVED: \$			RECEIPT #:		RCD BY:
Associated application file #s (appeals, modifications, previous approvals, etc.):					
Neighborhood District Association(s): N/A					
Notes:					



**Oregon Liquor and Cannabis Commission (OLCC) Request for two-lot Partition at
9201 SE MCLOUGHLIN BLVD, along Centerline of Johnson Creek. Associated
with Partition, a Natural Resource Review and Variance.**

Table of Contents

Appendix A.....	Land use Application, Signed
Appendix B.....	Preliminary Plat Checklist, signed
Appendix C.....	Submittal Requirements Sheet, signed
Appendix D.....	Partition, Narrative
Appendix E.....	Natural Resource Review, Narrative
Appendix F.....	Variance Narrative
Appendix G.....	Impact Evaluation and Alternatives Analysis

List of Exhibits:

- Exhibit 1; Preliminary Partition Plan
- Exhibit 2; Natural Resource Zone Plan
- Exhibit 3; Restricted Development Area
- Exhibit 4; Existing Vegetation Conditions Map
- Exhibit 5; Tax Map showing no tracts
- Exhibit 6; Title Report
- Exhibit 7; Location plan

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Appendix B



MILWAUKIE PLANNING
 6101 SE Johnson Creek Blvd
 Milwaukie OR 97206
 503.786.7630
planning@milwaukieoregon.gov

Preliminary Plat Checklist and Procedures

All applications for partitions and subdivisions require submission of preliminary development plans and supporting information in accordance with the Milwaukie Land Division Ordinance. In special cases, certain items listed below may not be required and can be waived by staff. All items below must be submitted except when authorized by staff signature at the end of the form. Errors, omissions, or poor quality may result in the application being rejected or declared incomplete pursuant to the Milwaukie Zoning Ordinance and/or Land Division Ordinance. The Zoning and Land Division Ordinances can be found here: www.qcode.us/codes/milwaukie/.

One hard copy and an electronic version of all submittal materials are required.

Application Checklist

1. Detailed description of how the proposal complies with Land Division Ordinance Section 17.12 Application Procedure and Approval Criteria. *See attached Narrative*
2. Detailed description of how the proposal complies with Land Division Ordinance Section 17.16 Application Requirements and Procedures. *See attached Narrative*
3. Detailed description of how the proposal and application complies with Land Division Ordinance Section 17.20 Preliminary Plat including the following minimum requirements:
 - a. Preliminary plats shall be prepared by an Oregon registered land surveyor. *Okay, Compass Surveying*
 - b. The following general information shall be submitted with the preliminary plat:
 - 1) Proposed name of the subdivision/partition. The name shall not duplicate nor resemble the name of another subdivision in the county. Subdivision names shall be approved by the County Surveyor in accordance with Oregon Revised Statutes Chapter 92. *named OLCC Partition*
 - 2) Appropriate identification clearly stating the map is a preliminary plat. *Done*
 - 3) Location by section, township, and range; and a legal description sufficient to define the location and boundaries of the area to be divided. *Done*
 - 4) Names and addresses of the owner, subdivider, and engineer or surveyor. *Done*
 - 5) Information specified in Section 17.20.060.A.10 related to middle housing land divisions (if applicable). *N/A*
 - 6) Other information as may be specified on application forms and checklists prescribed by the Planning Director.
 - c. Vicinity map shall be drawn at an appropriate scale, showing all existing subdivisions, streets, and unsubdivided land between the proposed subdivision and the nearest existing arterial or collector streets; and showing how proposed streets may be extended to connect with existing streets. At a minimum, the vicinity map shall depict future street connections for land within 400 ft of the subject property. *Done*
4. Existing conditions plan including the following):

Since no development is proposed, the existing condition elements may also be placed on the preliminary plan

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 Rev. 6/2022

- a. Location, width, and names of all existing or platted streets within or adjacent to the tract, together with easements, railroad right-of-way, and other important features, such as section lines and corners, city boundary lines, and monuments. Done, See Partition Plan
 - b. Contour lines related to an established benchmark or other datum approved by the Engineering Director, with intervals at a minimum of 2 ft for slopes up to 10% and 5 ft for slopes over 10%. Done, See Partition Plan
 - c. Location within the area to be divided, and in the adjoining streets and property, of existing sewers, water mains, culverts, storm drain system, and electric conduits or lines proposed to service the property to be subdivided, and invert elevations of sewer manholes, drain pipes, and culverts. Done, See Partition Plan
 - d. Zoning and existing uses within the tract and 200 ft on all sides, including the location and use of all existing structures indicating those that will remain and those to be removed. Done, See Partition Plan
 - e. Approximate location of areas subject to inundation or stormwater overflow with approximate high-water elevation. Location, width, direction, and flow of all watercourses on or abutting the tract including wetlands and watercourses as shown on City-adopted natural resource and Title 3 maps. SFHA delineated on Preliminary Partition. All other water resources noted in the Natural Resource Review
 - f. Natural features such as rock outcroppings, drainages whether seasonal or perennial, wooded areas, and isolated trees, including type and caliper.
 - g. Floodway and floodplain boundary. Done, See Partition Plan
 - h. Areas containing slopes of 25% or greater Done, See Partition Plan
5. The preliminary plat plan shall include the following information:
- a. Date, north point, scale, address, assessor reference number, and legal description. Done, See Partition Plan
 - b. Name and address of the record owner or owners and of the person who prepared the site plan. Done, See Partition Plan
 - c. Approximate acreage and square feet under a single ownership or, if more than one ownership is involved, the total contiguous acreage of all landowners directly involved in the partition. Done, See Partition Plan
 - d. For land adjacent to and within the area to be divided, the locations, names, and existing widths of all streets, driveways, public safety accesses, easements, and right-of-ways; location, width, and purpose of all other existing easements; and location and size of sewer and waterlines, drainage ways, power poles, and other utilities. Done, See Partition Plan
 - e. Location of existing structures, identifying those to remain in place and those to be removed. Done, See Partition Plan
 - f. Dimensioned lot design and layout, showing proposed setbacks, landscaping, buffers, driveways, lot sizes, and relationship to existing or proposed streets and utility easements. Done, See Partition Plan
 - g. Existing development and natural features for the site and adjacent properties, including those properties within one 100 ft of the proposal, showing buildings, mature trees, topography, and other structures. Done, See Partition Plan
 - h. Elevation and location of flood hazard boundaries. Done, See Partition Plan
 - i. The location, width, name, and approximate centerline grade and curve radii of all streets; the relationship of all streets to any projected streets planned by the City; Done, See Partition Plan

indication as to whether roads will continue beyond the plat; and existing and proposed grade profiles.

j. Lot and block numbers. **Done, See Partition Plan**

k. For middle housing land divisions: **N/A**

i. separate utility connections for each dwelling unit;

ii. proposed easements necessary for each dwelling unit on the plan for:

- 1) Locating, accessing, replacing and servicing all utilities;
- 2) Pedestrian access from each dwelling unit to a private or public road;
- 3) Any common use areas or shared building elements;
- 4) Any dedicated driveways or parking; and
- 5) Any dedicated common area.

6. A conceptual plan shall be provided for complete subdivision or partitioning of the property, as well as any adjacent vacant or underutilized properties, so that access issues may be addressed in a comprehensive manner. The concept plan shall include documentation that all options for access have been investigated including shared driveways, pedestrian accessways, and new street development. **No development or new access points proposed. Access will remain the same as existing, and no change to the intensity of use. Preliminary plans, vicinity maps, and tax maps show the existing road configuration.**

7. A detailed narrative description demonstrating how the proposal meets all applicable provisions of this title and Title 19. **See Narrative: staff will address the NME standards, the Natural resource standards, and any other relevant standard in Title 19.**

8. Plans and drawings as necessary to demonstrate compliance with all applicable provisions of chapters of this title and Title 19. **See the concurrent submittal for the natural resource review.**

9. A drainage summary report and plan that demonstrates estimated pre- and post-development flows, stormwater collection and management measures, and proposed discharges.

We discussed this with City Planning Staff, and concluded that a drainage/storm water summary report is not needed given no development proposed

10. Proposed deed restrictions, if any, in outline form.

See references on plat. A title report may as be supplied if required.

11. Improvements to be made by the developer and the approximate time such improvements are to be completed. Sufficient detail regarding proposed improvements shall be submitted so that they may be checked for compliance with the objectives of this title, State law, and other applicable City ordinances. If the nature of the improvements is such that it is impractical to prepare all necessary details prior to approval of the preliminary plat, the additional details shall be submitted with the request for final plat approval. **No Development Proposed/N/A**

** 12. Location plan drawn to an appropriate scale (on paper no larger than 8½ by 11 inches) showing nearest cross streets, drives opposite the site, and location of buildings and parking areas on adjoining lots. **See Exhibit 7**

Application Procedures

1. A preapplication conference with City staff is highly recommended. **A pre-app was not needed since no development will be proposed on the CC site.**
2. Appointments may be made for review of preliminary plat requirements through the Planning Department in advance of formal submission. **We will take advantage of this, and contact planning staff before submittal**
3. The Planning Department coordinates with appropriate City departments, the Fire District, and other involved agencies as needed. **Acknowledged; we have discussed frontage and utilities with staff, and there will be no warranted improvements since no actual development is proposed.**
4. Applications will be screened for completeness at the time of submission. Incomplete applications will not be accepted. **Acknowledged**

Milwaukie Preliminary Plat Checklist
Page 4 of 4

Please contact Milwaukie Planning staff at 503-786-7630 or planning@milwaukieoregon.gov with any questions or help with this form.

DENNIS DOHERTY
Applicant Name

[Signature]
Applicant Signature

11/21/24
Date

Waived Items

Milwaukie Planner Signature

Date

Appendix C



MILWAUKIE PLANNING
 6101 SE Johnson Creek Blvd
 Milwaukie OR 97206
 503-786-7630
planning@milwaukieoregon.gov

Submittal Requirements

For all Land Use Applications
 (except Annexations and Development Review)

All land use applications must be accompanied by a signed copy of this form (see reverse for signature block) and the information listed below. The information submitted must be sufficiently detailed and specific to the proposal to allow for adequate review. Failure to submit this information may result in the application being deemed incomplete per the Milwaukie Municipal Code (MMC) and Oregon Revised Statutes.

Contact Milwaukie Planning staff at 503-786-7630 or planning@milwaukieoregon.gov for assistance with Milwaukie's land use application requirements.

1. **All required land use application forms and fees**, including any deposits.

Applications without the required application forms and fees will not be accepted.

2. **Proof of ownership or eligibility to initiate application** per MMC Subsection 19.1001.6.A.

Where written authorization is required, applications without written authorization will not be accepted.

3. **Detailed and comprehensive description** of all existing and proposed uses and structures, including a summary of all information contained in any site plans.

Depending upon the development being proposed, the description may need to include both a written and graphic component such as elevation drawings, 3-D models, photo simulations, etc. Where subjective aspects of the height and mass of the proposed development will be evaluated at a public hearing, temporary onsite "story pole" installations, and photographic representations thereof, may be required at the time of application submittal or prior to the public hearing.

4. **Detailed statement** that demonstrates how the proposal meets the following:

A. All applicable development standards (listed below):

1. **Base zone standards** in Chapter 19.300.
2. **Overlay zone standards** in Chapter 19.400.
3. **Supplementary development regulations** in Chapter 19.500.
4. **Off-street parking and loading standards and requirements** in Chapter 19.600.
5. **Public facility standards and requirements**, including any required street improvements, in Chapter 19.700.

B. All applicable application-specific approval criteria (check with staff).

These standards can be found in the MMC, here: www.qcode.us/codes/milwaukie/

5. **Site plan(s), preliminary plat, or final plat** as appropriate.

See Site Plan, Preliminary Plat, and Final Plat Requirements for guidance.

6. **Copy of valid preapplication conference report**, when a conference was required.

APPLICATION PREPARATION REQUIREMENTS:

- Five hard copies of all application materials are required at the time of submittal. Staff will determine how many additional hard copies are required, if any, once the application has been reviewed for completeness. Provide an electronic version, if available.
- All hard copy application materials larger than 8½ x 11 in. must be folded and be able to fit into a 10- x 13-in. or 12- x 16-in. mailing envelope.
- All hard copy application materials must be collated, including large format plans or graphics.

ADDITIONAL INFORMATION:

- Neighborhood District Associations (NDAs) and their associated Land Use Committees (LUCs) are important parts of Milwaukie's land use process. The City will provide a review copy of your application to the LUC for the subject property. They may contact you or you may wish to contact them. Applicants are strongly encouraged to present their proposal to all applicable NDAs prior to the submittal of a land use application and, where presented, to submit minutes from all such meetings. NDA information: www.milwaukieoregon.gov/citymanager/what-neighborhood-district-association.
- By submitting the application, the applicant agrees that City of Milwaukie employees, and appointed or elected City Officials, have authority to enter the project site for the purpose of inspecting project site conditions and gathering information related specifically to the project site.
- Submittal of a full or partial electronic copy of all application materials is strongly encouraged.

As the authorized applicant I, (print name) Dennis Doherty, attest that all required application materials have been submitted in accordance with City of Milwaukie requirements. I understand that any omission of required items or lack of sufficient detail may constitute grounds for a determination that the application is incomplete per MMC Subsection 19.1003.3 and Oregon Revised Statutes 227.178. I understand that review of the application may be delayed if it is deemed incomplete.

Furthermore, I understand that, if the application triggers the City's sign-posting requirements, I will be required to post signs on the site for a specified period of time. I also understand that I will be required to provide the City with an affidavit of posting prior to issuance of any decision on this application.

Applicant Signature: 

Date: 11/21/24

Official Use Only

Date Received (date stamp below):

Received by: _____



Appendix D

Two-Lot Partition of the Oregon Liquor Cannabis Commission (OLCC) Property Project Summary, Vicinity Maps, and Narrative for Title 17 and 19

Project: OLCC request for Preliminary Partition Approval.

Location: T 1 South, R 1 East, Section 26, Qtr. A, Qtr. A, Tax Lot 00100. Deed reference: Book 473 Page 699, Clackamas County Deed records. (Exhibit 6)

Address: 9201 SE MCLOUGHLIN BLVD, Milwaukie, 97222

Map and Tax Lot #: 12E26AA00100

Owner: Oregon State Liquor Control Commission (OLCC): 9079 SE MCLOUGHLIN BLVD, MILWAUKIE, OR 97222 (mailing address)

Applicant: OLCC: 9201 SE MCLOUGHLIN BLVD, MILWAUKIE, OR 97222 (situs)

Surveyor: Compass Land Surveyors; 4107 SE International Way, Suite 705
Milwaukie, Oregon 97222, Attn: Don Devlaeminck, PLS

Associated Exhibits:

Exhibit 1; Preliminary Partition Plan

Exhibit 6; Title Report

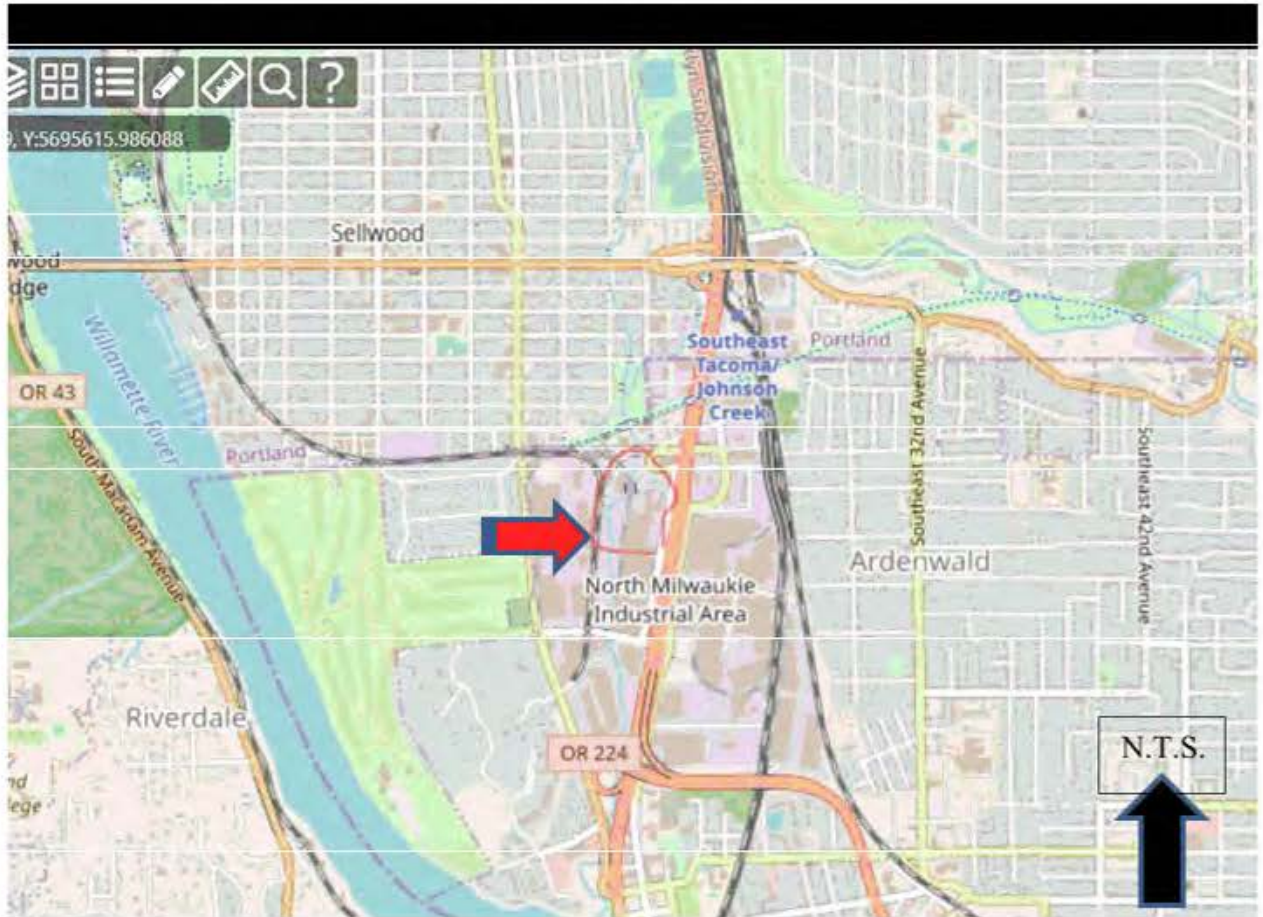
Exhibit 7; Location Plan

Project Overview

OLCC requests to divide the subject property along the centerline of Johnson Creek, retaining the eastern section for the OLCC and creating a new parcel for Clackamas County's existing Community Correction facilities (Corrections). Currently, OLCC has its facilities east of Johnson Creek. Corrections operates their programs in two main building west of Johnson Creek. If this request is granted, Clackamas County would own the actual land where the buildings and improvements are located, instead of leasing the land from current or future owners. The subject property is roughly 14.5 acres. The "Corrections" property, west of the creek, shown as Proposed Parcel 1 on the preliminary plan, will have an area of roughly 3.6 acres. The remaining OLCC property, shown as Proposed Parcel 2 on the preliminary plan (east of creek), will have an area of roughly 10.9 acres. With this request, there are no proposed changes to

operations of the Community Corrections facilities or OLCC facilities. No changes to access, circulation, parking, or structures are proposed. There will be no removal of any vegetation. The west sector of this property has been developed with the Corrections buildings for several years, and there is no plan to change the overall use. The Corrections operation will continue to provide a vital service for County and City citizens. With the ownership of land being vested with the County, future issues arising from leasing and/or encumbrances can be minimized, and the Corrections facilities shall have a more secure future and continue serving the community.

VICINITY MAP



VICINITY MAP #2:

Title 17 Narrative:

Title 17

17.16.010 APPLICATION REQUIRED

Applicant has submitted the necessary applications as described above.

17.16.020 DETERMINATION OF COMPLETENESS

Staff acknowledges that a completeness determination will be made and if deemed incomplete, will have 15 days to make complete.

17.16.030 WAIVER OF SUBMISSION REQUIREMENTS

A. Certain application submission requirements may be waived at the discretion of the Planning Director subject to meeting the following conditions:

1. The applicant shows good cause for the requested waiver;
2. The waiver does not compromise a proper and complete review; and
3. The information is not material to describing the proposal or demonstrating compliance with approval criteria.

Staff has confirmed with City Planning staff that a Pre-Application conference was not required given that no development is proposed. Additionally, a storm water report is not necessary since there is no change to development or impervious surfaces.

B. Application submission requirements that may not be waived include:

1. Signed and completed application form, submission requirements form, and plan checklist;
2. Property owner's authorization for application to be made;
3. Detailed narrative description that specifies how the proposal complies with applicable codes; and
4. Required plans, maps, and drawings.

All items listed in this subsection shall be submitted with the application packet.

17.16.060 PRELIMINARY PLAT FOR PARTITION AND SUBDIVISION

Required fee shall be submitted. Required checklist submitted and signed. Application signed by appropriate parties, and all other information specified here shall be submitted. Ch. 17.20 shall be reviewed below.

CHAPTER 17.18 Approval Criteria and Procedures:

Normally, a Partition application would be reviewed as a Type II land use review process. But, since this request shall be accompanied by a Type III Natural resource Review, and Variance request, the Partition application shall be reviewed concurrently with the natural resource review as Type III (17.12.020D1 and 19.911.3 C). There are no plans to further partition any areas of the property. Thus, a subdivision review is not required (17.12.020D2). This request complies with purposes of Title 17 (17.12.010)

Subsections: 17.18.020 APPROVAL CRITERIA FOR PRELIMINARY PLAT:

1. The proposed preliminary plat complies with Title 19 of this code and other applicable ordinances, regulations, and design standards,

Staff will provide a supplemental narrative addressing all relative criteria for Title 19 related to the NME zone, and Natural resource zone. No tree removal is planned with this development.

2. The proposed division will allow reasonable development and will not create the need for a variance of any land division or zoning standard.

No Variances associated with Title 17 are proposed. The unique natural layout of the site including Johnson Creek will require the proposed parcel to have natural, non-rectilinear perimeter. A Variance is requested for the natural resource zone requirements for a tract.

3. The proposed subdivision plat name is not duplicative and the plat otherwise satisfies the provisions of ORS 92.090(1).

N/A, this is a partition

4. The streets and roads are laid out so as to conform to the plats of subdivisions already approved for adjoining property as to width, general direction, and in all other respects unless the City determines it is in the public interest to modify the street or road pattern.

There will be no change to access or street location. The project will conform to the existing plat patterns and the historic street patterns that make up this industrial area.

5. A detailed narrative description demonstrating how the proposal conforms to all applicable code sections and design standards.

That is being supplied with this narrative and other appendixes.

Subsection 17.12.040B- Staff acknowledges and accepts that conditions of approval may be granted by the review authority. However, access strips are not expected since the entire property is bounded by Johnson Creek and McBrod Ave, and there are no adjoining areas where access needs to be continued.

17.18.030 APPROVAL CRITERIA FOR FINAL PLAT

Applicant acknowledges that there is Type I final plat review procedure. Applicant will comply with all valid conditions of approval set forth by the review authority, make notations on final plat as directed, and will be prepared a valid Oregon registered surveyor.

17.20.010 SUBMISSION OF PLANS

As described below, adequate plans have been submitted.

17.20.020 SCALE

An adequate and professional scale has been presented on the preliminary plan. Scale is 1"=60'.

17.20.030 GENERAL INFORMATION TO BE SHOWN ON THE PRELIMINARY PLAT

Applicant has confirmed at all requisite information is shown on the preliminary plat.

17.20.040 BUILDING LINES PROHIBITED

Platted building lines are not proposed and there are no encroachments between Parcel 1 and Parcel 2

17.20.050 EXISTING CONDITIONS

Staff confirmed with City staff, and found that the existing conditions map and preliminary plat map may be combined into one preliminary plat sheet as no development is proposed. All items of the existing conditions are established on the preliminary plat map prepared by Compass Land Surveying.

17.20.060 PROPOSED CONDITIONS

All required information has been included in the preliminary partition plan prepared by Compass Land Surveying.

CHAPTER 17.22 FINAL PLAT

Applicant acknowledges that several filing requirements will be required to record the final plat. Applicant does not expect any improvements or exactions with this application as all development is existing and there is no require for future development, but still acknowledges subsection 050 and 060.

17.28.010 CONFORMITY OF SUBDIVISION

Applicant shall comply with all City plans, though no specific design requirements or special improvements have been identified.

17.28.020 PUBLIC FACILITY IMPROVEMENTS

While one new parcel is planned, there are no identified public facility upgrades or required public infrastructure as all development is existing and there is no change in the site development. Note, this section is still applicable and shall comply where indicated by the Planning Commission.

17.28.030 EASEMENTS

All utilities have been shown on the preliminary plat, and we will work with public works to ensure that all applicable easements are delineated on the final plat. It is noted that this Subsection appears to only apply to subdivisions.

17.28.040 GENERAL LOT DESIGN

A. Size and Shape: lot size, width, shape, and orientation must be appropriate for the location and the type of use contemplated. Minimum lot standards must conform to Title (1) Lot shape standards may be adjusted subject to Section 19.911 Variances.

The proposed parcel configuration conforms to the natural drainage patters of the lot. Staff will address minimum lot standards in the Title 19 narrative (Appendix E).

B. Rectilinear Lots Required: Lot shape must be rectilinear, except where not practicable due to location along a street radius, or existing lot shape.

Given the existing lot shape, street locations, and the historic development patterns on site, rectilinear lots are possible. Additionally, there is no possibility

of creating a rectangular lot given Johnson Creek courses through the entire property. The exception noted above is warranted in this case.

C. Limits on Compound Lot Line Segments: Cumulative lateral changes in direction of a side or rear lot line exceeding 20% of the distance between opposing lot corners along a given lot line may only be permitted through the variance provisions of MMC Subsection 19.911. Changes in direction must be measured from a straight line drawn between opposing lot corners.

The side yard setbacks of Parcels 1 and Parcels 2 (north and south lot lines) are either a true east west direction, or form part a long curve that contains Ochoco Street at the north of the lot. As discussed above, the rear lines of both lots will be Johnson Creek, which forms a natural meandering boundary. In consultation with City staff, and given that the natural boundary cannot be avoided, a Variance in this case is not required. This standard is met.

D. Limits on Double and Reversed Frontage Lots

Double frontage and reversed frontage lots should be avoided, except where essential to provide separations of residential development from railroads, traffic arteries, or adjacent nonresidential uses, or to overcome specific disadvantages of topography and orientation.

With the creation of two parcels, the OLCC property will no longer have Double or Reverse frontage. Parcel 1 will be considered a corner lot on McBrod Ave and Parcel 2 a corner lot on HWY 99E and Ochoco.

E. Measurement of Required Frontage

Pursuant to the definition and development standards contained in Title 19 for frontage, required frontage shall be measured along the street upon which the lot takes access.

Both proposed lots will be corner lots, with ample frontage on McBrod, Ochoco/Hwy99E Ramp, and Hwy 99E frontage road that has the requisite infrastructure in place. Neither lot will be a flag lot or back lot.

17.28.050 through 17.28.70 FLAG LOT AND BACK LOT DEVELOPMENT AND FUTURE ACCESS, DESIGN STANDARDS, SUBDIVISIONS

This partition will not create any flag lots or back lots, and there is no need to dedicate future access/rights of way since the lots have ample frontage on public roads. Design standards need not be addressed, and this request is for a Partition, not a subdivision. These standards are not applicable.

17.28.080 PUBLIC OPEN SPACES

No new development is proposed with this partition, and no public spaces such as parks, have been identified on the Comprehensive Plan. Public Open Spaces are not required with this request.

17.28.090 LAND DIVISION WITH LEFTOVER PARCEL OR LOT

This is not a residential land division. This criteria is not applicable

17.32.010 IMPROVEMENT PROCEDURES

No new public improvements are expected with this development. The site is already completely developed, with full frontage improvements. Also, neither the County nor OLCC has plans to redevelop any portion of the property. Lastly, staff consulted with City Planning and Engineering staff, who concluded no additional improvements are warranted on this fully constructed property. Applicant can provide a map showing all existing public and/or private utilities and utility easements on the subject property.

17.32.020 UTILITY UNDERGROUNDING

Applicant understands that undergrounding the site's utilities is a requirement for any new or relocated connections. However, no new development is proposed, so no utility undergrounding is required.

17.32.030 GUARANTEE

There are no anticipated improvements warranted with this proposal. No new development is proposed. Applicant nonetheless acknowledges that a Guarantee is required for any new improvements

17.44.010 VARIANCE

As discussed above, a variance is being requested, but not to the above standards. The Variance request has to do with "tract" provisions set forth in the Natural Resource Overlay district, Title 19.402.

Title 19 Narrative:

CHAPTER 19.300 BASE ZONES

19.312 NORTH MILWAUKIE INNOVATION AREA

19.312.1 (B) Purpose "North Milwaukie Employment" Zone (NME)

Both the OLCC site and Corrections site are long established employment providers in the City. The OLCC site is a major distribution center and

administrative hub for the State's liquor products. The use is clearly a high level transportation and processing facility. The County Correction site supports the County's work release program, which is appropriate for the NME zone due to its unique characteristics. Again, both facilities provide well-paying jobs for the surrounding community. The proposed partition will not change any of these characteristics, and the entire site will continue to comply with the goals and policies of the NMIA plan.

19.312.2 "Uses"

The existing OLCC site is an outright permitted use, specifically wholesale trading, warehousing, and distribution. The County Corrections site is a Community Service Use. As noted above, both sites and their associated structures have been established in Milwaukie for decades. Both uses comply with this subsection. Since no new development is proposed, there is no additional need to analyze the table of uses for compliance.

19.312.5 "Development Standards"

The below table lists various design standards. Many of the standards related to building design, landscaping, frontage occupancy, ground floor space, etc., are not applicable given the both the OLCC Site and Community Corrections site were lawfully developed decades ago, under different criteria. Staff will address each section nonetheless.

Table 19.312.5			
North Milwaukie Innovation Area — Summary of Development Standards			
Standard	NME	MUTSA	Response
A. Lot Standards			
1. Minimum lot size (sq ft)	None	None	No minimum. Standard is met.
2. Minimum street frontage (ft)	None	None	No minimum. Standard is met.
B. Development Standards			
1. Floor area ratio (min/max)	0.5:1/3:1	0.5:1/3:1	N/A, buildings are existing.
2. Building height (ft) Minimum Maximum (Height bonus available)	25 45-90	25 45-90	N/A, buildings are existing.
3. Setbacks (ft) Minimum front yard setback	None	None	N/A, existing building. Still, front setbacks are ~9' for corrections building south, ~12' for

Maximum front yard setback	10-30 ¹	10-30 ¹	corrections building north, ~13' OLCC structure. Front setbacks met.
Side and rear setbacks	None ²	None ²	No side or rear setbacks required, these standards are met.
4. Maximum lot coverage	85%	85%	Parcel 1~16%-- Parcel 2~33%, This standard is met
5. Minimum Landscaping	15%	15%	N/A, Landscaping established through existing buildings.
6. Flexible ground-floor space	Yes, where applicable	Yes, where applicable	N/A, buildings are existing.
7. Off-street parking required	Yes	Yes	N/A, Off street parking sufficient for both sites.
8. Frontage occupancy	50%	50%	N/A, existing building
C. Other Standards			
Residential density requirements (dwelling units per acre)			N/A
a. Stand-alone residential			
(1) Minimum	N/A	None	
(2) Maximum	N/A	None	
b. Mixed-use buildings	N/A	None	
2. Signs	Yes	Yes	N/A signs are pre-existing and no new signs are proposed.
3. Design Standards	Yes	Yes	N/A, no new development proposed.

19.312.6 "Detailed Development Standards"

We reviewed these standards and found that they only relate to new development. Since no development is actually proposed with this Partition request, this criteria is not applicable.

19.312.7 "Development Standards for All Uses in the MUTSA and on NME Key Streets"

Similar to the above criteria, these standards do not apply because the buildings are pre-existing, and no new development is proposed.

CHAPTER 19.400 OVERLAY ZONES AND SPECIAL AREAS

19.402 NATURAL RESOURCES NR

As discussed in the project narrative and findings above, This Partition request will also require a Type III Natural Resources Review. The findings, as well as all additional submittal items, shall be addressed in Appendix E and Appendix G.

CHAPTER 19.500 SUPPLEMENTARY DEVELOPMENT REGULATIONS

This section of Title 19 pertains to development standards for new structures and uses. Since no development is proposed, and the existing buildings have been lawfully established, there is no need to address this section in detail.

CHAPTER 19.600 OFF-STREET PARKING AND LOADING

Off-Street Parking and Loading areas are not changing, and there is no new development proposed. The existing buildings, parking, and loading areas have been lawfully established, and there is no need to address this section in detail.

CHAPTER 19.700 "PUBLIC FACILITY IMPROVEMENTS"

While Partitions are subject to these provisions, this section is primarily related to exactions imposed by the City, for needed public facilities such as roadway improvements. In the case of this proposal, however, there will be no change to the existing uses on the subject property, and no proposed development whatsoever. Since there is no change to the development, the Engineering Department has not indicated that a Traffic impact Assessment (TIA) is required.

Title 19.708 sets forth "Transportation Facility Requirements," and contains detailed street design standards that are generally required when a new development is proposed. In the case of this Partition request, no development is proposed, and there are no changes to the use, parking, circulation, or any other aspect of development. Moreover, the applicant met with City Planning and Engineering staff who concluded that frontage improvements and other transportation improvements are not required with this Partition request. The site is already developed with adequate frontage improvements, and there are no additional facilities warranted with this proposal. These standards are met.

CHAPTER 19.800 NONCONFORMING USES AND DEVELOPMENT

Since no development is proposed, analysis of nonconforming development need not be addressed. The site was already lawfully developed. We recognize that nonconforming uses in this chapter do not extend to pre-existing development associated with the Natural Resource Zone.

CHAPTER 19.900 LAND USE APPLICATIONS

Table 19.901 requires a Type III land use review for Natural Resource Assessments and Partitions (partitions being a type II land use review concurrently with the Natural

Resource Review as noted above). Also, as discussed above, a Variance request subject to Title 19.911, is being sought for requirements listed in the NR overlay zoning district.

CHAPTER 19.1000 REVIEW PROCEDURES

As discussed above, this application requires review through a Type III Review. City Planning staff has confirmed that Pre-Application conference was not required since no actual development was proposed. Applicant acknowledges the City Planning Commission will be the final Review Authority, unless appealed to the City Council.

CHAPTER 19.1100 ANNEXATIONS AND BOUNDARY CHANGES

Annexations and "Boundary Changes" are not proposed. This criteria does not apply.

CHAPTER 19.1200 SOLAR ACCESS PROTECTION

Solar Access Protections only apply to R-MD zones. This standard is not applicable.



Appendix E:

Natural Resource Review associated with Partition for Oregon Liquor and Cannabis Commission (OLCC) Property

Project: OLCC request for Preliminary Partition Approval.

Location: T 1 South, R 1 East, Section 26, Qtr. A, Qtr. A, Tax Lot 00100. Deed reference: Book 473 Page 699, Clackamas County Deed records.

Address: 9201 SE MCLOUGHLIN BLVD, Milwaukie, 97222

Map and Tax Lot #: 12E26AA00100

Owner: Oregon State Liquor Control Commission (OLCC): 9079 SE MCLOUGHLIN BLVD, MILWAUKIE, OR 97222

Applicant: Same as owner

Associated Exhibits and Appendix:

Exhibit 2; Natural Resource Zone Plan

Exhibit 3; Restricted Development Area

Appendix G; Impact Evaluation and Alternatives Analysis.

Project Overview

Applicant requests to divide the subject OLCC property along the centerline of Johnson Creek. Johnson Creek runs in a north-to-south direction, bifurcating the entire OLCC parcel into two distinct sections, a westerly section (the Corrections facilities) and an easterly section (The OLCC facilities). There are two environmental "Overlay Zones" associated with this property; The Water Quality Resources (WQR) overlay Zone and the Habitat Conservation Area (HCA) overlay zone. Zoning requirements for both the WQR and HCA are set forth in Chapter 19.402. Although no development is proposed with this request, Table 19.402.3.K requires "Partition" applications be reviewed under a Type III review process. Because there is no new development proposed, the applicant's Natural Resource Review will account primarily for existing disturbances on site, and delineate protection areas for the WQR and HCA, while subtracting areas that are already developed (See exhibits 2 and 3). For general reference, below is an image of the WQR, derived from the City's Zoning and Land Use GIS application (See Image

1-vegetated corridor). Below Image 1 is the adopted HCA map (See Image 2-HCA Map). Image 3 shows both overlays combined (See Image 3-WQR and HCA Map). Also prepared is a natural resource plan (Exhibit 2) detailing existing disturbances, and delineating the natural resource overlays. Finally, the City's GIS application for zoning and development confirmed that the following overlays are not present on the subject property: Willamette Greenway (19.401), Historic Preservation (19.403), Flex Space (19.404) and Airport (19.405).

Image 1-Vegetated Corridor (WQR):



Image 2-HCA Map

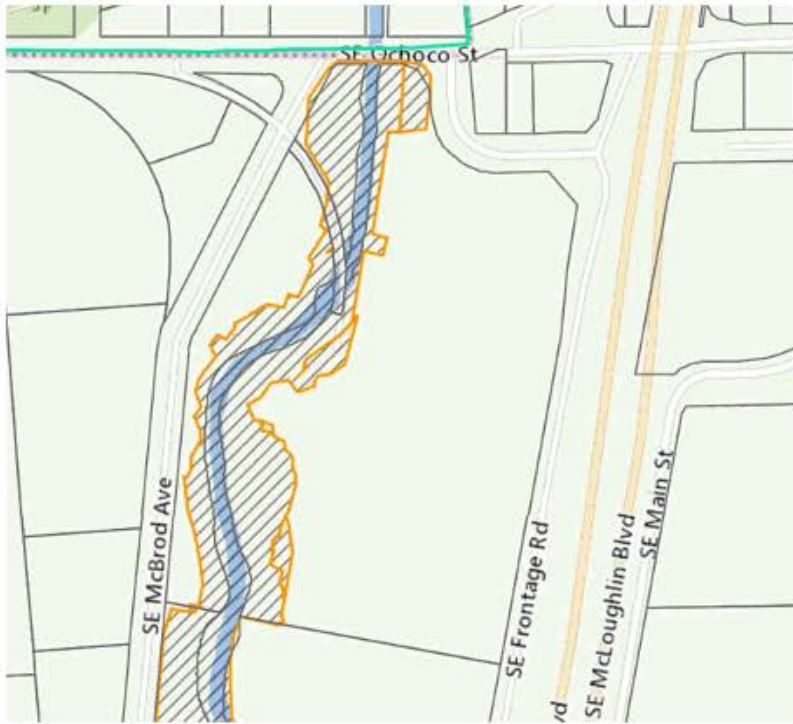
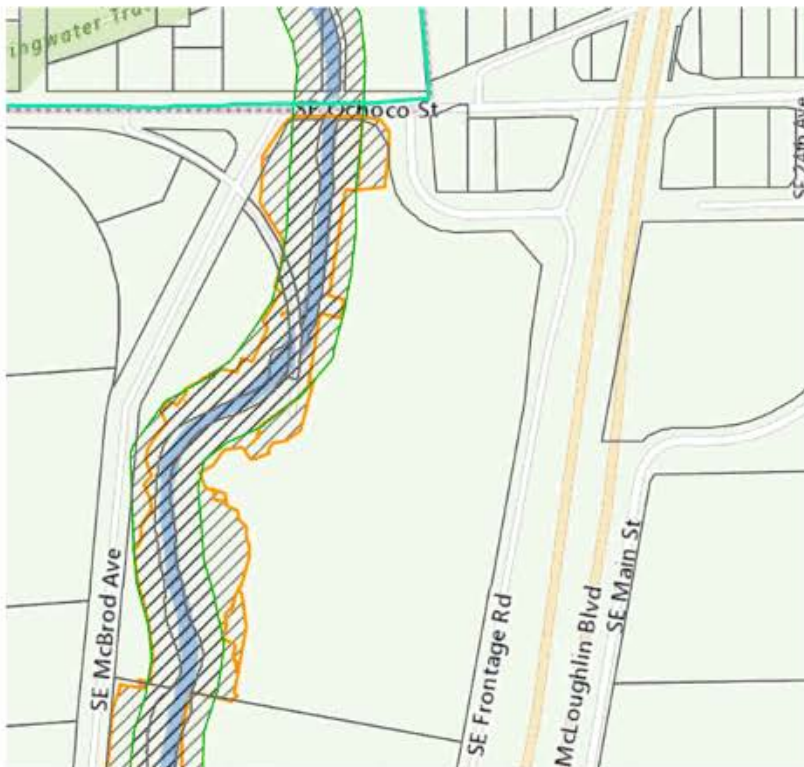


Image 3: WQR and HCA Map:



Title 19

Chapter 19.402 "Natural Resources"

19.402.1 Intent:

This application request satisfies the intent of this section. It identifies the WQR and HCA, shall delineate future protection areas on the final plat, and will preserve existing native vegetation, by not proposing any new development therein. In particular, it should be noted under Subsection 19.402.1(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; or 2) Impose any unreasonable hardship against the continued maintenance of existing legal site conditions."

Since there is no development proposed, and since the site has been lawfully developed for decades, there should be no changes to the site's overall operations, and no unreasonable conditions to restore major sections of the Johnson Creek corridor to predevelopment conditions.

19.402.2: Coordination with Other Regulations:

Since no development is proposed, there is likely no need for erosion control, floodplain management, or tree code protections with this development. Nonetheless, applicant will coordinate with all applicable Titles of Milwaukie's Code. It is noted that Nonconforming Use regulations in Chapter 19.800 do not apply to overlays set forth in Chapter 19.402. All existing structures and uses are proposed and there are no changes with this request, the entire site shall continue to comply with all local, regional, state, or federal regulations.

19.402.3 Applicability:

The site contains both HCA and WQRA and is the subject of a Partition request. As noted above, Table 19.402.3.K, requires that Partition applications be reviewed under a Type III land use review process.

19.402.4 Exempt Activities

No development is proposed with this request, and there is no specific reason to review Exempt Activities at this time. In consultation with City Planning staff, it was noted that although the site predates the HCA and WQR, it does not constitute an Exempt Activity.

19.402.5 Prohibited Activities

The applicant has not been engaged in, nor plans to implement any of the prohibited activities listed in this section.

19.402.8 Activities Requiring Type III Review:

A. The activities listed below shall be subject to the general discretionary review criteria provided in Subsection 19.402.12:

See Appendix G.

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

As noted above, this application request is for a Partition, therefore, compliance with Subsections 19.402.13 H and I must be met. Staff consulted with City Planning staff in hopes to apply for a Type II Land Use Review under 19.402.13(G), "Low-Impact Partitions". City Planning staff noted that option is not available, presumably because some of the WQR on site is already developed with pre-existing buildings or impervious cover, and cannot be fully (100 percent)preserved on site. Partition regulations will be discussed below.

19.402.9 Construction Management Plans

Construction Management Plans are reviewed through Erosion Control permits. As discussed above, Erosion Control plan is not expected since no development is proposed.

19.402.10 Natural Resource Management Plans

The applicant has not identified the necessity for a standalone Natural Resource Management plan since no disturbance is proposed. This section is not applicable.

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:

Response: No development is proposed whatsoever with this request. There will be no stockpiling, grading, planting, or construction of any kind. No utilities are proposed either.

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:

Response: No new disturbance to WQRs or HCAs are proposed. Mitigation is not warranted.

19.402.12 General Discretionary Review

Response: An Impact Evaluation and Alternatives Analysis has been prepared. Please reference Appendix G.

19.402.13 Land Division and Property Line Adjustments

A. Boundary Verification

Applicant concurs with HCA Boundary, and establish the Vegetated corridor width as 50-foot wide buffer from the edges of both banks of Johnson Creek. This will be discussed in detail below.

B. Construction Management Plans (CMP)

No new development is proposed, and no new street improvements are expected with this request. Pursuant to subsection 402.13(B)(2), a CMP is not required.

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.

No new development is proposed or anticipated with this request. Therefore, there is no reason to comply with the disturbance criteria and mitigation standards set forth in 19.402.11 or 12.

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:

2. Not complete the mitigation requirements, thus requiring that any subsequent development be subject to review under Section 19.402.

As discussed in detail throughout this request, no new development is proposed or anticipated on the OLCC site. As for the community corrections site, much of the lot is completely developed with existing impervious cover. Except for the grassy area north of the railroad spur, much of the site is covered in buildings or asphalt, and there are no plans, near term or mid-term, to expand development on this site. Applicant acknowledges that any subsequent development be reviewed under Section 19.402

G. Low-Impact Partitions

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

Response: Because some of the previously developed areas encroach into the 50-foot WQR, a Low-Impact Partition is not possible. Thus, compliance with subsection H is required, and an Impacts and Alternatives Analysis has been provided herein.

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:

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.

Response: As discussed in detail herein, the parcel configuration is designed to take full advantage of the natural flow patterns of Johnson Creek. We are committed to preserving any areas that are not otherwise covered by impervious surfaces within a Restricted Development Area (RDA) or Restrictive Easement, to prevent any future development of the onsite WQRs and HCAs

- b. An Impact Evaluation and Alternatives Analysis shall be prepared in accordance with the relevant portions of Subsection 19.402.12.A.

Response: An Impact Evaluation and Alternatives Analysis is being prepared as Appendix G

- 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.

Response: The HCA covers far less than 85% of the total lot area. This criteria is not applicable.

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.

Response: Two preliminary Natural resource maps have been prepared by Compass Land Surveyors; A Natural Resource Zone plan (Exhibit 2) and a Restricted Development Area Plan (Exhibit 3). The natural resource plan shows combined HCA and WQRs, while the Restricted Development Plan shows the combined areas, as they will be restricted from future development in perpetuity. Please note, we have requested a variance to Subsection J, in order to place the Natural Resource areas in an RDA. In either case, these areas will be protected in perpetuity and be protective covenants as noted below.

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.

Response: This is the preferred mechanism chosen. However, the natural resource areas will be delineated as an RDA or Restrictive Easement, instead of a tract. As discussed in detail within the Variance request, a tract will cause undue financial hardships as well as other hardships not typical of the area. The RDA/Restrictive Easement will provide the same natural resource protections, with added benefits, as discussed in the variance request.

- 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.

Response: Not applicable, this is not a residential subdivision.

- 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.

Response: Neither the City or a Private Nonprofit have contacted us, nor it is known if this options is desired or even available. This criteria is not applicable at present.

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.

Response: This requirement is acknowledged, and property owners will comply with any associated conditions of approval.



Appendix F:

Variance Request to Section 19.402.13(J)

Allowing a restrictive development area (RDA) or restrictive easement to contain the Natural Resource Areas (HCA/WQR)

Project: OLCC request for Preliminary Partition Approval.

Location: T 1 South, R 1 East, Section 26, Qtr. A, Qtr. A, Tax Lot 00100. Deed reference: Book 473 Page 699, Clackamas County Deed records.

Address: 9201 SE MCLOUGHLIN BLVD, Milwaukie, 97222

Map and Tax Lot #: 12E26AA00100

Owner: Oregon State Liquor Control Commission (OLCC): 9079 SE MCLOUGHLIN BLVD, MILWAUKIE, OR 97222

Applicant: Same as Owner

Associated Exhibits:

Exhibit 5; Tax Maps Showing No Tracts

Project Overview

Applicant requests to divide the subject OLCC property along the centerline of Johnson Creek. Johnson Creek runs in a north-to-south direction, bifurcating the entire OLCC parcel into two distinct sections, a westerly section (the Corrections facilities) and an easterly section (The OLCC facilities). There are two environmental "Overlay Zones" associated with this property; The Water Quality Resources (WQR) overlay Zone and the Habitat Conservation Area (HCA) being reviewed under a separate Natural Resource Review. The applicant will comply with all standards therein. One standard, however, will cause an unnecessary hardship to the project. The Zoning Ordinance states that "tract(s) shall be identified to distinguish it [the HCA and WQR] from lots or parcels intended for sale." (Title 19.402.13.J.2). While Tracts may be a useful instrument for some residential land divisions, or land divisions that will create new building sites, they propose a hardship to the OLCC property given that the entire site is already developed. The applicant is still proposing to preserve every bit of HCA and WQR, but requests the final plat show a Restrictive Development Area (RDA) or Restrictive Easement with associated restrictive covenant(s) being recorded simultaneously. The RDA or restrictive easement will accomplish the same level of protection that would be provided within a tract. It will be held in perpetuity, and will

have the benefit of a responsible government agency as the underlying owner. We respectfully request the Planning Commission allow a single variance to this criteria, based on the below analysis.

Title 19

Chapter 19.911 “Variances”

19.911.1 Purpose:

Variances provide relief from specific code provisions that have the unintended effect of preventing reasonable development or imposing undue hardship. Variances are intended to provide some flexibility while ensuring that the intent of each development standard is met. Variances may be granted for the purpose of fostering reinvestment in existing buildings, allowing for creative infill development solutions, avoiding environmental impacts, and/or precluding an economic taking of property. Variances shall not be granted that would be detrimental to public health, safety, or welfare

Response:

We are requesting relief from Title 19.402.13.J.2, specifically the requirement to create a “tract”. In this circumstance, a tract poses undue hardships on both the OLCC and Community Corrections because it will create an odd legal entity to hold shared ownership for both parcels. These can cause legal issues in the future, and there is no known precedence to establish how two separate government entities will be responsible for various aspects of the entity/tract. Instead, an RDA or restricted easement will provide the exact same protection to the HCA/WQR area, while putting the underlying onus on the associated land owner. In other words, OLCC will be responsible for protecting lands east of the creek, and Clackamas County for land west of the creek.

19.911.2 Applicability

A. Eligible Variances

Except for situations described in Subsection 19.911.2.B, a variance may be requested to any standard or regulation in Titles 17 or 19 of the Milwaukie Municipal Code, or any other portion of the Milwaukie Municipal Code that constitutes a land use regulation per ORS 197.015.

B. Ineligible Variances

A variance may not be requested for the following purposes:

1. To eliminate restrictions on uses or development that contain the word “prohibited.”
2. To change a required review type.

3. To change or omit the steps of a procedure.
4. To change a definition.
5. To increase, or have the same effect as increasing, the maximum permitted density for a residential zone.
6. To justify or allow a Building Code violation.
7. To allow a use that is not allowed outright by the base zone. Requests of this nature may be allowed through the use exception provisions in Subsection 19.911.5, nonconforming use replacement provisions in Subsection 19.804.1.B.2, conditional use provisions in Section 19.905, or community service use provisions in Section 19.904.

Response:

This request does not fall under a “ineligible variance” and is therefore eligible pursuant to Subsection A.

C. Exceptions

A variance application is not required where other sections of the municipal code specifically provide for exceptions, adjustments, or modifications to standards either “by right” or as part of a specific land use application review process.

Response: *To our knowledge, and in consultation with City Staff, there are no Exceptions that will allow us to use RDAs or restricted easements rather than tracts.*

19.911.3 Review Process

A. General Provisions

1. Variance applications shall be evaluated through either a Type II or III review, depending on the nature and scope of the variance request and the discretion involved in the decision-making process.
2. Variance applications may be combined with, and reviewed concurrently with, other land use applications.
3. One variance application may include up to three variance requests. Each variance request must be addressed separately in the application. If all of the variance requests are Type II, the application will be processed through a Type II review. If one or more of the variance requests is Type III, the application will be processed through a Type III review. Additional variance requests must be made on a separate variance application.

Response: *We are making one variance request, that appears to require a Type III process, and we are already submitting a Type III application, so this can run concurrently with the Partition and Natural Resource Review.*

B. Type II Variances

Type II variances allow for limited variations to numerical standards. The following types of variance requests shall be evaluated through a Type II review per Section 19.1005:

Response: *This is not a request to a numerical standard. It appears a Type III variance is required.*

C. Type III Variances

Type III variances allow for larger or more complex variations to standards that require additional discretion and warrant a public hearing consistent with the Type III review process. Any variance request that is not specifically listed as a Type II variance per Subsection 19.911.3.B shall be evaluated through a Type III review per Section 19.1006.

Response: *Although we do not believe this request is complex in nature, it is understood that it requires a type III review because this request is not specified in 19.911.3.B.*

19.911.4 Approval Criteria

B. Type III Variances

An application for a Type III variance shall be approved when all of the criteria in either Subsection 19.911.4.B.1 or 2 have been met. An applicant may choose which set of criteria to meet based upon the nature of the variance request, the nature of the development proposal, and the existing site conditions.

Response: *We understand that either criteria may be used to satisfy this section. It is our assertion that we meet both options. Thus, we will provide appropriate responses for both sections, with the understanding that only one may be used to justify the request.*

1. Discretionary Relief Criteria

a. The applicant's alternatives analysis provides, at a minimum, an analysis of the impacts and benefits of the variance proposal as compared to the baseline code requirements.

Impacts: *The only impact of allowing an RDA or restrictive easement as opposed to a tract is that the final plat map will show a dashed line, and the underlying Natural Resource Area will be managed by Clackamas County to*

the west, and OLCC to the east. The only benefit a tract offers is that private land owners who have no experience or interest in preserving open spaces (such as residential or commercial owners) can pay into the management of a tract, generally through a Homeowners association.

Benefits: In this case, tracts will have the opposite benefit. First, tracts would setup undue economic hardships (described below). Moreover, "tracts" will require the creation of a nebulous ownership entity that will require unprecedented legal research to ensure that both parcels are following the rules in Title 19.402.13. RDAs or Restrictive Easements can accomplish the same exact protections that are set forth in Title 19.402, but will ensure that each owner is expressly responsible for the maintenance of their respective natural resource areas. Another adverse impact of creating tracts, the tract/owner/entity may dissolve or otherwise not be answerable to the stated conditions therein, and difficult to contact. Some Homeowners Associations run into this type of ownership issue, several years after the plat records. There is no response from the entity, and the City may need to talk with the tract owner, may need an easement, or may see an opportunity to enhance the Natural Resource area. The benefit of having an RDA or restrictive easement means that the underlying owners, the County or OLCC, (or their successors/heirs) will always be available to work with the City or other agencies, when it comes to enhancing these areas or allowing permission on to the protected area.

b. The proposed variance is determined by the Planning Commission to be both reasonable and appropriate, and it meets one or more of the following criteria:

(1) The proposed variance avoids or minimizes impacts to surrounding properties.

Response: There would be no change in impact to surrounding properties. The extent of the Natural Resource Area will be the same whether it is within an RDA/Restrictive Easement or Tract.

(2) The proposed variance has desirable public benefits.

Response: In our opinion, the proposed variance has more benefit and utility than a tract. An RDA or Restrictive Easement makes it easier to work with underlying owners. Furthermore, if any future opportunities arise to enhance the Natural Resource area, secure easements (e.g. stormwater, sewer, etc.), or simply contact the underlying owner, contact with land owners shall be relatively easy compared to a tract.

(3) The proposed variance responds to the existing built or natural environment in a creative and sensitive manner.

Response: The RDA/restrictive easement is a creative way to ensure that the same amount of natural resource protection is maintained and protected.

(4) The proposed variance would allow the development to preserve a priority tree or trees, or provide more opportunity to plant new trees to achieve 40% canopy, as required by Chapter 16.32.

Response: *No development or tree removal is proposed with this development, and placing the Natural Resource Area in an RDA/Restrictive Easement will not change that fact. Furthermore, by avoiding a nebulous ownership entity that would arise with the creation of a tract, future restoration and tree planting would require far less bureaucracy and potential road blocks, as the underlying owner would be available. Furthermore, both owners are responsible government agencies, and have the necessary resources to ensure proper maintenance of the natural resource overlay.*

c. Impacts from the proposed variance will be mitigated to the extent practicable.

Response: *there will be no impacts to mitigate. There would be no difference in the amount of land preserved, regardless of whether it is in a tract or RDA/Restrictive Easement.*

2. Economic Hardship Criteria

a. Due to unusual site characteristics and/or other physical conditions on or near the site, the variance is necessary to allow reasonable economic use of the property comparable with other properties in the same area and zoning district.

Response: *The site is unusual in that it is already developed with two separate government facilities. A tract would create excessive economic hardships on the property because there is no precedence or "template" for this type of entity/ owner. We reviewed downstream industrial and commercial properties along Johnson Creek, from the subject property south to the Willamette River. There are no tracts on any of these tax maps (Please reference Exhibit 5). Furthermore, we looked upstream, to the industrial/commercial/residential area east of Johnson Creek Blvd and SE Brookside Drive along Johnson Creek. Once again, none of these properties have a tract, (See Exhibit 5). There are no other properties with similar uses to ours (institutional, commercial, industrial, etc.) that have*

had to comply with the stringent requirements of creating a tract. The cost to create, operate, and maintain some nebulous entity would be substantial, and would create several hours of legal consultation, and may create ownership/absentee issues in the future. Furthermore, no other properties with similar characteristics have been compelled to create such a burdensome ownership entity. Given the hardships warranted in creating a tract, we surmise that a RDA/Restrictive Easement is a reasonable alternative, that will have the same, and in all likelihood, better, protections for Johnson Creek.

- b. The proposed variance is the minimum variance necessary to allow for reasonable economic use of the property.

Response: Allowing an RDA or restrictive easement is the only variance we request. There is no other option that will have less impact or "minimal" impacts than what is being requested.

- c. Impacts from the proposed variance will be mitigated to the extent practicable.

Response: The impacts of the Natural Resource area will be the same whether protected by tract or RDA/restrictive easement. There is nothing to mitigate.



Appendix G:
Impact Evaluation and Alternatives Analysis (Title 19.402.12)

Associated Exhibits:

Exhibit 4: Existing Vegetation Conditions Map

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.

Response: *We acknowledge the Planning Director's duties.*

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.

Response: *Since no actual developments is proposed in the WQRs or HCAs, the Planning director has permitted this analysis to be prepared by the applicant's project team. This criteria is met.*

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.

Response: *The riparian area contains a mix of low structure vegetation, Woody vegetation, and developed areas not providing vegetation cover. The east side of Johnson Creek provides a better mix of conifers and deciduous trees, though this cover does not extend much past 50 feet from the east edge of the Creek, and is somewhat thick, in comparison to the whole site, near the SE sector of the creek. The north end of the east parcel, surrounding the railroad spur, provides very little ecological function, with low structure vegetation being the only type of cover. The west parcel is primarily comprised of low structure vegetation, and developed impervious cover. There are scattered trees, but not enough to provide any continuous woody vegetation or forest canopy. Some areas north of the railroad spur, and adjoining SE Ochoco street, appear to provide some low structure vegetation and a mix of deciduous trees. Johnson Creek was channelized considerably in the 1930s and 1940s, and there are large boulders on either side of the creek intended for bank stabilization or channelization. The channel benefits from some level of shade provided by trees, in some places, lining either side of the creek. This shade will not be altered in any way.*

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.

Response: *The WQR, a 50-foot vegetative buffer offset from the edge of Johnson Creek, is roughly 151,500 square feet in area (3.48 Acres). Within the buffer, tree canopy comprises roughly 63,900 sq. feet of the total buffer area, or 42%. Ground cover (G.C.) and shrubs cover roughly 56,600 of the total buffer, or 37%. Combined, all tree canopy, GC, and shrubs total roughly 78,660 sq. feet, or 51% of the total buffer.*

Existing Condition of the WQR is poor, pursuant to title 19.402.11.C. Please reference the Existing Vegetation Conditions Map with Exhibit 4.

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.

Response: *Fortunately, no development is proposed, and the Natural Resource area will be preserved as is, in perpetuity. The existing development has remained unchanged for several decades, and there has been no substantial changes to the site overall. Much of the Johnson Creek watershed is already "impaired", and has been the subject of many regional restoration efforts. There will be no net impact to the creek with this partition, as no new development is proposed.*

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.

Response: *No other alternatives exist because the existing impacts to the HCA and WQR predate their implementation, as described in detail with the Natural Resource Review. The proposed Partition will be divided along the creek centerline, preserving the original OLCC facilities to the east, and County facilities to the west. There will be no new construction proposed, and the existing vegetation will be preserved in an RDA and protected by restrictive covenant.*

b. Development in the WQR and/or HCA has been limited to the area necessary to allow for the proposed use.

Response: *No new disturbances are proposed. The only disturbances to consider are those existing disturbances associated with the aforementioned facilities. As noted in the Title 19.402.1, it is not the intent of the Natural Resource zone to "impose any obligation on property owners to restore existing developed sites to predevelopment or natural conditions when no new activity is proposed." Therefore, the Partition, which does not include any new development in the WQR and HCA, meets this section.*

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.

Response: *The WQR is not being disturbed, and restoration is not warranted.*

d. Road crossings will be minimized as much as possible.

Response: *No development, including road crossings, is proposed.*

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.

Response: *No repair and maintenance, alteration, and/or total replacement of existing structures is proposed. No changes will be made to the site with this request.*

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.

Response: *As noted previously, no adverse impacts will occur since no development is proposed, whatsoever.*

- 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.

Response: *As noted previously, no adverse impacts will occur since no development is proposed, whatsoever.*

- 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.

Response: *No vegetation has been removed, and does not need to be replaced*

- (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.

Response: *No new lighting schemes are proposed.*

- (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.

Response: *Although the existing WQR is in poor condition, as stated above, the existing vegetation, particularly on the east side of creek, will remain connected, as no vegetation removal is proposed.*

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.

Response: *As noted previously, since no impacts to the HCA or WQR is proposed, mitigation measures are not required.*

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.

Response: *As noted previously, since no impacts to the HCA or WQR is proposed, mitigation measures are not required.*

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.

Response: *Since there is no actual disturbance to the HCA or WQR, there is no alternative plan or layout that will have less intrusion. This project is simply to divide the two distinct areas of land.*

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.

Response: *no detrimental ecological impacts will occur since no development is proposed.*

- (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.

Response: *No grading, removal of native vegetation, or disturbance of native soils shall occur. There are no buildings proposed, so an analysis on building footprints is not warranted. The local hydrology and wildlife corridor will not be degraded whatsoever, as no development is proposed. The existing conditions of Johnson Creek, in this part of Clackamas County, have been established for decades, and there is no immediate plan impact the buffers.*

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 Oregon Noxious Weed List or Milwaukie Invasive Tree 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.

Response: *Mitigation is not warranted since there are no new impacts on the HCA or WQR.*

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.

Response: *Municipal Water facilities are not existing or proposed. This criteria is not 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.

Response: *No disturbance is proposed. This criteria is not applicable.*

An applicant may use the nondiscretionary mitigation options presented in Subsection 19.402.11.D.2 as a guide for proposing mitigation measures that will then be evaluated against the approval criteria provided in Subsection 19.402.12.B.

Response: *No disturbance is proposed. This criteria is not applicable.*

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.
 - (5) An explanation of how the applicable requirements in Chapter 16.32 will also be met.
- 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.
 - (3) Whether the applicable requirements in Chapter 16.32 will also be met.




Response: *As discussed above, a Mitigation Plan is not required as no new development is proposed.*

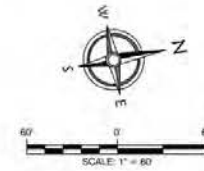


OLCC PRELIMINARY PARTITION PLAT

**TAX LOT 100, MAP 1-1E-26AA
IN THE NE 1/4 SECTION 26, T.1S., R.1E., W.M.
CITY OF MILWAUKIE, CLACKAMAS COUNTY, OREGON**

Exhibit 2

-  WQR (50 foot buffer)
 HCA - HIGH
 HCA - LOW



CLACKAMAS COUNTY
COMMUNITY CORRECTIONS
BUILDING

CENTERLINE OF
JOHNSON CREEK IS
PARCEL BOUNDARY LINE

PROPOSED PARCEL 1
3.6± ACRES

SE MCBROD AVENUE

CLACKAMAS
COUNTY WORK
RELEASE BUILDING

TAX LOT 200 MAP
1-1E-26AA

EAST PORTLAND TRAIL

PROPOSED PARCEL 2
10.9± ACRES

TAX LOT 100 MAP 1-1E-26AA
9201 SE MCLOUGHLIN BLVD, MILWAUKIE
OWNER: STATE OF OREGON BY AND THROUGH ITS
OREGON LIQUOR AND CANNABIS COMMISSION
ZONE: NORTH MILWAUKIE EMPLOYMENT (NME)

OLCC BUILDING

OLCC BUILDING



POND

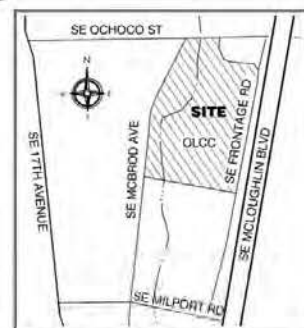
TAX LOT 100
MAP 1-1E-26AD

SE OCHOCHO STREET

SE FRONTAGE ROAD

SE FRONTAGE ROAD (STATE RIGHT OF WAY)

SE MCLOUGHLIN BLVD



VICINITY MAP

NATURAL RESOURCES PLAN

MPASS Land Surveyors
4107 SE International Way, Suite 705
Milwaukie, Oregon 97222 503-653-9093

CLACKAMAS COUNTY
2051 KAEN ROAD
OREGON CITY, OREGON 97045






TAX LOT 100, MAP 1-1E-26AA
IN THE NE 1/4 SECTION 26, T.1S., R.1E., W.M.
CITY OF MILWAUKIE, CLACKAMAS COUNTY, OREGON

DRAWN	MMM	CHECKED	DD
SCALE	1" = 60'	DATE	10/2021
REVISIONS	PLAN	8533 Prelim.dwg	



**TAX LOT 100, MAP 1-1E-26AA
IN THE NE 1/4 SECTION 26, T.1S., R.1E., W.M.
CITY OF MILWAUKIE, CLACKAMAS COUNTY, OREGON**

Exhibit 4 Tree Canopy, Ground Cover (GC), and shrubs (Existing)

-  Tree Canopy 42%
-  G.C. and shrubs 37%
-  OLCC_Property
-  WQR (50 foot buffer)
-  Tax Lots

The WQR, a 50-foot vegetative buffer offset from the edge of Johnson Creek, is roughly 151,500 square feet in area (3.48 Acres). Within the buffer, tree canopy comprises roughly 63,900 sq. feet of the total buffer area, or 42%. Ground cover (G.C.) and shrubs cover roughly 56,600 of the total buffer, or 37%. Combined, all tree canopy, GC, and shrubs total roughly 78,660 sq. feet, or 51% of the total buffer. ★

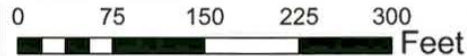
Existing Condition of the WQR is poor, pursuant to title 19.402.11.C

*Note:

Both coverages were merged and result in an overall coverage of 51%.

Graphically, they are shown as two distinct features: Tree Canopy and Ground Cover

1 inch = 100 feet



The information provided was derived from digital databases from Clackamas County's GIS. Although we strive to provide the best data we can, we sometimes use data developed by jurisdictions outside Clackamas County. Therefore, Clackamas County cannot accept any responsibility for any errors, omissions, or positional accuracy, and therefore, there are no warranties which accompany this product. Although information from Land Surveys may have been used in the creation of this product, in no way does this product represent or constitute a Land Survey. Users are strongly cautioned to verify all information before making any decisions.

Date: 11/3/2022

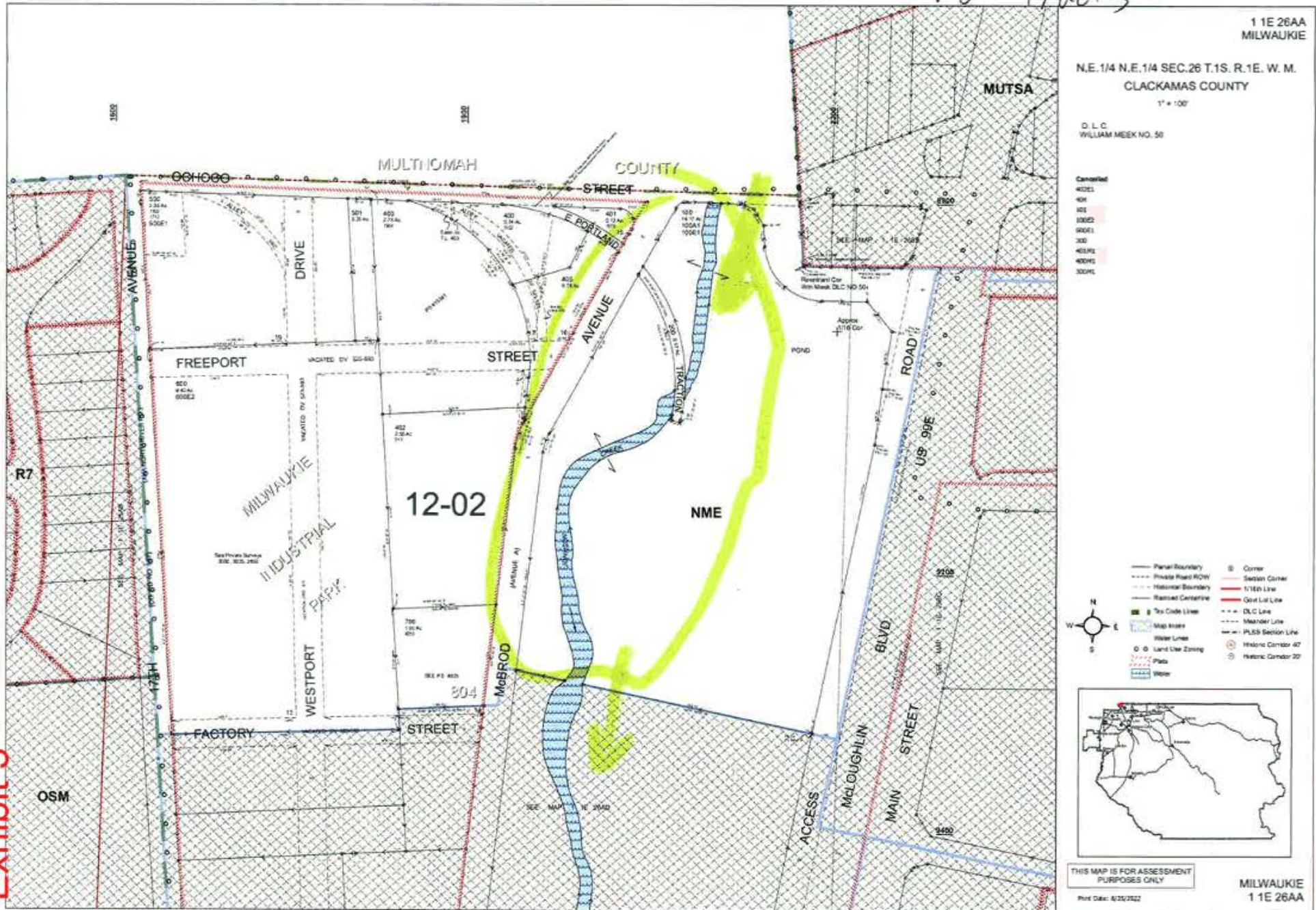
Drawn By: BENB



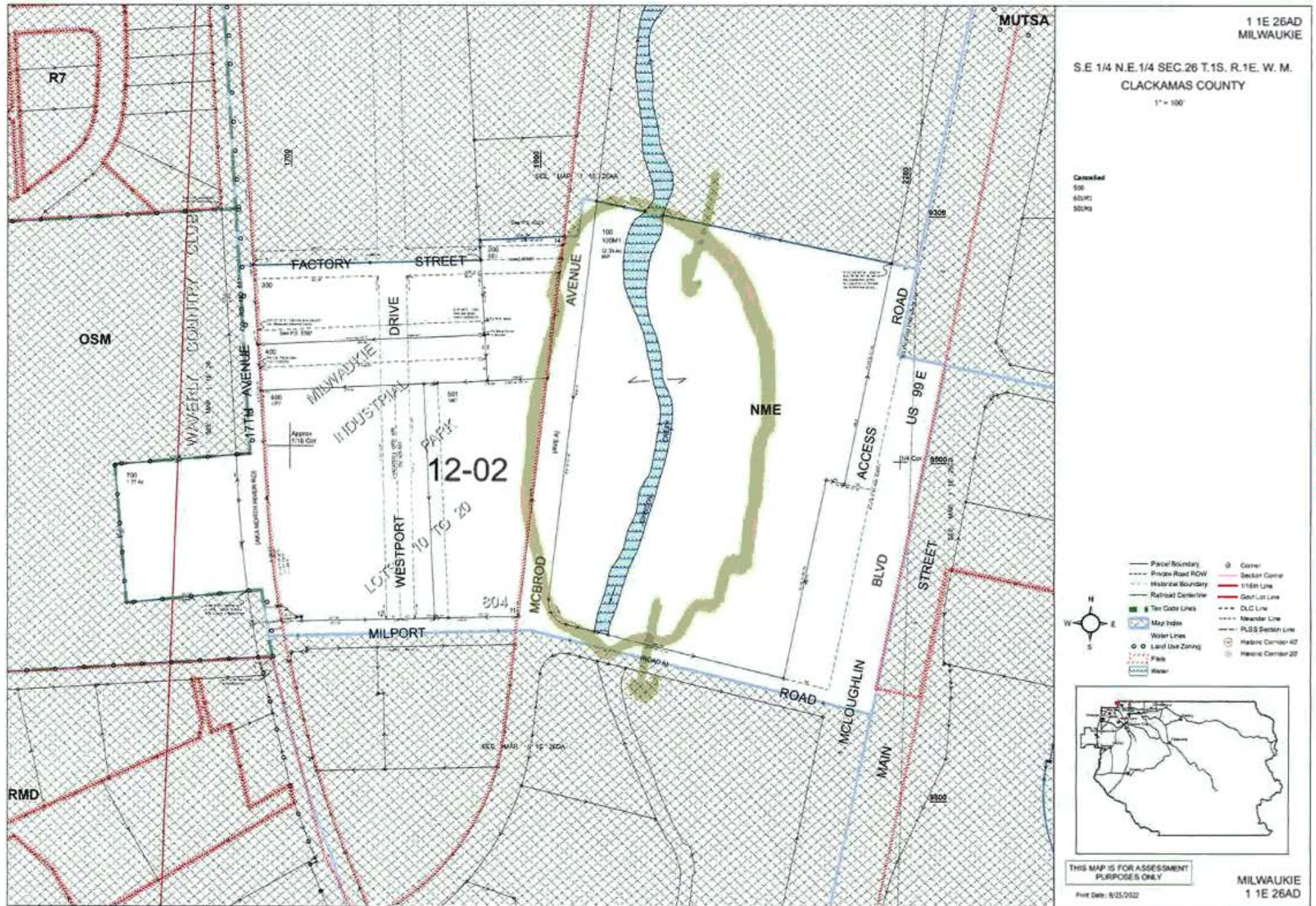
S:\Planning\CAD-GIS\GIS\Milwaukie Partition



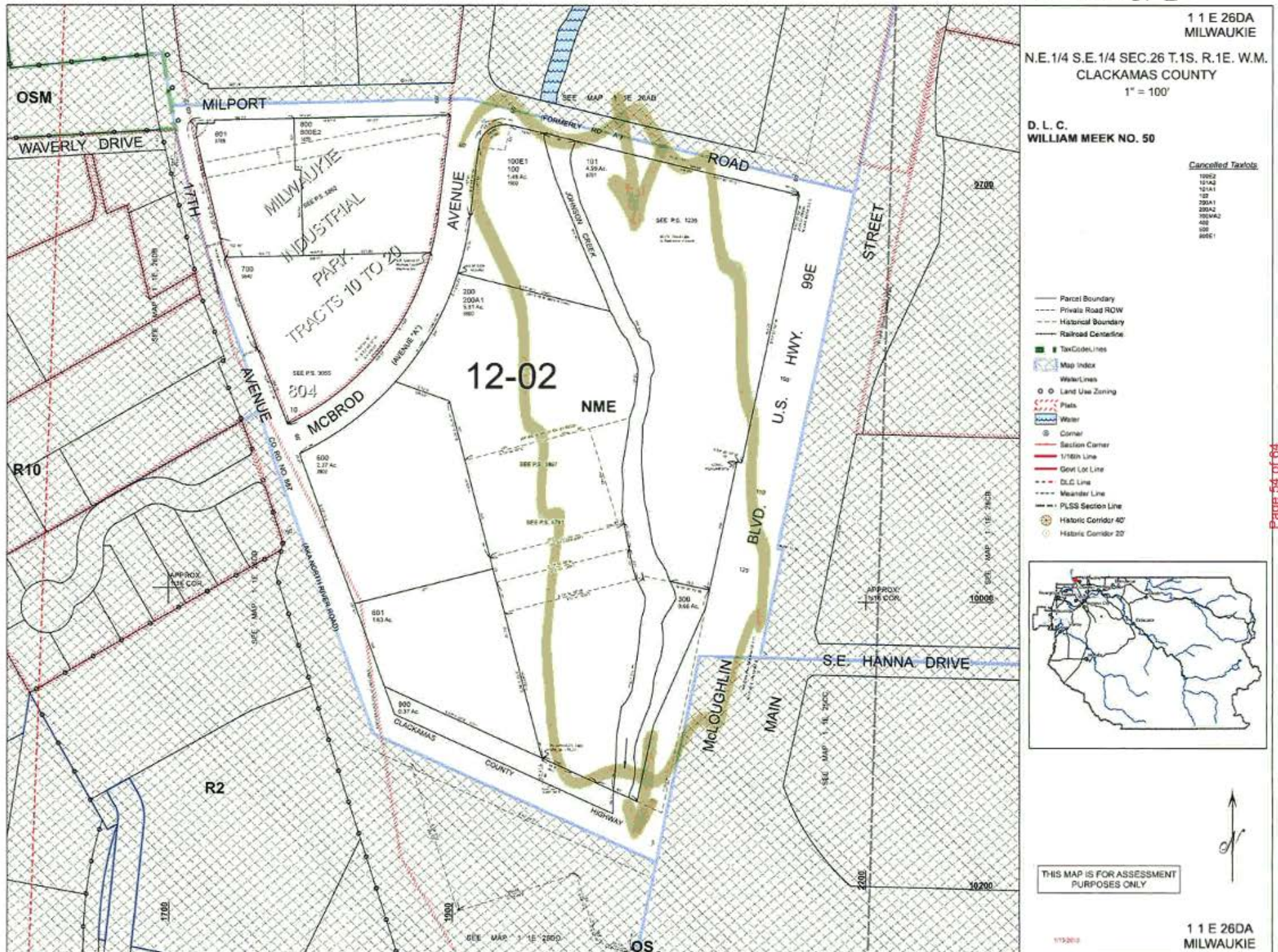
No Tracts



No tracts



No Tracts



No fracts

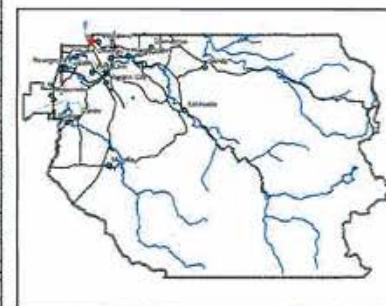
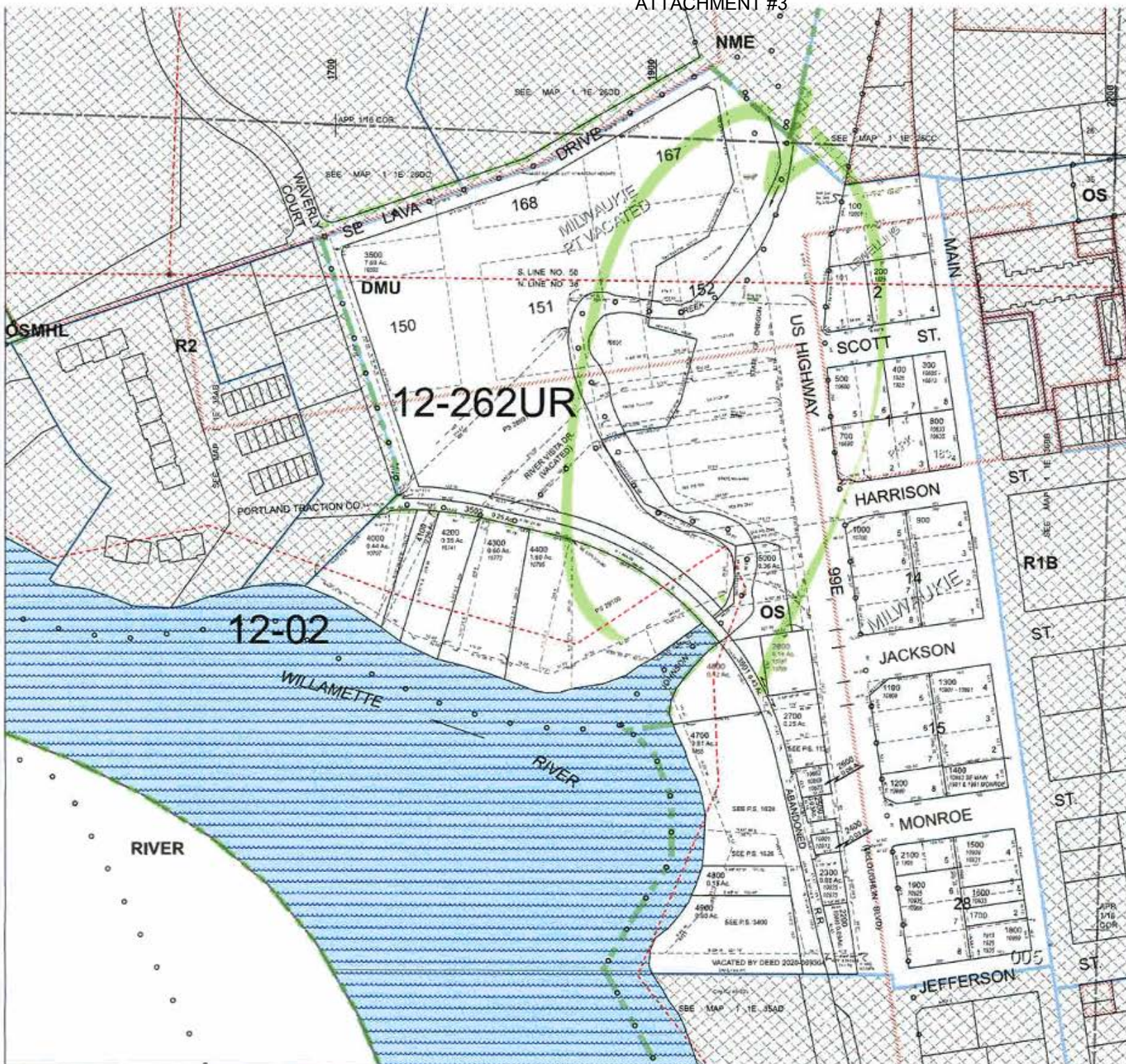
11 E 35AA
MILWAUKIEN.E. 1/4 N.E. 1/4 SEC. 35 T.1S. R.1E. W.M.
CLACKAMAS COUNTY
1" = 100'D. L. C.
LOT WHITCOMB NO. 38
WILLIAM MECK NO. 50

Cancelled Taxlots

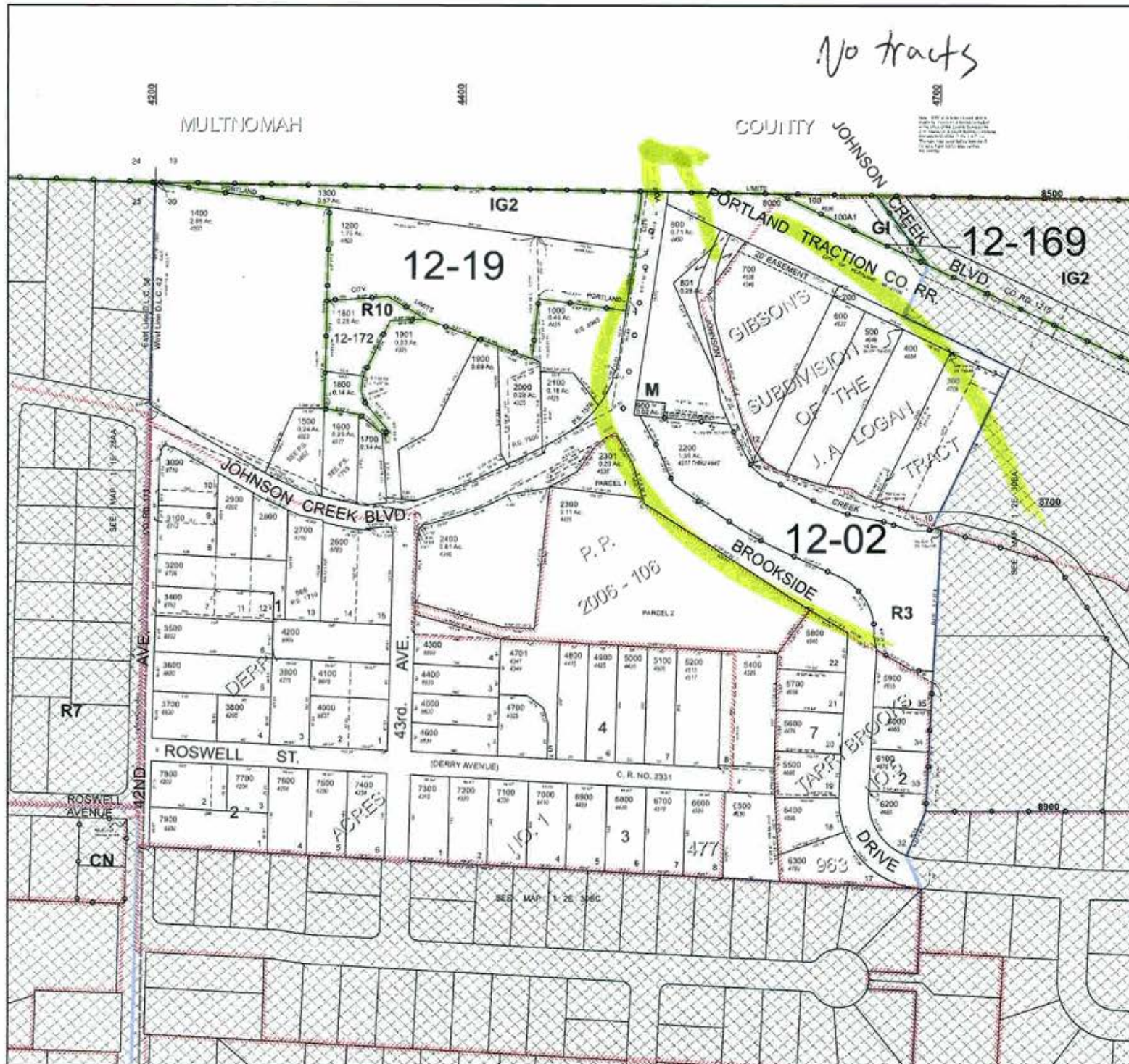
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1050A100

- Parcel Boundary
- Private Road ROW
- Historical Boundary
- Railroad Centerline
- TaxCode Lines
- Map Index
- Water Lines
- Land Use Zoning
- Plats
- Water
- Corner
- Section Corner
- 1/16th Line
- Govt Lot Line
- DLC Line
- Meander Line
- PLSS Section Line
- Historic Corridor 42
- Historic Corridor 27

Page 55 of 64

THIS MAP IS FOR ASSESSMENT
PURPOSES ONLY11 E 35AA
MILWAUKIE

Page 56 of 64



No tracts

12 E 30BA

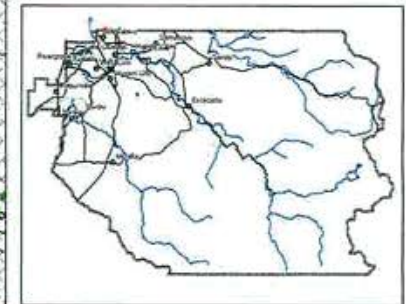
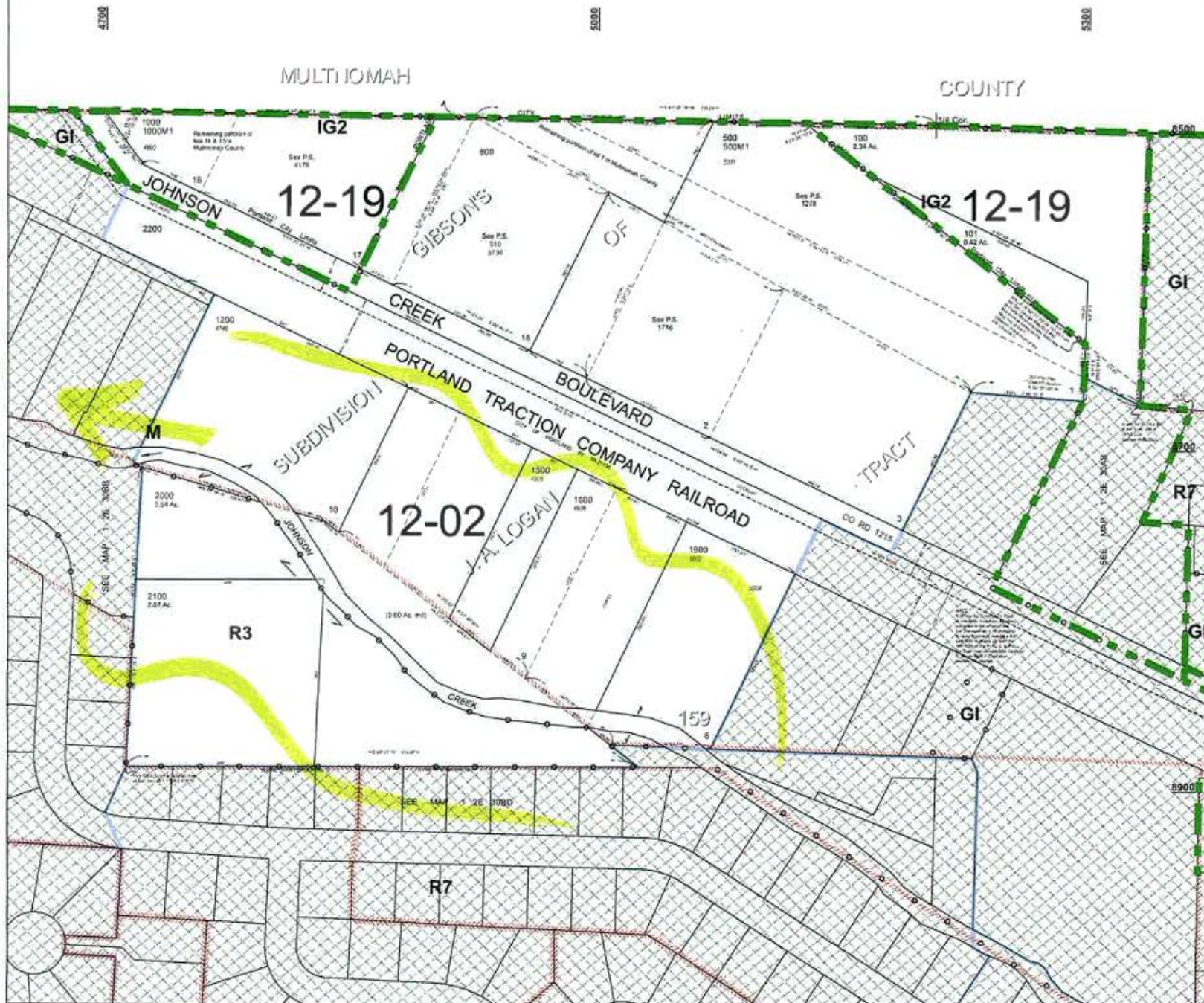
N.E. 1/4 N.W. 1/4 SEC. 30 T.1S. R.2E. W.M.
CLACKAMAS COUNTY
1" = 100'

D. L. C.
GEORGE WILLS NO. 42

Cancelled Taxlots

2001
2002
2003
2004
2005
2006
2007
2008
2009
2010
2011
2012
2013
2014
2015
2016
2017
2018
2019
2020

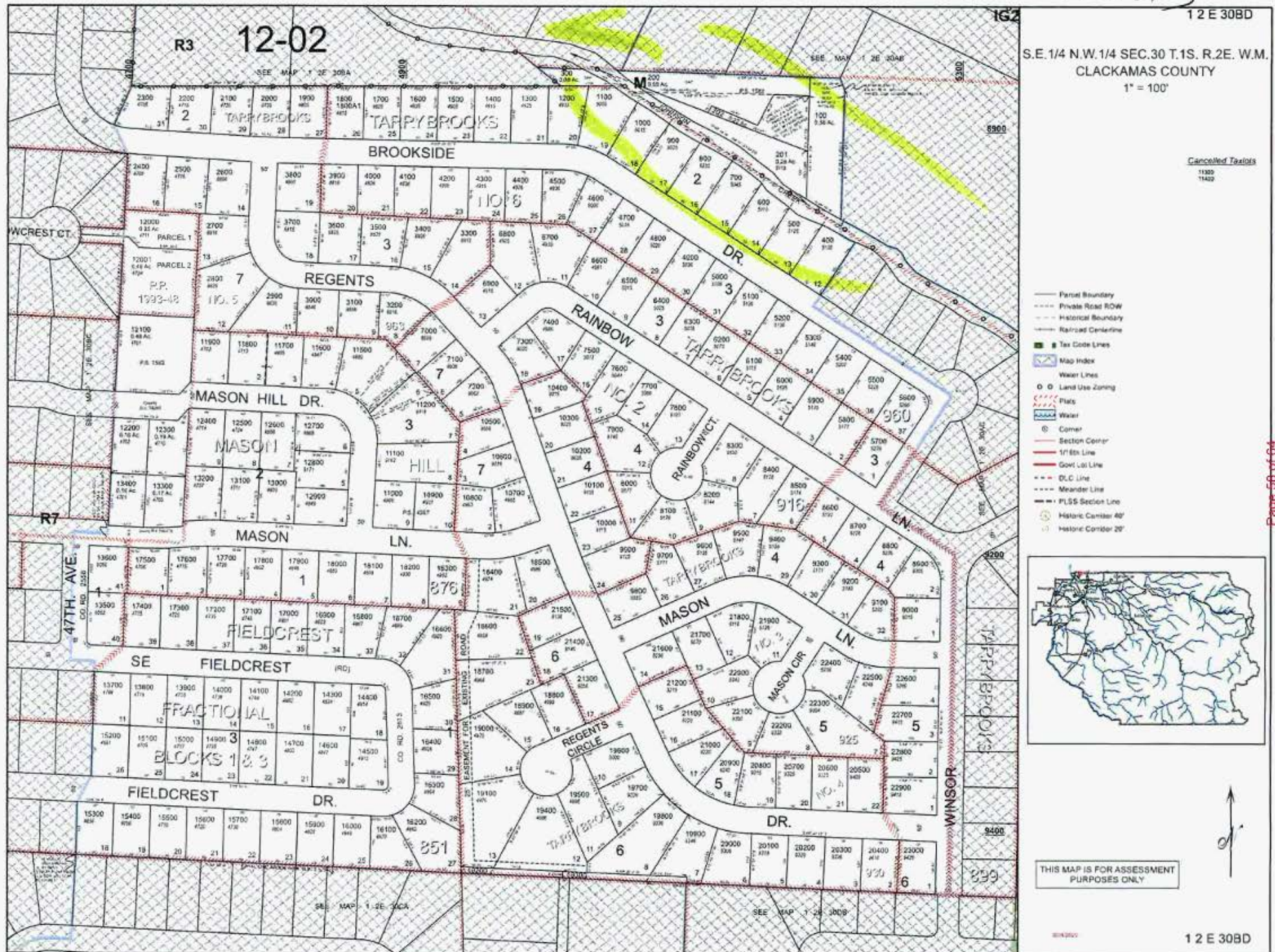
Page 57 of 64



THIS MAP IS FOR ASSESSMENT
PURPOSES ONLY

12 E 30BA

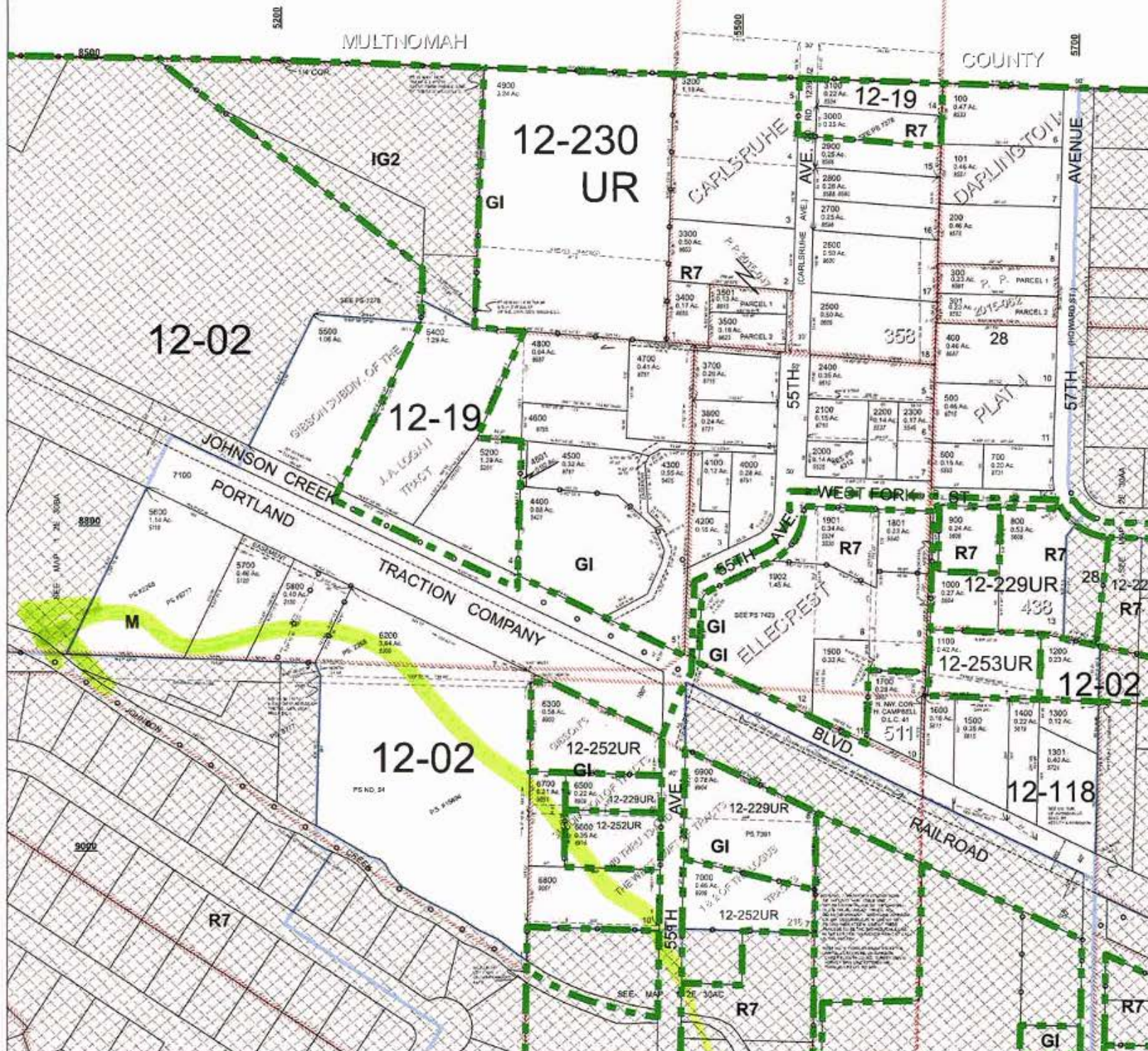
No tracts



Cancelled Texts

Parcel Boundary
 Private Road ROW
 Historical Boundary
 Railroad Centerline
 Tax/Ced. Lines
 Map Index
 Water Lines
 Land Use Zoning
 Plats
 Water
 Corner
 Section Corner
 1/16th Line
 Govt. Lot Line
 D/C Line
 Meander Line
 P.L.S. Section Line
 Historic Corner 40'
 Historic Corner 20'

1 2 E 30AB



**PROPERTY INFORMATION REPORT**

Date: October 19, 2021

File No.: 21-296427

Property: 9201 SE McLoughlin Boulevard, Milwaukie, OR 97222

Compass Land Surveying
4107 SE International Way - Suite 705
Milwaukie, OR 97222
Attn: Don

Your Reference: JOB #8533

REPORT FEE: \$500.00

The information contained in this report is furnished by WFG National Title Insurance Company (the "Company") as an information service based on the records and the indices maintained by the Company for the county identified below. This report does not constitute title insurance and is not to be construed or used as a commitment for title insurance. The Company assumes and shall have no liability whatsoever for any errors or inaccuracies in this report. In the event any such liability is ever asserted or enforced, such liability shall in no event exceed the paid herein. No examination has been made of the Company's records, other than as specifically set forth in this report.

The effective date of this report is October 12, 2021

REPORT FINDINGS

- A. The land referred to in this report is located in the county of Clackamas State of Oregon, and is described as follows:

See Attached Exhibit "A"

- B. As of the Effective Date and according to the last deed of record, we find the title to the land to be vested as follows:

Oregon State Liquor Control Commission

- C. As of the Effective Date and according to the Public Records, the Land is subject to the following liens and encumbrances, which are not necessarily shown in the order of priority:

1. Taxes, including the current fiscal year, not assessed due to ownership by a governmental entity. If the exempt status is terminated, an additional tax may be levied.
Property ID No. : 00016155
Levy Code : 012-002
Map Tax Lot No. : 11E26AA00100
2. Taxes, including the current fiscal year, not assessed due to ownership by a governmental entity. If the exempt status is terminated, an additional tax may be levied.
Property ID No. : 01517228
Levy Code : 012-002
Map Tax Lot No. : 11E26AA00100E1

NOTE: The Clackamas County Assessor shows a partial exemption.

3. City liens, if any, of the City of Milwaukie.

4. Any adverse claim based upon the assertion that:
 - a) Said land or portion thereof is now or at any time has been below the high water mark of Johnson Creek.
 - b) Said land has been removed from or brought within the boundaries of the premises by the process of erosion or an avulsive movement of Johnson Creek or has been formed by a process of accretion or reliction or has been created by artificial fill.
 - c) Rights of the public and governmental bodies in and to any portion of the premises herein described lying below the high water mark of Johnson Creek, including any ownership rights which may be claimed by the State of Oregon below the high water mark.
5. Rights of the public in and to any portion of the herein described premises lying within the boundaries of streets, roads or highways.
6. Easement, including the terms and provisions thereof:

For	:	Johnson Creek channel improvement
Granted to	:	Johnson Creek Water Control District
Recorded	:	July 29, 1961
Recording No(s)	:	(book) 590 (page) 89
Affects	:	See document for exact location
7. Easement, including the terms and provisions thereof:

For	:	Spur Track
Granted to	:	Day-York Distributors, Inc.
Recorded	:	April 29, 1971
Recording No(s)	:	71-9025
Affects	:	See document for exact location
8. Easement, including the terms and provisions thereof:

For	:	Electric Power Line
Granted to	:	Portland General Electric Company
Recorded	:	July 18, 1978
Recording No(s)	:	78-30853
Affects	:	Southwesterly portion of the herein describe property
9. Easement, including the terms and provisions thereof:

For	:	Electric Power Line
Granted to	:	Portland General Electric Company
Recorded	:	April 2, 1980
Recording No(s)	:	80-12135
Affects	:	South 16 feet of the West 218 feet
10. Easement, including the terms and provisions thereof:

For	:	Water Line
Granted to	:	City of Milwaukie
Recorded	:	September 15, 1992
Recording No(s)	:	92-57533
Affects	:	See document for exact location
11. Any unrecorded leases or rights of tenants in possession.
12. No search has been made for Financing Statements filed in the office of the Secretary of State. Exception may be taken to such matters as may be shown thereby. No liability is assumed if a Financing Statement is filed in the office of the County Recorder covering timber, crops, fixtures or contracts on the premises wherein the lands are described other than by metes and bounds or under the rectangular survey system or by recorded lot and block.

END OF EXCEPTIONS

NOTE: Please be advised that we have searched the records and do not find any open Deeds of Trust. If you should have knowledge of an outstanding obligation, please contact the Title Department for further review.

NOTE: Personal property taxes, if any.

NOTE: Assessor records show the following personal property tax accounts associated with the subject property:

Account No. [P0009833](#) in the name of Canon Financial Serv, Inc.

Account No. [P0009834](#) in the name of Canon Financial Serv, Inc.

NOTE: In no event shall WFG National Title Insurance Company have any liability for the tax assessor's imposition of any additional assessments for omitted taxes unless such taxes have been added to the tax roll and constitute liens on the property as of the date of closing. Otherwise, such omitted taxes shall be the sole responsibility of the vestee(s), herein.

NOTE: We find NO judgments or Federal Tax Liens against the name(s) of Oregon State Liquor Control Commission.

NOTE: The following is incorporated herein for information purposes only and is not part of the exception from coverage (Schedule B-II of the prelim and Schedule B of the policy): The following instrument(s), affecting said property, is (are) the last instrument(s) conveying subject property filed for record within 24 months of the effective date of this preliminary title report:

None of Record

Note: Links for additional supporting documents:

[Vesting Deed](#)

[Adjoiners](#)

[Survey - SN958](#)

[Aerial](#)

END OF REPORT

Joel M. Winchester
WFG National Title Insurance Company
12909 SW 68th Parkway, Suite 350
Portland, OR 97223
Phone: (503) 941-2827
Fax:
Email: jwinchester@wfgnationaltitle.com

EXHIBIT A LEGAL DESCRIPTION

BEGINNING at the intersection of the Westerly boundary of the East Portland-Oregon City Highway, also known as Highway U.S. 99E, with the Northerly boundary of the William Meek Donation Land Claim No. 50 in Section 26 Township 1 South, Range 1 East, of the Willamette Meridian, which point of beginning set in a concrete monument bears North 89° 07' East 294 feet distant from the re-entrant corner of said D.L.C No. 50; Thence, South 10° 23' 50" West 1519.01 feet to a point, said point being designated by a steel pipe on the Westerly boundary line of the East Portland- Oregon City Highway, known as Highway U.S. 99E; Thence North 79° 36' 10" West 100 feet to a point, said point being designated by a steel pipe; Thence, South 10° 23' 50" West 435.77 feet to a point, said point being designated, by a steel pipe on the Northerly boundary line of an existing project road, known as "Road A"; Thence North 77° 46' 10" West 481.54 feet following the North boundary line of said Road A to a point, said point being the beginning of a 50 foot radius curve to the right, through a central angle of 82° 59' 02", an arc distance of 72.41 feet to a point of tangent in the Easterly boundary of an existing project road known as "Avenue A"; Thence, following the Easterly boundary line of said Avenue A, North 5° 12' 32" East 1338.87 feet to a point, said point being the beginning of a 100 foot radius curve to the right, through a central angle of 22° 15' 24", an arc distance of 42.73 feet to a point of tangent; Thence, North 27° 28' 16" East 557.64 feet along the Easterly boundary line of said Avenue A to a point, said point being the beginning of a 25 foot radius curve to the right, through a central angle of 62° 56' 24" a distance of arc of 27.46 feet to a point of tangent, said point being on a line parallel to and 10 feet South of the City of Portland boundary line between Clackamas County and Multnomah County, and the Southerly boundary of S.E. Ochoco Street; Thence, South 89° 35' 20" East, 242.40 feet, following the Southerly boundary of said S.E. Ochoco Street to a point, said point being set in a concrete monument on the Southerly boundary of said street; Thence, South 4° 53' 30" East 139.39 feet to a point, said point being set in a concrete monument on the Northerly boundary of the Donation Land Claim No. 50 heretofore mentioned; Thence, from said point following the Northerly boundary line of said D.L.C., North 89° 07' East 294 to the point of beginning of the tract herein described.

Excepting therefrom those parcels of land described in the following recorded documents:

Deed to the Portland Traction Company recorded July 22, 1954, in [Book 484, Page 156](#), Clackamas County Deed Records;

Deed to the State of Oregon, by and through its Department of Transportation, Highway Division recorded December 7, 1990, recording No. [90-60498](#);

Special Warranty Deed to ART Mortgage Borrower Propco 2006-1C L.P., recorded December 18, 2006, recording no. [2006-115824](#).

Grantor: Clackamas County
2051 Kaen Rd
Oregon City, OR 97045

Grantee: Clackamas County
2051 Kaen Rd |
Oregon City, OR 97045

After Recording Return to:
Clackamas County
Attn: Jeffrey Munns
2051 Kaen Rd.
Oregon City, OR 97045

RESTRICTED DEVELOPMENT EASEMENT
(Individual Grantor)

For value received, Clackamas County, (Grantor), hereby grants, bargains, sells and conveys to Clackamas County, a political subdivision of the State of Oregon, its heirs, successors and assigns, (Grantee), a perpetual, nonexclusive restricted development area easement to protect the integrity, viability, conveyance and water quality functions of the sensitive area and associated buffer, in, under, upon, and across Grantor's real property located in the City of Milwaukie (The City), Clackamas County, and State of Oregon.

Grantor's real property is more particularly described as follows: A parcel of land located in the NE 1/4 of Section 26, T1S, R1E, WM, more particularly described as:
Parcel1 of Partition Plat 2023-____

The Restricted Development Easement is more particularly described as that portion of the mapped Restricted Development Area, as delineated on PP 2023-____, west of the centerline of Johnson Creek, as follows:
Insert Legal Description at time of plat recording.

The true consideration for this conveyance is Zero and No/100 Dollars (\$0.00).

Within the restricted development easement no roadways, driveways, buildings, structures or fences shall be constructed. Any removal of native plants, land disturbance, or other development activity is prohibited, unless authorized by the City of Milwaukie. Any proposed activity consistent with the purpose of this easement is subject to review and approval by the Grantee.

Grantor agrees to undertake no activity or otherwise harm or impair the restricted development easement area to prevent or impede the proper functioning of the easement.

Normal maintenance of the restricted development easement is permitted, and includes: irrigation, debris management, clearing and/or pruning of dead and diseased trees, and other activities described in 19.402.4 of the Milwaukie Municipal Code where allowed outright, or with consent of the City.

Grantee's rights include the right to access and inspect conservation easement areas, storm drainage and all related facilities through, under along the described property. Grantee shall give adequate notice to the landowner before accessing the property. Grantee has the right of reasonable ingress and egress to the easement area over the Grantor's property for the exercise of any of the rights of the easement. The Grantee may utilize vehicles and other reasonable modes of transportation for access purposes.

Grantor represents, covenants, and warrants to Grantee that Grantor is lawfully seized in fee simple title to the Property; that Grantor has the legal right and authority to grant this Easement and that no other party has an ownership interest in the Property or any portion thereof (including the associated timber, water, and mineral rights) that will limit or interfere with Grantee's rights hereunder whatsoever; and that the execution and performance of this Easement by Grantor is duly authorized.

In witness whereof, the above named Grantor has hereunto set Grantor's hand to this document on this _____ day of _____ 2023.

Grantor Name

Grantor Name

STATE OF OREGON)
) ss.
County of _____)

This instrument was signed and attested before me this _____ day of _____ 2023,
by Grantor Name(s).

Notary Public for State of _____

My Commission Expires: _____

Grantor: Oregon State Liquor Control Commission
9079 SE McLoughlin
Milwaukie, OR 97222

Grantee: Oregon State Liquor Control Commission
9079 SE McLoughlin
Milwaukie, OR 97222

After Recording Return to:
Oregon State Liquor Control Commission
9079 SE McLoughlin
Milwaukie, OR 97222

RESTRICTED DEVELOPMENT EASEMENT
(Individual Grantor)

For value received, Oregon State Liquor Control Commission, (Grantor), hereby grants, bargains, sells and conveys to Oregon Liquor Control Commission (OLCC) , its heirs, successors and assigns, (Grantee), a perpetual, nonexclusive restricted development area easement to protect the integrity, viability, conveyance and water quality functions of the sensitive area and associated buffer, in, under, upon, and across Grantor's real property located in the City of Milwaukie (The City), Clackamas County, and State of Oregon.

Grantor's real property is more particularly described as follows: A parcel of land located in the NE 1/4 of Section 26, T1S, R1E, WM, more particularly described as:
Parcel 2 of Partition Plat 2023-____

The Restricted Development Easement is more particularly described as that portion of the mapped Restricted Development Area, as delineated on PP 2023-____, east of the centerline of Johnson Creek, as follows:
Insert Legal Description at time of plat recording.

The true consideration for this conveyance is Zero and No/100 Dollars (\$0.00).

Within the restricted development easement no roadways, driveways, buildings, structures or fences shall be constructed. Any removal of native plants, land disturbance, or other development activity is prohibited, unless authorized by the City of Milwaukie. Any proposed activity consistent with the purpose of this easement is subject to review and approval by the Grantee.

Grantor agrees to undertake no activity or otherwise harm or impair the restricted development easement area to prevent or impede the proper functioning of the easement.

Normal maintenance of the restricted development easement is permitted, and includes: irrigation, debris management, clearing and/or pruning of dead and diseased trees, and other activities described in 19.402.4 of the Milwaukie Municipal Code where allowed outright, or with consent of the City.

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In witness whereof, the above named Grantor has hereunto set Grantor's hand to this document on this _____ day of _____ 2023.

Grantor Name

Grantor Name

STATE OF OREGON)
) ss.
County of _____)

This instrument was signed and attested before me this _____ day of _____ 2023,
by Grantor Name(s).

Notary Public for State of _____

My Commission Expires: _____



MLP-2025-001

**9201 SE McLoughlin Blvd
(OLCC)
Partition**

Planning Commission

March 11, 2025

Vera Kolas, Senior Planner

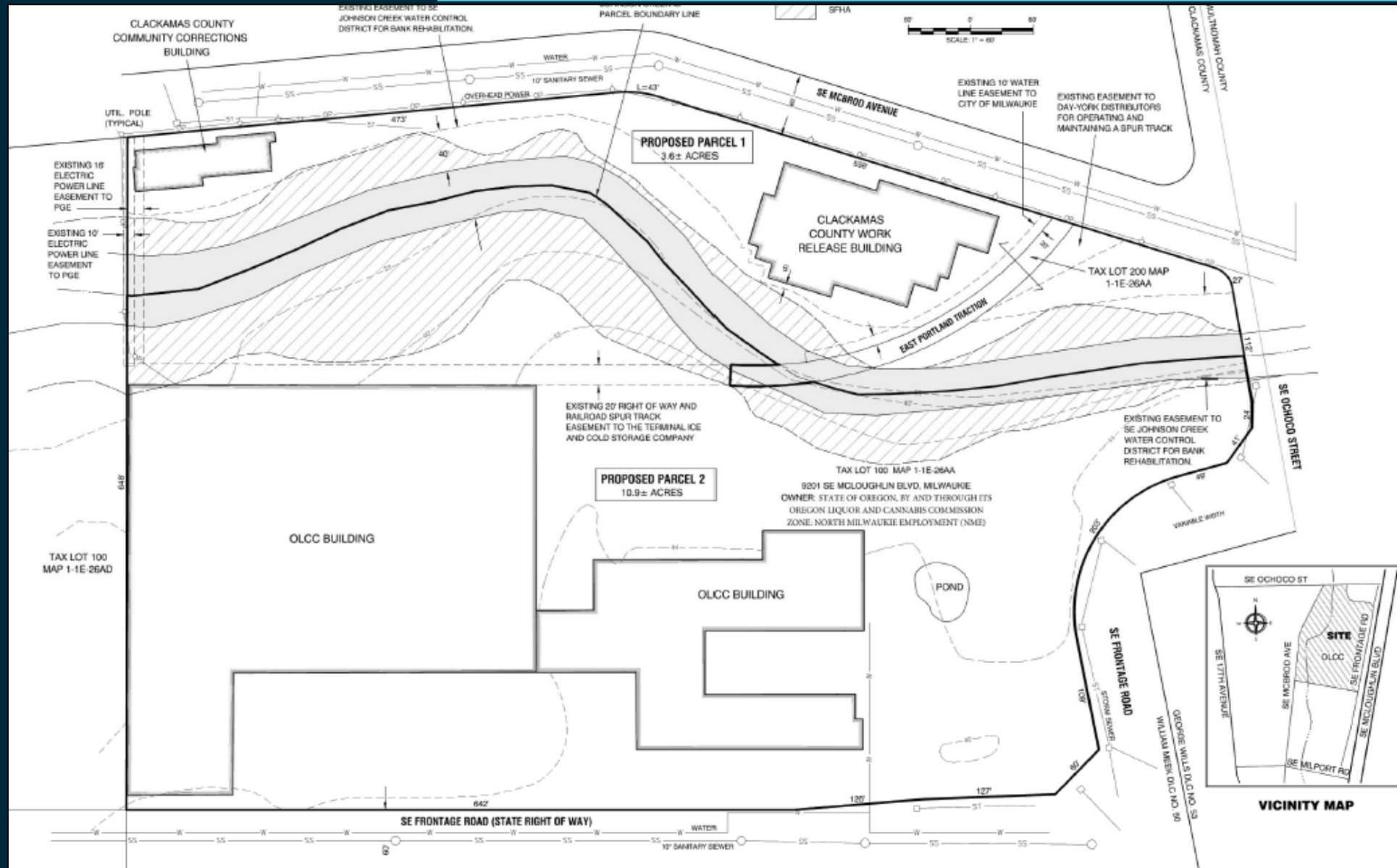
SITE



SITE - ZONING



PROPOSAL



MMC 19.402.13 – Partitions with resource areas:

- 100% of Water Quality Resource (WQR) to be in separate tract
- Type III Natural Resource review with impact analysis

Proposal:

- Impact analysis provided
- Variance requested to the separate tract requirement
 - Restricted development area with restrictive easement proposed instead

Type III Variance – APPROVAL CRITERIA

Type III Variance – Discretionary Relief Criteria

- a. The applicant's alternatives analysis provides, at a minimum, an **analysis of the impacts and benefits** of the variance proposal as compared to the baseline code requirements.
- b. The proposed variance is determined by the Planning Commission to be both **reasonable and appropriate**, and it meets one or more of the following criteria:
 - (1) The proposed variance **avoids or minimizes impacts** to surrounding properties.
 - (2) The proposed variance has desirable public benefits.
 - (3) The proposed variance **responds to the existing built or natural environment in a creative and sensitive manner**.

Key Question

Is the request to allow the restricted development area and restrictive easement variance **reasonable** and **approvable**?

- Site is fully developed already
 - Preservation of 100% of Water Quality Resource not possible with encroachments
- Proposed restricted development area **includes both WQR and Habitat Conservation Area**
 - Restrictive easement **prohibits disturbance** or construction without City approval
- Separate tract requires a separate entity to manage the area
 - Easement binds both governmental entities to maintain the easement area
- **Same level of protection with restrictive easement as with separate tract.**

Summary

- Site is already developed
- No new development proposed – partition only
- Restricted development area = Water Quality Resource + Habitat Conservation Area
- Restrictive easement = same level of protection as tract

RECOMMENDATION

Decision-making options

- A. Approve the application subject to the Findings and Conditions of Approval. (STAFF RECOMMENDATION)
- B. Approve the application with modified Findings and Conditions of Approval. Such modifications need to be read into the record.
- C. Deny the application upon finding that it does not meet approval criteria. Such findings need to be read into the record.
- D. Continue the hearing.

**QUESTIONS OR
COMMENTS?**

