MILWAUKIE
Dogwood City of the West

To: **Planning Commission**

Through: **Katie Mangle, Planning Director**

From: **Brett Kelver, Associate Planner**

Date: **June 13, 2011, for June 14, 2011, Public Hearing**

Subject: **Supplemental Information for June 14 Hearing**

ADDITIONAL CODE AMENDMENTS

Staff has identified one small addition to existing language in the City's rules for off-street parking that would increase consistency with the updated Natural Resource regulations (see Attachment 1). Staff recommends that the Commission add Attachment 1 to the proposed amendments presented in the packet materials ("PC Hearing Draft 6-14-11" versions).

DISCUSSION ITEM

Residential exemption in Title 13 model code: Staff reexamined the exemptions suggested in the Title 13 model code provided by Metro. Information presented in the June 14 staff report was inaccurate in describing a single exemption for existing residences that would allow disturbance of up to 10% of the vegetative cover in an HCA. To clarify, the Title 13 model code provides two different exemptions that are not included in the current version of the proposed amendments:

a) *For residences constructed prior to the date of adoption of the HCA rules, there is an exemption for any type of development in an HCA that would not otherwise require a land use application, building permit, erosion control permit, or grading permit. This allowance extends to the removal of any amount of vegetation and tree canopy.*

b) *For all properties (residential, commercial, industrial—whether already established or newly developed), there is an exemption to remove up to 10% of existing vegetation in an HCA (maximum 20,000 sq ft on any given lot).*

The current version of the proposed amendments provides some specific exemptions for tree removal (19.402.4.A.6), new gardens and play areas up to 150 sq ft (19.402.4.A.8), new trails (19.402.4.A.17), and new minor encroachments into HCAs (up to 500 sq ft for patios and sheds – 19.402.4.B.2). But these various exemptions are specifically limited in scope and do not offer such broad and general exemptions in HCAs as the Title 13 model code.

If the model code exemptions were incorporated into the proposed amendments, a primary effect would be to exempt tree removal in HCAs from any review or requirement to replant, whether on residential, commercial, or industrial property. Additionally, existing residences would be exempt from review for most small disturbances, at least up to the point where they would need a standard building, grading, or erosion control permit. Staff continues to support the exemptions proposed in the current version of the amendments as providing significant relief to property owners without abandoning protection of HCAs. If the Commission decides to

pursue one or both of these model code exemptions, staff suggests that the Commission consider incorporating them in a way that will be easy to implement.

Commissioner Stoll has asked staff to draft language that would incorporate the two exemptions from the model code into the proposed amendments. Staff is developing that language and evaluating how its inclusion would affect other parts of Section 19.402—a draft will be made available at the public hearing tomorrow night (June 14).

COMMENTS

Additional comments were received from Christopher Burkett and Pat Russell and are included as Attachments 2 and 3, respectively.

ATTACHMENTS

1. Additional amendment to Subsection 19.606 Parking Area Design and Landscaping
2. Comments received from Christopher Burkett on 6/09/11 (via e-mail)
3. Comments received from Pat Russell on 6/13/11 (via e-mail)

Additional amendment to Subsection 19.606 Parking Area Design and Landscaping

(Proposed new text is underlined.)

CHAPTER 19.600

OFF-STREET PARKING AND LOADING

19.606 PARKING AREA DESIGN AND LANDSCAPING

F. Lighting

Lighting is required for parking areas with more than 10 spaces. The Planning Director may require lighting for parking areas of less than 10 spaces if the parking area would not be safe due to the lack of lighting. Lighting shall be designed to enhance safe access for vehicles and pedestrians on the site, and shall meet the following standards:

1. Lighting luminaires shall have a cutoff angle of 90 degrees or greater to ensure that lighting is directed toward the parking surface.
2. Parking area lighting shall not cause a light trespass of more than 0.5 footcandles measured vertically at the boundaries of the site.
3. Pedestrian walkways and bicycle parking areas in off-street parking areas shall have a minimum illumination level of 0.5 footcandles, measured horizontally at the ground level.
4. Where practicable, lights shall be placed so they do not shine directly into any WQR and/or HCA location; and the type, size, and intensity of lighting shall be selected so that impacts to habitat functions are minimized.

ATTACHMENT 2

From: christopherburkett@comcast.net
Sent: Thursday, June 09, 2011 12:32 PM
To: Kelver, Brett
Subject: Re: A few more issues

Thanks Brett,

1. I wasn't sure if that only referred to new construction, so I'm relieved to hear that it applies to existing situations. Thanks for clarifying that.

3. Well, on both our properties a smaller, spindly tree can still be 12" in diameter. Both properties have had trees growing for 80+ years.

5. My concern is not "expanding into existing native vegetation" but if I don't pull out weeds promptly, if some are native species, a strict interpretation of the ordinance could mean a constant game of "gotcha."

I wish you the best with the upcoming Planning Commission meeting, sorry I have to miss it as I'm sure it will be very interesting.

Thanks for the Bon Voyage; we leave for the airport at 4AM tomorrow.

Christopher Burkett

----- Original Message -----
From: "Brett Kelver" <KelverB@ci.milwaukie.or.us>
To: christopherburkett@comcast.net
Cc: "Katie Mangle" <MangleK@ci.milwaukie.or.us>
Sent: Thursday, June 9, 2011 11:40:09 AM
Subject: RE: A few more issues

Thanks for sending these comments, Christopher. I will send them along to the Planning Commission before the hearing, either Friday or Monday.

I'll give a few quick responses:

1) (I wasn't sure about your page number reference, as Attachment one represents pages 24-67 of the entire packet—but I got your point.) There is in fact a limited exemption in HCAs for up to 500 sq ft of disturbance (including for walkways, patios, etc.) in residential zones—19.402.4.B.2 on page 32 of the whole packet (page 9 of 44 in Attachment 1, the strikeout version of the code).
2) Re: power lines and trees, you raise a good point—I'll think that one through.
3) As we discussed on Monday, one option for dealing with the kind of native tree crowding situation you mention below would be to develop a simple management plan for dealing with those trees. And remember that for code purposes, a tree is not a regulated "tree" unless it is at least 6 inches in diameter, so smaller "spindly" trees could be removed if they are still small and don't meet the "tree" definition.
4) Re: the beaver question, that is also a good one that needs a little more thought. I don't know if there are higher jurisdictional rules that would apply to animals and game management. I don't know that the zoning code is truly empowered to regulate something like shooting birds on a property, for

example. I do think that any mitigation plantings would need to be replaced as per the general mitigation standards established in 19.402.11.B, regardless of the cause of their demise (80% survival required for 3 years following project approval/completion). I'll try to think this one through as well.
5) Again, I think that two intents expressed in 19.402.1, regarding existing landscaping and resource restoration, are not mutually exclusive. It is possible to require mitigation and restoration of WQRs and HCAs in development situations and to allow already established landscapes to be maintained. The point I was making in Item C of the staff report is that allowing someone to remove existing native vegetation in order to establish a "heritage landscape" seems to fall outside the intention of allowing existing landscapes to be maintained and also antithetical to the intention of restoring and improving natural resources "where possible." I will continue to try to find more clear ways to address this issue—the rules acknowledge the right of property owners to maintain their existing landscapes, which is different than expanding existing landscaping into intact native vegetation areas.

Thanks again for sending your comments. Good luck with your upcoming trip!

-Brett Kelver
Associate Planner
City of Milwaukie

From: christopherburkett@comcast.net [mailto:christopherburkett@comcast.net]
Sent: Thursday, June 09, 2011 9:11 AM
To: Kelver, Brett
Subject: A few more issues

Brett,

Here are a few last minute issues for your consideration.

1. Impervious surface prohibition (Attachment 1, page 125, Landscape planting and maintenance). (See attached photos of steps, paths and small Koi pond.)

On our home property we have several pathways composed of crushed gravel and flat mica-schist stones. Any careful study of water absorption and runoff around these pathways would show no harmful effects, even during periods of heavy rainfall. It would be virtually impossible to document any harm to water quality or animal habitat with this type of construction and yet it is my understanding that these pathways, steps and small pond would be prohibited by the new regulations.

Wouldn't it be possible to allow small amounts of impervious surfaces, with larger amounts controlled through a Type 1 permit? Larger amounts could be permitted based upon the percentage of impervious to pervious ground coverage. This would give homeowners some flexibility in the use of their properties without harming the HCA. It
will be an overly restrictive burden if impervious surfaces are completely prohibited in HCA areas, since good landscape architecture requires the use of limited amounts of impervious surfaces.

2. Pruning or tree removal near power lines

Since incoming power lines have to be kept clear of branches, there should be either an outright exemption for pruning more than 20% or outright removal if the tree is sited incorrectly. (We've all seen those tragic situations where trees growing directly underneath power lines get truncated every year.)

In a power line situation, a tree may require pruning or removal regardless of whether it's native or non-native.

3. Native vs. Non-native tree removal

Native tree removal should not be completely forbidden. There will be some situations where overcrowding of trees has occurred and the best solution is to remove a spindly native species, such as a Douglas Fir tree. Treed canopy is treed canopy and provides much the same benefit in many situations, no matter if native or non-native. While it is reasonable to encourage native species tree populations, this should not be done at the expense of the overall treed canopy.

4. An inconvenient situation.

It is a tricky and inconvenient situation when a beaver decides to take up residence in an WQR area. In short order, the beaver will cut down huge numbers of trees, native or non-native. Some can be mitigation trees; will these require replacement? The beaver's dam can cause considerable impact on the local ecology very quickly, including interfering with natural drainage areas and flooding roads. Yet the beaver is one of the native species which is benefiting from the Habitat Conservation Areas. In a wild forest setting, beavers contribute to the natural ecology in many productive ways but in an urban setting there are many awkward and dangerous situations created from the results of the beavers legendary work ethic.

This beaver discussion is not idle speculation: we had one take up residence in our church pond last year, very close to the Milwaukie city limits.

This is merely one example of why the "everything is prohibited unless specifically permitted" clause is too all encompassing as "live trapping for relocation" of any native species animal is not specifically permitted, so it would presumably be prohibited. (In some cases, relocation is not permitted.... so what then?)

5. Heritage Landscaping.

Are we free to continue our landscaping as promised in the intent section? Some fully mature, cohesively landscaped properties do not need "restoration" and it is insulting to insinuate that they do. What those of us who have such properties need is protection from bureaucratic regulations which compromise the integrity of our landscaped properties by forcing us to revert our land back to "native species only" brush and weeds.

It is obvious by reading through the "Other issues, part C" discussion that the ultimate intent of these regulations is to eventually force homeowners to change their beautifully choreographed and exquisitely maintained properties to "more natural conditions." This is outrageously presumptuous and completely unacceptable. Why do you attempt to wrest control of the very land we live on and care for?

Please, just leave us in peace: we are harming no one and do not deserve this kind of treatment.

Sincerely,
Christopher Burkett

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MILWAUKIE SUSTAINABILITY: Please consider the impact on the environment before printing a paper copy of this message.

ATTACHMENT 3

From: Pat Russell <flanagan112@hotmail.com>
Sent: Monday, June 13, 2011 11:25 AM
To: Kelver, Brett
Subject: RE: Reminder: Milwaukie PC mtg 6/14 on Natural Resource code amendments

Brett,

Thanks for including my email in the staff's packet to the PC.

Unless each PC member reads my May email, they probably don't realize that I am advocating a MINIMUM 200 foot setback, REGARDLESS of improvements and any "improvements" within that area should be toward greatly enhancing the riparian habitat, or upland habitat for salmon. Again, I recall in the 90's that some METRO staff wrote a report, recommending the 200 foot setback to follow findings of scientific research in forest practices of the Pacific NW. For steep slopes the setback would be increased to 400 feet. If scientists feel that 200 feet is an absolute minimum to sustain a fisheries habitat for salmon in a forested area, one would wonder why this same standard isn't applied to an urban setting, where some would argue the enviromental impacts in and around our riparian corridors are even more impacted that a forest clear-cut.

Further, again, I encourage our policy makers to prioritize the recovery of salmon in the Kellogg-Mt. Scott watershed. Salmon presence is the only meaningful litmus test, compared to a politically-based (compromise) standard adopted by Metro as a minimum (Title 13).

May I suggest an order to the PC's action, if they choose to move this amendment forward?

I suggest that the Comprehensive Plan amendments move forward BEFORE any motion to amend the zoning regulations. After all, state law requires/implies (?) implementing policy to conform to the city's Comprehensive Plan.

Note my new email address. I am checking my old address periodically.

In case any of the Commissioners are wondering where I live, I live 1/2 block south of Biquist Elementary, outside Milwaukie's city limits. However, since my focus is on salmon recovery, fish and other characters of our watershed (Kellogg Creek/Mt. Scott) don't live by political boundaries. Milwaukie's policies and investments are key to the salmon recovery in the watershed. Further, my comments do not reflect the values of the No. Clackamas Urban Watersheds Council, the No. Clackamas Citizens Association (CPO), nor the McLoughlin Area Plan Committee (MAP), of which groups I am a member.

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