



Nov 23, 2011

File(s): MOD-11-01 and WQR-11-04

NOTICE OF DECISION

This is official notice of action taken by the Milwaukie Planning Commission on Nov 22, 2011.

Application:	Modification of Trolley Trail for Light Rail
Applicant(s):	TriMet
Location(s):	Trolley Trail alignment in the City of Milwaukie between River Rd and Park Ave on tax lots 1S1E36CC02101, 02100, 01900, 01800, 01700, 00901, 00300, 05100, and 05300; 1S1E36CD02400; and 2S1E01BA10100
Application Type(s):	Modification to an Existing Approval and Water Quality Resource
Decision:	Approved with Conditions
Review Criteria:	<u>Milwaukie Zoning Ordinance:</u> <ul style="list-style-type: none">• Section 19.303 – Residential Zone R-5• Section 19.402 – Water Quality Resources• Section 19.904 – Community Service Uses• Section 19.909 – Modifications to Existing Approvals• Chapter 19.1000 – Review Procedures (specifically Section 19.1001 General Provisions and Section 19.1006 Type III Review)• Interim Implementation Memo for Metro Title 13 Habitat Conservation Areas
Neighborhood(s):	Island Station

This notice is issued in accordance with Milwaukie Municipal Code Section 19.1006 Type III Review. The complete case file for this application is available for review between 8:00 a.m. and 5:00 p.m. on regular business days at the Planning Department, Johnson Creek Facility, 6101 SE Johnson Creek Blvd. Please contact Susan Shanks, Senior Planner, at 503-786-7653 or shankss@ci.milwaukie.or.us, if you wish to view this case file.

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

Appeal period closes: 5:00 p.m., December 8, 2011

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

Findings in Support of Approval

1. The applicant, TriMet, submitted two land use applications (the “application”) for approval of modifications to a portion of the Trolley Trail between River Rd and Park Ave as part of the Portland Milwaukie Light Rail (PMLR) project. The application requests approval for trail design and water quality resource mitigation. TriMet is empowered to initiate the application pursuant to Milwaukie Municipal Code (MMC) Subsection 19.1001.6.A because it has statutory rights of eminent domain. The application has been assigned the following file numbers and consists of the following application types:
 - **MOD-11-01: Modification to Existing Approval**
 - **WQR-11-04: Water Quality Resource**
2. The location and design of the trail was previously approved by the City as a Community Service Use (CSU) in 2009 (Land Use File CSU-08-03). Since this portion of the trail has not yet been constructed, the applicant’s modification request is being processed as a Modification to an Existing Approval rather than a new CSU application or a modification to an existing CSU. Since the applicant seeks to modify an existing approval, only those portions of the trail that are proposed to be modified between River Rd and Park Ave are subject to review. The modification request includes all trail improvements in the City of Milwaukie that lie between the light rail safety fencing to the east and the outer edge of the slope easements being acquired by TriMet for trail construction to the west. Light rail improvements in this area, which include everything on either side of the modified Trolley Trail alignment under review, are not part of this land use review. Sound walls, for example, that are located on or to the west of the slope easements for the trail are not part of this review, as they are in response to light rail impacts not trail modifications.
3. The application is being processed as a major modification to an existing approval pursuant to MMC Subsection 19.909.3.A.3.a because the Planning Director determined that the modifications being proposed have different or more impacts than the original Trolley Trail proposal.
4. The applicant proposes to modify the original Trolley Trail approval to ensure the continuation of the trail through this area and to accommodate the PMLR alignment along McLoughlin Blvd. The PMLR alignment has an existing land use approval that was issued by Metro in 2008.¹ This land use final order (LUFO) was made pursuant to House Bill 3478 (1996), which provides for the review and siting of regional transportation facilities through local jurisdictions. The City’s review of the proposed trail modifications are not directly encumbered by the 2008 LUFO. However, the proposed trail modifications are a direct result of the approved rail alignment since a portion of the Trolley Trail property was identified in the PMLR Final Environmental Impact Statement as being needed for the light rail project. As such, the City cannot condition the approval of the trail modifications in such a way as to prevent the implementation of the 2008 LUFO.
5. The Trolley Trail site for purposes of this application consists of the following tax lots: 1S1E36CC02101, 02100, 01900, 01800, 01700, 00901, 00300, 05100, and 05300; 1S1E36CD02400; and 2S1E01BA10100. TriMet has eminent domain authority and is in the

¹ Metro Resolution No. 08-3964 entitled 2008 South/North Land Use Final Order (LUFO) Amendment.

process of purchasing the lots listed above and/or acquiring the necessary easements to construct the trail.

6. The Trolley Trail site has a base zone designation of Residential Zone R-5. A portion of the site on tax lots 1S1E36CC00901 and 00300 (near Wren St and McLoughlin Blvd) contains an unmapped water feature that meets the definition for a protected water feature pursuant to MMC table 19.402.9.A. As such, this area is subject to the City's water quality resource (WQR) regulations.
7. The application is further subject to Development Review at or before the time of development permit submittal pursuant to MMC Section 19.906. The purpose of Development Review is to ensure compliance with applicable standards and conditions of approval through an efficient review process that effectively coordinates the City's land use and development permit review functions.
8. The modification proposal includes the following elements:
 - A trail alignment shift to the west resulting in impacts to six tax lots under private ownership, five of which are in residential use.
 - Changes to the grade along the western side of the trail that require the construction of retaining walls and safety fencing or walls.
 - Changes to the existing vegetation on both sides of the trail as a result of both the trail alignment shift to the west and the light rail construction to the east.
 - The introduction of pedestrian-scale lighting along the trail between Park Ave and River Rd.
9. The proposal results in the following WQR impacts:
 - Removal of 18 trees.
 - Temporary disturbance to 6,150 sq ft of WQR area.
 - Permanent impacts to 10,700 sq ft of WQR area.
10. The applicant proposes the following mitigation plan:
 - Plant 48 trees.
 - Restore areas temporarily impacted by trail and light rail construction with appropriate native plants pursuant to applicable WQR standards.
 - Mitigate for areas permanently impacted by the trail and light rail at a 1:1 replacement ratio within the WQR area and above the ordinary high water level.
 - Remove invasive and nonnative species from within the construction limits and the mitigation area.
 - Monitor and maintain plantings for five years with a target survival rate of 80%.
11. The applicant's mitigation plan was reviewed by ESA Northwest Biological Resources. ESA was retained by the City at the applicant's expense to provide independent technical review of the applicant's WQR analysis and mitigation plan. ESA determined that: (1) the applicant's analysis was reasonably complete and accurate, (2) the mitigation plan met code requirements, and (3) the mitigation plantings were suitable for the site and would improve local ecological functions.
12. The application was submitted on August 8, 2011. It was initially deemed incomplete by the City on September 7, 2011. The applicant revised and resubmitted the application on September 20, 2011 and requested that the application be deemed complete on that date. The City deemed the application complete on September 20, 2011, and now has until January 18, 2012 to issue a

final decision on the application. The applicant revised portions of the application on October 26, 2011. The following revised exhibits were evaluated and accepted by the Planning Commission at a public hearing:

- **WQR Report** (with related Mitigation Site Plan & Tree Removal Plan): Exhibit TR1 and Exhibits P32-33
- **Lighting Plan**: Exhibits P9-P13
- **Landscape Plan**: Exhibits P14-P20

13. The Planning Commission (PC) evaluated the application at a public hearing on November 8 and 17, 2011 pursuant to MMC Section 19.1006 Type III Review. The November 8 PC public hearing on the application was properly noticed through direct mailings and sign postings pursuant to MMC Subsection 19.1006.3 Type III Public Notice.
14. The application was referred for comment to the following City departments and agencies: City of Milwaukie Engineering, Building, and Community Development Departments; Clackamas County Fire District #1; North Clackamas Parks and Recreation District. It was also forwarded to the Island Station Neighborhood District Association, and public copies were made available at City Hall, Ledding Library, and the Planning Department. Additionally, the Community Services Department broadly advertised the PC's public hearing on the application at various public forums, such as the Milwaukie Farmers Market, and through direct e-mailings and the City's PMLR project website.

Two written comments were received by the City from Island Station residents prior to October 17, 2011. All written comments are summarized in and/or attached to the November 8, 2011 PC staff report.

15. The application is subject to the Interim Implementation Memo for Metro Title 13 Habitat Conservation Areas and the following provisions of the Milwaukie Zoning Ordinance, which is Title 19 of the Milwaukie Municipal Code (MMC):
 - Section 19.303 – Residential Zone R-5
 - Section 19.402 – Water Quality Resources
 - Section 19.904 – Community Service Uses
 - Section 19.909 – Modifications to Existing Approvals
 - Chapter 19.1000 – Review Procedures (specifically Section 19.1001 General Provisions and Section 19.1006 Type III Review)

Provisions not addressed in these findings are found to be not applicable to the decision on the application.

16. **MODIFICATION TO AN EXISTING APPROVAL:** MMC Subsection 19.909.4.B contains the approval criteria for Modification (MOD) applications. An application for a MOD application shall be approved if the following criteria are met.
 - A. The proposed modification complies with all applicable development standards and requirements, except as modified by the original approval.

Applicable standards are as follows:

 1. Metro Title 13, which the City began implementing May 29, 2009, requires a Construction Management Plan (CMP) and Map Verification for all development within 100 feet of a mapped habitat conservation area (HCA) pursuant to Sections 5

and 9 respectively.² No other provisions of Title 13 apply since no development is proposed within an HCA. The applicant does not dispute the need for map verification or a CMP. Both of these requirements can be fulfilled during the development phase of the project and are appropriate as conditions of approval. As conditioned, this standard will be met.

2. Subsection 19.303.H requires that a minimum of 25% of the site be landscaped. The applicant is proposing to retain approximately 70% of the site in landscaping. This standard is met.
3. Subsection 19.904.9.A requires the applicant to provide all utilities, streets, or other improvements necessary for the trail. The original proposal avoided impacts to the Sparrow St and 26th Ave intersection. The proposed modification to shift the alignment to the west encroaches into this intersection. More detailed information is needed to ensure that sufficient right-of-way width will continue to exist to accommodate full street improvements at this location in the future. If this is not the case, right-of-way dedication may be required. As conditioned, this standard will be met.
4. Subsection 19.904.9.F requires that all trail lighting shall be designed to avoid glare on adjacent residential uses and public streets.

Light rail will be located to the east of the trail. Residentially-zoned properties are located to the west of the trail. Pedestrian-scale lighting for the trail is proposed on the east side of the trail to minimize impacts on residences to the west. The proposed lights are mounted on 14-foot poles and are designed to shine downwards on the trail rather than outwards. Plantings and retaining walls between the trail and the residences to the west are expected to further minimize any lighting impacts on residences. Approval of the application has been conditioned to ensure that no increase in foot candle readings occurs on these properties (as measured from top of bank) as a result of trail lighting. As conditioned, this standard will be met.

5. Subsection 19.904.9.G requires that, where possible, the hours and levels of operation of the trail shall be adjusted to make it compatible with adjacent uses.

As originally approved, the Trolley Trail is a transportation facility that is intended to be available for use every day and at all hours of the day, though most use is expected during daylight hours. To the east, the trail is adjacent to two other transportation facilities, namely the future light rail alignment and McLoughlin Blvd, which is continuously in use. To the west, the trail is separated by topography and landscaping from most of the adjacent residential properties. Similar to a lit public sidewalk, the addition of lighting along the trail is not expected to substantially change how the trail is used but will allow for safer pedestrian and bike travel during nighttime hours. No adjustments are necessary to make the trail compatible with adjacent uses. This standard is met.

6. Subsection 19.402.10 contains standards for development on property that contains protected water quality resource (WQR) areas. The standards in this subsection pertain to the development phase of the project and are appropriate as conditions of approval. A summary of these standards is as follows:
 - The water quality resource area shall be restored and maintained in accordance with the approved mitigation plan and the specifications in MMC Table 19.402.9.E WQR Area Requirements.

² The original Trolley Trail application was submitted prior to City's implementation of Metro Title 13 and was not subject to these standards.

- Existing vegetation shall be protected and left in place wherever practicable. Work areas shall be carefully located and marked to reduce potential damage to the water quality resource area. Where existing vegetation has been removed, the site shall be revegetated as soon as practicable.
- Prior to construction the water quality resource area shall be flagged, fenced or otherwise marked and shall remain undisturbed except as may be allowed by this decision. Such markings shall be maintained until construction is complete.
- Appropriate site preparation and construction practices shall be followed to prevent erosion, pollution, sedimentation, or drainage of hazardous materials to the water quality resource area.
- Stormwater facilities that encroach more than 25 feet into the outside boundary of the WQR require the addition of area to the WQR area on the site equal in size to the area of encroachment.
- Lights must be placed and hooded so that they do not shine directly into the water quality resource areas wherever practicable. Lights must provide the minimum level of lighting necessary for safe development operations and limited water quality resource area impacts.
- Storm water flows as a result of the proposed development within and to water quality resource areas shall not exceed pre-development flows. Storm water outfalls shall be appropriately designed to avoid erosion to stream banks or water quality resource area slopes.

As conditioned, the Planning Commission finds that all of these standards will be met and that this approval criterion will therefore be met.

- B. The proposed modification will continue to meet all applicable approval criteria upon which the original approval was based.

The Trolley Trail was originally approved by the City as a Community Service Use (CSU) in 2009. MMC Subsection 19.904.4 contains the applicable approval criteria for CSU applications.

1. The building setback, height limitation, and off-street parking and similar requirements governing the size and location of development in the underlying zone are met. Where a specific standard is not proposed in the CSU, the standards of the underlying zone are met.

No buildings or parking areas are proposed. The underlying zone landscape standard will be met.

The Planning Commission finds that this criterion is met.

2. Specific standards for the proposed uses as found in Subsections 19.904.7-11 are met.

Applicable standards are addressed above under Findings 15.A.3, 4, and 5.

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

3. The hours and levels of operation of the proposed use are reasonably compatible with surrounding uses.

As described in more detail in Finding 15.A.5 above, the trail is a transportation facility immediately adjacent to other existing or planned transportation facilities and separated from adjacent residential uses by retaining walls and landscaping. As

such, the hours and levels of operation of the trail are reasonably compatible with surrounding uses.

The Planning Commission finds that this criterion is met.

4. The public benefits of the proposed use are greater than the negative impacts, if any, on the neighborhood.

The underlying approval for the Trolley Trail found that the overall public benefits of the trail outweighed its potential impacts. The following public benefits were identified in the original approval:

- Improves an existing public facility
- Expands the local network of safe non-motorized facilities
- Provides a public recreational amenity
- Improves local and regional connectivity
- Encourages alternative transportation modes
- Has the potential to reduce single-occupancy vehicle trips
- Implements the Transportation System Plan

The modified trail alignment and design has the same public benefits as the previously approved trail alignment and design. The width of the trail and the trail shoulders are not proposed to change. The access points to the trail from the west are also not proposed to change. The addition of trail lighting between River Rd and Park Ave has the added benefit of providing a safer travel experience for pedestrians and cyclists during nighttime hours. Finally, impacts to an unnamed and ecologically degraded protected water feature near Wren St and McLoughlin Blvd enables the City to require natural resource mitigation for these impacts. The applicant's proposed mitigation plan will significantly improve the ecological functioning of this area, and, as such, is a benefit of the modified trail alignment.

The addition of retaining walls and the large scale removal of vegetation along the trail have the potential to negatively change the character of the area. However, the Planning Commission finds that the change, while dramatic, is not necessarily an adverse impact. Where vegetation is proposed for removal, the applicant proposes new vegetation. Given that much of the understory in this area contains invasive and nonnative plants, wholesale removal and revegetation of this area could be considered a benefit. Additionally, the applicant proposes to preserve the large giant sequoia near Sparrow St and McLoughlin Blvd by designing the trail around it. Different trail designs were evaluated in an effort to preserve three other giant sequoias further to the north; however, none were determined to be practicable. The three sequoias near Wren St are proposed for removal in order to avoid: (1) shifting the trail further into the adjacent water quality resource area to the west, and (2) adding a second jog in the trail so close to the one planned around the large sequoia at Sparrow St, as jogs in the trail negatively affect sight lines and bicyclist safety and comfort.

Where retaining walls are needed, the applicant proposes to acquire additional land behind the retaining walls (through purchase or easement) to provide a buffer of landscaping between the trail and the adjacent properties to the west. Large retaining walls include vertical reveals, vine plantings, and tiers to soften hard edges and add visual interest at the pedestrian level. The addition of retaining walls and landscape buffers also serve to more clearly define the western edge of the trail site

than the previously approved alignment. This has the added benefit of reducing the likelihood of intentional or inadvertent trespassing onto private property by trail users.

The applicant has provided landscaping plans and a tree mitigation plan that illustrate the proposed landscaping and wall treatments. The application has been conditioned to ensure that these plans are implemented as proposed.

The following potential impacts were identified in the original approval:

- Improvements to the trail are expected to increase users of the trail. This increase in use may impact the privacy of private property owners adjacent to the trail. It may also result in trespassing.

The modified trail alignment and design has the following additional potential impacts:

- The applicant is acquiring and demolishing the residences on five properties in the City of Milwaukie to accommodate the proposed trail alignment. On the one hand, this represents a significant disruption and inconvenience for these residents. On the other hand, once these homes are demolished, they are no longer impacted by the trail. If they were ever redeveloped, future development would have the opportunity to minimize any trail impacts through home and site design.
- The addition of trail lighting has the potential to introduce new lighting impacts where none existed before. The application has been conditioned to avoid this potentiality.
- Shifting the trail alignment to the west results in temporary and permanent impacts to an unnamed protected water feature near Wren St and McLoughlin Blvd. The applicant proposes to mitigate for these impacts and has submitted the appropriate analysis and mitigation plan. The applicant's mitigation plan is expected to result in substantial ecological improvements to this area. The application has been conditioned to ensure the successful implementation of the proposed mitigation.

Given that the impacts identified in the original approval have, to some extent, been addressed and new potential impacts can be effectively mitigated, the Planning Commission finds that the public benefits outweigh the potential impacts from the proposed Trolley Trail modification. As conditioned, this criterion will be met.

5. The location is appropriate for the type of use proposed.

The trail alignment was established over 110 years ago as a transportation facility, first as a streetcar line and later as a freight rail line. The proposed modification to the alignment does not substantially alter the location of the trail at the City or regional level. It also does not change how the trail connects to other trail sections to the north and south. As such, the location of the modified trail is appropriate for the proposed use.

The Planning Commission finds that this criterion is met.

17. **WATER QUALITY RESOURCE:** MMC Subsection 19.402.9 contains the application requirements for development in water quality resource (WQR) areas.

The applicant submitted the required WQR materials and analysis for impacts to the unnamed stream on the west side of the Trolley Trail on tax lots 1S1E36CC00901 and 00300 near Wren St and McLoughlin Blvd. Refer to Table 1 below for detailed findings pertaining to the applicant's

alternatives analysis and mitigation plan, which are required per MMC Subsection 19.402.9.G and I respectively.

As conditioned, the Planning Commission finds that no practicable alternative exists to the trail alignment and that light rail alignment location has already been approved; that disturbance to the WQR area is limited to the area necessary to accommodate the trail and light rail alignments; and that the mitigation plan proposed by the applicant for impacts to the WQR area caused by the trail and light rail alignments is adequate.

A. Application Requirements

Walkways, bike paths, and roads along or across water quality resource areas, such as the Trolley Trail, are subject to Type III review pursuant to MMC Subsection 19.402.7. The applicant submitted most of the required information for Type III review, a summary of which is provided below.

- A topographic map of the site with contour intervals of five (5) feet or less showing a delineation of the water quality resource area and all wetlands.
- The location of all existing natural features including, but not limited to, all trees of a caliper greater than six (6) inches diameter at breast height (DBH).
- The location of all wetlands.
- An inventory and location of existing debris and noxious materials.
- An inventory of vegetation, including percentage ground and canopy coverage.
- An assessment of the existing condition of the water quality resource area.

Additionally, MMC Subsection 19.402.9.K requires payment of all adopted fees. The applicant paid the required water quality resource application fee and technical report review deposit. The deposit is meant to cover the City’s expenses related to the hiring of a consultant with the appropriate technical expertise to review the applicant’s water quality resource study.

As conditioned, the Planning Commission finds that the water quality resource application requirements will be met.

18. Pursuant to Subsection 19.1001.7.E, the decision on this land use application shall expire and become void within the time periods specified in Subsection 19.1001.7.E.1 unless the review authority specifies a different expiration time period as allowed by Subsection 19.1001.7.E.2. Given the size, complexity, and phased nature of the proposal, the Planning Commission finds that it is appropriate to extend the time period within which the applicant must obtain development permits from 2 years to 4 years, and within which the applicant must pass all final inspections from 4 years to 6 years, from the date of the land use decision on this application.

Table 1: Water Quality Resource Findings

MMC Subsection 19.402.9.G – ALTERNATIVES ANALYSIS		
An alternatives analysis shall be included in the application that demonstrates the following.		
	Requirement	Findings
1.	No practicable alternatives to the requested development exist that will not disturb	Placement of the light rail and trail alignments in this area are constrained by McLoughlin Blvd on the east and steep slopes and residentially-zoned properties on the west. Other rail alignments were evaluated but none were considered practicable, e.g.

	<p>the Water Quality Resource Area.</p>	<p>placement of light rail on the east side of McLoughlin Blvd and on the west side of the trail. Other trail alignments and trail supports were considered but none had fewer impacts on the WQR area and/or were considered appropriate by the North Clackamas Parks and Recreation District.</p> <p><i>This requirement is met.</i></p>
<p>2.</p>	<p>Development in the Water Quality Resource Area has been limited to the area necessary to allow for the proposed use.</p>	<p>The trail is located as far away from the WQR area as possible while maintaining a minimum acceptable distance from the light rail alignment. A reduction in the width of the trail at this location was considered neither safe nor desirable by the North Clackamas Parks and Recreation District, but a retaining wall is proposed at this location in order to reduce the amount of fill and disturbance within the WQR area.</p> <p><i>This requirement is met.</i></p>
<p>3.</p>	<p>The Water Quality Resource Area can be restored to an equal or better condition in accordance with Table 19.402.9.E.</p>	<p>The current condition of the WQR area is degraded. A mitigation plan has been developed to compensate for the unavoidable impacts to this area pursuant to Table 19.402.9.E. The proposed mitigation plan will improve the current conditions and put the area on a trajectory toward providing better water quality function and habitat values. Specific elements of the plan include:</p> <ul style="list-style-type: none"> • Restoration of all WQR areas temporarily impacted by trail and light rail construction with appropriate native plants. • Mitigation for all WQR areas permanently impacted by the trail and light rail alignments at approximately a 1:1 replacement ratio within the WQR area and above the ordinary high water level. • Removal of invasive and nonnative species from within the construction limits and the mitigation area. • Monitoring and maintenance of plantings for five years with a target survival rate of 80%. <p>The mitigation plan would benefit from the following refinements to ensure protection of existing trees to be retained and 100% ground coverage at the end of the monitoring period as required by Table 19.402.9.E:</p> <ul style="list-style-type: none"> • Show which trees are proposed to be retained with a note about protecting these trees in place to ensure that they are not adversely affected during construction or mitigation. • Consider adding a “ground cover and herbaceous species” list to the plant schedule, moving both sword fern and low Oregon grape to this list and adding another 1-gallon herbaceous species like fringe-cup (<i>Tellima grandiflora</i>) to this list. (Fringe cup is a good competitor against invasive plants, tolerates drought, and has a high transplant success rate.) • Revise the shrub density to reflect the removal of sword fern and low Oregon grape from the shrub layer, and add additional shrubs as needed to achieve a shrub planting density of at least

		<p>6 ft on center. Existing shrubs to be retained can be included in the shrub planting density calculation.</p> <p>The mitigation plan should also include the following:</p> <ul style="list-style-type: none"> • A larger water quality resource buffer to account for the encroachment of the proposed stormwater facility more than 25 feet into the outside boundary of the WQR area. The expanded area must be equal in size to the area of encroachment so as to mitigate for this specific adverse impact per Subsection 19.402.10.E. If the stormwater facility is removed from the WQR area, no changes would be required to the WQR buffer. • The location of all debris and noxious material identified in the WQR report and a note to remove it prior to the installation of the mitigation plantings per Table 19.402.9.E. In the alternative, a justification should be provided for why it should be left in place. <p>The approval of the application has been conditioned to ensure the mitigation plan is implemented as proposed and as altered by these findings.</p> <p><i>As conditioned, this requirement will be met.</i></p>
<p>4.</p>	<p>An explanation of the rationale behind choosing the alternative selected, including how adverse impacts to resource areas will be avoided and/or minimized.</p>	<p>Placement of the light rail and trail alignments in this area is constrained by McLoughlin Blvd on the east and steep slopes and residentially-zoned properties on the west. Other rail alignments were evaluated but none were advanced. They were considered either nonpracticable or more impactful to the trail, McLoughlin Blvd, or nearby residential properties. Other trail alignments and trail supports were considered within the area left remaining on the west side of the light rail alignment, but none had fewer impacts on the WQR area and/or were considered appropriate by the North Clackamas Parks and Recreation District.</p> <p>The trail is located as far away from the WQR area as possible while maintaining a minimum acceptable distance from the light rail alignment. A reduction in the width of the trail at this location was considered neither safe nor desirable by the North Clackamas Parks and Recreation District, but a retaining wall is proposed at this location in order to reduce the amount of fill and disturbance within the WQR area. The proposed retaining wall is located above ordinary high water and over an existing culvert.</p> <p><i>This requirement is met.</i></p>
<p>MMC Subsection 19.402.9.I – MITIGATION PLAN</p> <p>A mitigation plan shall be included in the application that includes the following information.</p>		
<p>1.</p>	<p>A description of adverse impacts that will be caused as a result of development.</p>	<p>The proposed trail and light rail alignments will have the following adverse impacts:</p> <ul style="list-style-type: none"> • Temporary disturbance to 6,150 sq ft of WQR area • Permanent impacts to 10,700 sq ft of WQR area • Removal of 18 trees greater than 6 inches in diameter at breast

		<p>height (DBH)</p> <p>Short-term impacts include a slight reduction in the shading of the WQR area and the loss of tree canopy habitat after trees are removed. These impacts will gradually diminish over time as the mitigation plantings mature.</p> <p>More information is needed to ensure that the WQR area will not be adversely affected by the proposed stormwater plan for this area by piping or otherwise diverting water that would naturally feed this protected water feature.</p> <p><i>As conditioned, this requirement will be met.</i></p>
<p>2.</p>	<p>An explanation of how adverse impacts to resource areas will be avoided, minimized, and/or mitigated in accordance with, but not limited to, Table 19.402.9.E.</p>	<p>An explanation of how adverse impacts to the WQR area will be avoided, minimized, and/or mitigated is included under Subsections 19.402.9.G.3 and 4 above.</p> <p><i>This requirement is met.</i></p>
<p>3.</p>	<p>A list of all responsible parties including, but not limited to, the owner, applicant, contractor, or other persons responsible for work on the development site.</p>	<p>TriMet is the principal party responsible for work on the trail at this location. Additional detailed information will be made available to the City prior to construction as specific construction contracts are executed.</p> <p><i>This requirement is met.</i></p>
<p>4.</p>	<p>A map showing where the specific mitigation activities will occur.</p>	<p>The required map has been provided.</p> <p><i>This requirement is met.</i></p>
<p>5.</p>	<p>An implementation schedule, including timeline for construction, mitigation, mitigation maintenance, monitoring, reporting, and a contingency plan. All in-stream work in fish-bearing streams shall be done in accordance with the Oregon Department of Fish and Wildlife in-stream timing schedule.</p>	<p>No in-water is proposed. Bareroot plant materials will be planted between December 1 and February 28th following the completion of heavy construction. TriMet will monitor and maintain the site for five years after the initial planting. Maintenance will include providing mulch rings around trees and shrubs, watering, and weeding as necessary to allow the native plant community to mature to a self-sustaining condition. The target survival rate of plantings is 80%. If plant mortality exceeds 20% of the original planting quantities at any time during the five year period, TriMet will replace with new plants to achieve an overall 80% survival rate.</p> <p>TriMet will submit an annual report to the Planning Director documenting the survival of the trees and shrubs on the mitigation site for a period of five years. The approval of the application has been conditioned to ensure the mitigation plan is implemented as proposed and as altered by these findings.</p> <p><i>As conditioned, this requirement will be met.</i></p>

Conditions of Approval

1. The plans submitted to the City of Milwaukie for modification of the Trolley Trail shall be in substantial conformance with the plans reviewed by the Planning Commission (PC) that were date stamped by the City on September 20, 2011 and October 26, 2011. The plans shall be modified only as described in these conditions of approval or through a future land use application or formal modification process. Plan elements not proposed or approved for modification shall substantially conform to the underlying Trolley Trail approval (Land Use File: CSU-08-03).
2. The development permit submission for the modification of the Trolley Trail shall include a detailed written and/or graphic description of any plan changes that are not part of these conditions of approval or that were not specified by the final decision-making authority.
3. The development permit submission for the modification of the Trolley Trail shall include the following items to demonstrate conformance with the Modification to an Existing Approval criteria. Development permits shall not be issued until the Planning Director is satisfied that the following conditions of approval are met.
 - A. Provide a cross section design for the intersection at Sparrow St and 26th Ave that shows that there is sufficient right-of-way width to accommodate full street improvements at this location in the future. Redesign the trail at this location and/or dedicate property to the right-of-way if necessary.
 - B. Update the landscaping plan as follows:
 - 1) Include tree quantities that are substantially consistent with the proposed Tree Mitigation Site Plan (Exhibit D7).
 - 2) Show vine plantings at the base of the northernmost retaining wall.
 - 3) Revise plan to be consistent with the retaining wall plan with respect to the physical extent of the northernmost retaining wall.
 - 4) Revise plan to be consistent with the mitigation plan with respect to plant size and spacing.
 - 5) Include a bench specification for the bench shown on the east side of the trail near Sparrow St and 26th Ave.
4. The development permit submission for the modification of the Trolley Trail shall include the following items to demonstrate conformance with the Water Quality Resource area regulations. Development permits shall not be issued until the Planning Director is satisfied that the following conditions of approval are met.
 - A. Provide the following application materials:
 - 1) A topographic map of the site with contour intervals of five (5) feet or less showing a delineation of the water quality resource area, including all wetlands, that is consistent with Milwaukie Municipal Code (MMC) Table 19.402.9.A for a primary protected water feature with slopes greater than 25% for less than 150 ft.
 - 2) Provide a wetland delineation report for any identified wetlands within the WQR area.
 - B. Provide a technical memo that describes how the stormwater plan for this area does not adversely affect the WQR area by piping or otherwise diverting water that would naturally feed this protected water feature.
 - C. Revise the mitigation plan as follows:
 - 1) Expand the required vegetated buffer to account for the encroachment of the

proposed stormwater facility more than 25 feet into the outside boundary of the WQR area. The expanded area must be equal in size to the area of encroachment. Record a conservation easement for this replacement area to ensure its protection into the future. Provide a copy of the recorded easement to the Planning Department. In the alternative, remove the proposed stormwater facility from the WQR area.

- 2) Adjust the plant schedule to ensure 100% ground coverage in the mitigation area at the end of the monitoring period. Consider adding a “ground cover and herbaceous species” list to the plant schedule, moving both sword fern and low Oregon grape to this list and adding another 1-gallon herbaceous species like fringe-cup (*Tellima grandiflora*) to this list. (Fringe cup is a good competitor against invasive plants, tolerates drought, and has a high transplant success rate.) Revise the shrub density to reflect the removal of sword fern and low Oregon grape from the shrub layer, and add additional shrubs as needed to achieve a shrub planting density of at least 6 ft on center. Existing shrubs to be retained can be included in the shrub planting density calculation.
 - 3) Show existing trees to be retained and include a note about protecting these trees in place.
 - 4) Include the location of debris and noxious material on the plan and include a note that it will be removed prior to installation of the mitigation plantings. In the alternative, provide a justification for why it should be left in place.
5. Ongoing conditions of approval:
- A. Maintain and monitor the water quality resource area plantings for five years per the approved mitigation plan prepared by Vigil Agrimis and subsequently modified by these conditions of approval. Provide a copy of the annual monitoring report to the City of Milwaukie Planning Director no later than the end of each calendar year during the five years in which the plantings are monitored.
 - B. Pursuant to Subsection 19.1001.7.E.2, the time period within which the applicant must obtain development permits for the Trolley Trail is extended from 2 years to 4 years, and the time period within which the applicant must pass all final inspections is extended from 4 years to 6 years, from the date of the land use decision on this application.

Additional 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.

1. The development permit submission for the modification of the Trolley Trail shall include the following items to demonstrate conformance with Milwaukie Public Works Standards. Development permits shall not be issued until the Engineering Director has reviewed and approved the following items.
 - A. Submit a storm water management plan prepared by a qualified professional engineer that conforms to Section 2 – Stormwater Design Standards of the City of Milwaukie Public Works Standards. All stormwater from the Trolley Trail and its associated retaining walls shall be treated and infiltrated on private property unless otherwise approved by the Engineering Director.

- 1) The storm water management plan shall demonstrate that the post-development runoff does not exceed pre-development runoff, including any existing storm water management facilities serving the development site.
 - 2) The storm water management plan shall demonstrate compliance with water quality standards in accordance with the City of Portland Stormwater Management Manual.
- B. In the event the storm management system contains underground injection control devices, the applicant shall submit proof of acceptance of the storm system design from the Department of Environmental Quality. The storm water management plan must also be designed to meet water quality resource development standards contained in MMC Subsection 19.402.10, specifically:
- 1) Storm water flows as a result of the proposed development within and to water quality resource areas shall not exceed pre-development flows.
 - 2) Storm water outfalls shall be appropriately designed to avoid erosion to stream banks or water quality resource area slopes.
2. Prior to commencement of any earth disturbing activities, the applicant shall:
- A. Submit a Construction Management Plan pursuant to Metro Title 13 Section 5.
 - B. Submit the map verification information identified in Metro Title 13 Section 9.F.1.
 - C. Obtain an erosion control permit pursuant to MMC Title 16 Erosion Control.
 - D. Flag, fence, or otherwise mark the extent of the construction limits.
 - E. Flag, fence, or otherwise mark the water quality resource area not proposed to be disturbed pursuant to MMC Subsection 19.402.10. The water quality resource area must be identified in the field by a qualified professional.
3. During site development, the applicant shall:
- A. Limit development activity from 7 a.m. to 7 p.m. Monday through Friday and 8 a.m. to 5 p.m. Saturday and Sunday pursuant to Milwaukie Public Works Standards_Division 105.13, unless otherwise approved by the Engineering Director, and abide by MMC Chapter 8.08 regarding construction noise. Variances to maximum permitted noise levels or prohibited noises as identified in MMC Chapter 8.08 may be granted by the Police Department pursuant to MMC Subsection 8.08.110.
 - B. Safeguard the water quality resource area pursuant to MMC Subsection 19.402.10 as follows:
 - 1) All site development activities shall conform to the Construction Management Plan.
 - 2) Protection fencing shall be maintained around areas not proposed to be disturbed until site development is complete. Trees shall not be used as anchors to stabilize construction equipment or activities.
 - 3) Appropriate site preparation and construction practices shall be followed to prevent erosion, pollution, sedimentation, or drainage of hazardous materials to the water quality resource area.
 - 4) Native soils disturbed during development shall not be removed from the site.
 - 5) The water quality resource area shall be re-vegetated per the approved mitigation plan and as soon as practicable after the approved development activity in the resource area is complete.

4. Prior to final inspection of the modification of the Trolley Trail, the applicant shall complete the following items to the satisfaction of the Planning Director:
 - A. Restore and improve the water quality resource area per the approved mitigation plan prepared by Vigil Agrimis and subsequently modified by these conditions of approval pursuant to MMC Subsection 19.402.10.A. Submit a letter from the project's natural resource consultant attesting that all required restoration and mitigation work has been completed in conformance with the approved mitigation plan.
 - B. Install all the plantings per the approved landscape plan date stamped by the City on October 26, 2011 and subsequently modified by these conditions of approval. Submit a letter from the project's landscape designer attesting that all required landscaping work has been completed in conformance with the approved landscape plan. The letter shall include a description of and statement about how the spacing and quantities of the Type 2 plantings will provide the intended screening.
 - C. Demonstrate that the addition of trail lighting does not increase the foot candle readings (as measured from top of slope) for any properties in the City of Milwaukie on the west side of the trail that are not acquired by TriMet for construction of the trail or the light rail project. Documentation can take the form of a photometric study and/or a written report by an electrical engineer. Provide additional fencing or screening as needed to meet this criterion.

9. Prior to final inspection of the modification of the Trolley Trail, the applicant shall complete the following items to the satisfaction of the Engineering Director:
 - A. Construct a private storm management system to accommodate stormwater runoff from the trail and retaining walls. The private storm management system shall be constructed according to the approved storm water management plan.

The above-listed conditions of approval and additional requirements shall not be interpreted or applied by themselves or cumulatively in a manner that would prevent implementation of a land use final order, significantly negatively impact the operations of the South North MAX Light Rail Project or Project extension, significantly delay the completion or prevent the timely implementation of the South North MAX Light Rail Project or Project extension, or require funding beyond the project budget.



Katie Mangle
Planning Director

cc: Applicant
Property Owners
Planning Commission
Kenny Asher, Community Development/Public Works Director
Katie Mangle, Planning Director
Gary Parkin, Engineering Director
Zach Weigel, Civil Engineer
Wendy Hemmen, Light Rail Coordinator
Tom Larsen, Building Official
Bonnie Lanz, Permit Specialist
Doug Whiteley, Lieutenant Deputy Fire Marshal
NDA(s): Island Station
Interested Persons
Master File: MOD-11-01