



AGENDA

MILWAUKIE PLANNING COMMISSION Tuesday August 24, 2010, 6:30 PM

MILWAUKIE CITY HALL
10722 SE MAIN STREET

- 1.0 Call to Order - Procedural Matters**
- 2.0 Planning Commission Minutes – Motion Needed (10 min.)**
 - 2.1 May 25, 2010 *continued from July 27, 2010*
 - 2.2 June 29, 2010
- 3.0 Information Items**
- 4.0 Audience Participation –** This is an opportunity for the public to comment on any item not on the agenda
- 5.0 Public Hearings –** None
- 6.0 Worksession Items**
 - 6.1 Summary: Natural Resources Overlay briefing #6 **(45 min.)**
Staff Person: Brett Kolver
 - 6.2 Summary: Development Review Process Tune-Up Code Project briefing #3 **(90 min.)**
Staff Person: Susan Shanks
- 7.0 Planning Department Other Business/Updates**
 - 7.1 CPA-10-02 Wastewater Master Plan **(10 min.)**
- 8.0 Planning Commission Discussion Items –** This is an opportunity for comment or discussion for items not on the agenda.
- 9.0 Forecast for Future Meetings:**
 - September 14, 2010
 - 1. Worksession: CPA-10-02 Wastewater Master Plan
 - 2. Worksession: Development Review Process Tune-Up Code Project, review of draft chapters
 - September 28, 2010
 - 1. Worksession: Milwaukie's Comprehensive Plan – Thinking about, and planning for, the future

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 speak at this meeting, please fill out a yellow card and give to planning staff. Please turn off all personal communication devices during meeting. For background information on agenda items, call the Planning Department at 503-786-7600 or email planning@ci.milwaukie.or.us. Thank You.
2. **PLANNING COMMISSION MINUTES.** Approved PC Minutes can be found on the City website at www.cityofmilwaukie.org
3. **CITY COUNCIL MINUTES** City Council Minutes can be found on the City website at www.cityofmilwaukie.org
4. **FORECAST FOR FUTURE MEETING.** These items are tentatively scheduled, but may be rescheduled prior to the meeting date. Please contact staff with any questions you may have.
5. **TME 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 the agenda item to a future date or finish the agenda item.

Public Hearing Procedure

Those who wish to testify should come to the front podium, state his or her name and address for the record, and remain at the podium until the Chairperson has asked if there are any questions from the Commissioners.

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 IN SUPPORT.** Testimony from those in favor of the application.
5. **NEUTRAL PUBLIC TESTIMONY.** Comments or questions from interested persons who are neither in favor of nor opposed to the application.
6. **PUBLIC TESTIMONY IN OPPOSITION.** Testimony from those in opposition to the application.
7. **QUESTIONS FROM COMMISSIONERS.** The commission will have the opportunity to ask for clarification from staff, the applicant, or those who have already testified.
8. **REBUTTAL TESTIMONY FROM APPLICANT.** After all public testimony, the commission will take rebuttal testimony from the applicant.
9. **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.
10. **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.
11. **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.

The City of Milwaukie will make reasonable accommodation for people with disabilities. Please notify us no less than five (5) business days prior to the meeting.

Milwaukie Planning Commission:

Jeff Klein, Chair
Nick Harris, Vice Chair
Lisa Batey
Teresa Bresaw
Scott Churchill
Chris Wilson
Mark Gamba

Planning Department Staff:

Katie Mangle, Planning Director
Susan Shanks, Senior Planner
Brett Kelder, Associate Planner
Ryan Marquardt, Associate Planner
Li Alligood, Assistant Planner
Alicia Stoutenburg, Administrative Specialist II
Paula Pinyerd, Hearings Reporter

**CITY OF MILWAUKIE
PLANNING COMMISSION
MINUTES
Milwaukie City Hall
10722 SE Main Street
TUESDAY, June 29, 2010
6:30 PM**

COMMISSIONERS PRESENT

Jeff Klein, Chair
Nick Harris, Vice Chair
Teresa Bresaw
Chris Wilson
Mark Gamba

STAFF PRESENT

Katie Mangle, Planning Director
Brett Kelper, Associate Planner
Brad Albert, Civil Engineer
Bill Monahan, City Attorney

COMMISSIONERS ABSENT

Lisa Batey
Scott Churchill

1.0 Call to Order – Procedural Matters

Chair Klein called the meeting to order at 6:31 p.m. and read the conduct of meeting format into the record.

2.0 Planning Commission Minutes

2.1 April 27, 2010 –*continued from June 22, 2010*

Vice Chair Harris moved to approve the April 27, 2010 Planning Commission meeting minutes as presented. Commissioner Wilson seconded the motion, which passed 3 to 0 to 2 with Chair Klein and Commissioner Gamba abstaining.

3.0 Information Items—None

4.0 Audience Participation —This is an opportunity for the public to comment on any item not on the agenda. There was none.

5.0 Public Hearings

5.1 Summary: 19th Ave Replat and Duplex – *continued from June 22, 2010*

Applicant/Owner: Gary Michael and Carolyn Tomei

File: WG-10-01, WQR-10-01, VR-10-02, R-10-01

Staff Person: Brett Kelper

41 **Chair Klein** called the hearing to order and read the conduct of minor quasi-legislative hearing
42 format into the record.

43

44 **Brett Kelder, Associate Planner**, cited the applicable approval criteria of the Milwaukie
45 Municipal Code as found in 5.1 on Page 10 of the packet, which was entered into the record.
46 Copies of the report were made available at the sign-in table.

47

48 **Chair Klein** asked if any Commissioners wished to abstain. None did, but Commissioner Batey
49 sent a written comment.

50

51 **Katie Mangle, Planning Director**, announced that Commissioner Batey was out of town
52 tonight, but had asked that the record reflect that she intended to recuse herself from the
53 meeting because she lived across the street from the subject property. Commissioner Batey did
54 submit comments for the record.

55

56 Chair Klein, Vice Chair Harris, and Commissioners Bresaw and Gamba declared for the record
57 that they had visited the site. No Commissioners, however, declared a conflict of interest, bias,
58 or conclusion from a site visit. No Commissioners abstained and no Commissioner's
59 participation was challenged by any member of the audience.

60

61 **Chair Klein** asked if any Commissioners had any ex parte contacts to declare.

62

63 **Commissioner Gamba** stated that he introduced himself to the Applicants when visiting the site
64 and asked questions about the trees. He agreed to disclose during the meeting any information
65 he had learned about the trees if the information was not mentioned in the staff or Applicants'
66 presentation.

67

68 **Chair Klein** noted after the last Commission meeting that he, along with Commissioners Wilson
69 and Gamba, and Ms. Mangle discussed questions about variances and setbacks in general,
70 although not specific to the application.

71

72 **Ms. Mangle** confirmed the discussion regarded setbacks in general and did not regard the
73 application.

74

75 **Commissioner Bresaw** stated that she had known the Applicants for a number of years, but
76 believed she could make a fair and impartial decision with no conflict of interest.

77

78 **Chair Klein** stated that he had also known the Applicant, Carolyn Tomei, for 7 years, but also
79 would be able to make a decision without bias.

80

81 **Mr. Kelper** presented the staff report via PowerPoint, noting key issues of the complex
82 application. The site was on the Willamette River in Island Station, close to the Kellogg Creek
83 Sewer Treatment Plant and had several overlays, including the Habitat Conservation Area
84 (HCA). The Applicants wanted to replat the 5 underlying subdivision lots to create 2 parcels.
85 One parcel would encompass the existing house to the north and a duplex was proposed to be
86 built on the second parcel to the south. Staff recommended approvable with the exception of the
87 request for the reduced front yard setback, given only 2 of the 3 criteria were assessed as being
88 met. He responded to questions and comments from the Commission as follows:

- 89 • The overall building footprint was approximately 2,000 sq ft. The total floor area of both
90 stories was roughly calculated at 2,600 sq ft with an additional 500 sq ft deck area.
- 91 • The height of the building was measured from the grade at the front of the building to the
92 median point of the roof, not the peak of the roof. This varied with roof style, but was
93 appropriate for the proposed roof style. From the side the structure looked very tall, but
94 because of the slope and measuring at the front of the building, the height was actually less
95 than it appeared.
- 96 • **Commissioner Gamba** requested that future projects include roof peak indicators when
97 the Commission had to make a judgment call about views.
- 98 • **Chair Klein** noted that it was important to understand that certain photos provided by
99 staff were taken from an elevated porch and the second story of nearby houses on the
100 street.
- 101 • Depending on the position from which one looked, some new trees planted to the north of
102 the proposed duplex could impact the view corridor. There might be more impact looking
103 from farther north on 19th Ave, when looking straight down. He deferred to the Applicants to
104 address the issue in more detail, adding that if the Commission felt strongly, a condition
105 could be added to have the required plantings located outside what was perceived as a view
106 corridor.

- 107 • A density review is triggered when a decision about creating units of land requires
108 Commission review. Density calculations were made when determining how many units of
109 land could be achieved from a larger parcel. Density was based on units per net acre,
110 defined as everything on the property except right-of-way, slopes over 25%, flood plain area,
111 and natural resource designations. For this application, the entire parcel was covered with a
112 resource designation, making the net acreage zero, which technically did not allow any
113 development. However, there was an existing house and the property was actually
114 comprised of several underlying platted lots, which would allow some development to occur
115 by right. Technically, a variance was required, but staff felt it was reasonable to allow some
116 development, especially when other Code sections, such as Water Quality Resource (WQR)
117 and HCA rules, clearly accommodate development and address disturbance and
118 development on sensitive areas, with mitigation.
- 119 • Setbacks have an aesthetic function to some degree, providing some buffering at the
120 property boundary for a transition of private ownership to public ownership. Setbacks also
121 provide a cushion of separation between a structure and adjacent uses. Denser zones have
122 smaller setbacks, so as density increases, setbacks decrease. A front yard setback provided
123 separation from items in the right-of-way and automobile traffic, and allowed for some
124 infrastructure to be installed.
- 125 • The City did not presently have a plan to develop all the way to the edge of the right-of-way
126 at the Applicants' property. There was 35 ft from the new edge of the proposed pavement to
127 the actual property line.
- 128 • Setbacks allow for some potential future development, such as a new idea about what
129 should happen in the right-of-way.
- 130 • **Brad Albert, Civil Engineer**, clarified that the sewer line was an 8-inch main that could
131 handle an additional duplex. The property was at the end of that line, which ran into the
132 force main further south. He would review calculations for the bioswale at the time of
133 building permit. The sewer main would be sized accordingly for the impervious square
134 footage going to the swale. The preliminary drawings looked fine and indicated the size was
135 roughly proportional to what was needed to handle the proposed duplex. The Applicants
136 would submit an infiltration test to make sure that infiltrating water could be handled and
137 treated without overflow.
- 138 • The hearing had been originally scheduled for the previous meeting. The posted public
139 notice sign at the site had last week's date, but the Code did not require that the signs be
140 updated because other means of notice were available about the continuance, including

141 notice on the webpage. A general notice was not sent out, but staff did notify everyone who
142 had submitted comments. Staff handled it the same way as when a hearing was continued
143 to another date. They did not normally post the sign again because the process had actually
144 started. Anyone who would have shown up last week would have been informed of the date
145 change.

146

147 **Chair Klein** asked if any further correspondence had been received other than that included in
148 the meeting packet.

149

150 **Mr. Kelper** noted that the following people sent comments that were received by staff after the
151 staff report was completed:

- 152 • Eric Perkins, 11908 SE 19th Ave, received notice of the application as the Island Station
153 Neighborhood District Association (NDA) Chair. His comments were received June 15th.
- 154 • JoAnne Bird, 12312 SE River Rd, sent comments that were received on June 17th.
- 155 • Lisa Batey, 11912 19th Ave, sent 2 comments received on June 21st and June 29th.
- 156 • Richard and Alicia Hamilton, 11921 SE 19th Ave, sent comment received on June 22nd.
- 157 • Deanna Taylor, 12111 SE 19th Ave, sent comment that was received June 29th.

158

159 **Chair Klein** confirmed that the Commissioners had read all the submitted comments and then
160 called for the Applicants' testimony.

161

162 **Carolyn Tomei, Applicant**, reviewed her family's history in Milwaukie, describing their
163 involvement in the community and interest and concern about the environment. The existing
164 house on the property was built almost 100 years ago as a summer cottage and abutted the
165 street because it was built before the streets were platted and before setbacks. The family had
166 discussed ideas that would allow their sons to live on the Willamette River and came up with the
167 idea of building the duplex that allowed both sons to live on the river. The family believed now
168 was the best time to pursue the project.

169

170 **Gary Michael, Applicant**, distributed photos of a locust tree located below the proposed duplex
171 that had turkey vultures in it. He stated eagles and osprey also rested in the tree. He then
172 continued with the following comments:

- 173 • He stated the project had been interesting and challenging, especially given the uniqueness
174 of the property, street, and neighborhood. The topography of the property sloped to the

- 175 river, the right-of-way was wider than a typical local street, and proximity to the river created
176 serious issues regarding flooding and environmental concerns. As an architect for 40 years,
177 the property was one of the most challenging he had worked with. Challenges included
178 staying above the flood plain, saving trees on the site and in the right-of-way, observing the
179 regulations, striving for compactness, energy efficiency and economy, respecting design of
180 the nearby older houses, and taking maximum advantage of the river and island views
181 without adversely impacting views from their house, the Hamilton's house, and the street.
- 182 • He described the sequence of events regarding the application, which formally began with
183 the pre-application conference on September 17th, 2009. Initially, everyone believed the
184 entire 250 ft of street would need to be improved, which would have been extremely costly.
185 The front yard setback was needed to allow for widening of the street and creating a
186 separate pedestrian and bike path.
 - 187 • Because the parcel was platted into 5 lots, street improvements were required only for
188 the new, smaller lot for the duplex. However, after NDA meetings, it was clear that
189 residents on the street liked the street as it was and did not want a 20-ft street with
190 sidewalks and bike path. The street had very little traffic and people walked safely in the
191 street. The City acknowledged in a letter that the neighbors did not want street
192 improvements, so the Applicants could pay a fee in lieu of construction instead.
 - 193 • The Applicants hired a planning consultant, surveyor, and structural engineer to work in
194 earnest on the project. The application was submitted March 16th. An incompleteness
195 letter was received from staff on April 8th. The Applicants learned that the fee in lieu of
196 construction was required along with widening the street by 4 ft, to which they agreed.
197 The application was resubmitted on April 22nd.
 - 198 • On April 29th they learned a second variance was required for the 11-ft front yard
199 setback. Prior to that, they believed the averaging regulation would be used to determine
200 a 7-ft front yard setback. By then, a lot of design work had already been completed and
201 construction documents were almost done.
 - 202 • He emphasized that it was 7 months after the application was submitted, that the
203 Applicants learned that the front yard setback requirement was 11-ft instead of 7-ft as
204 they had originally been told. Their planning consultant, surveyor, and structural
205 engineer had completed all of the design work based on 7-ft setback. If they had known
206 the 11-ft setback was required from the start, the house could have been designed 5-ft
207 wider, although this would have impacted the view corridor to the river.

- 208 • He quoted the applicable ordinance from the pre-application report found on 5.1 Page 43 of
209 packet, "*Yard width shall be equal to two-thirds the height of the principal structure.*" He
210 challenged the applicability of that regulation to the front yard. Staff admitted it was unclear.
- 211 • In his years of designing projects in different jurisdictions, he had never seen the word
212 width used to mean the front yard depth. Width was used in ordinances in reference to
213 lot width while depth was used in reference to lot and front yard depth. The dictionary
214 definition of width is, "Extent from side to side, breadth or wideness." Depth is defined
215 as, "Distance measured from front to back as of a shelf, et cetera."
 - 216 • He questioned why staff would refer him to the averaging regulation MCC Subsections
217 19.401.2.b for front yard setbacks and 19.602.1 for the side yard setback. He was told
218 that for a Conditional Use (CU), the greater side yard width was intended to help retain
219 view corridors, such as to the river, in a Willamette Greenway (WG) project. This was
220 confirmed in the pre-application meeting.
 - 221 • He believed the advice given to the Applicants before and during the pre-application was
222 correct, but that the interpretation over 7 months later was at best, a huge stretch of the
223 common use of the language. The interpretation and timing of it did not seem logical to
224 the Applicants.
 - 225 • He believed MCC 19.602.1 needed to be rewritten. If the original intent was for the two-
226 thirds height dimension to apply to all yards, then the word 'width' should be removed. If
227 not, then make it absolutely clear that it applied only to side yards.
- 228 • The Applicants requested the two variances because they were necessary to save some
229 trees west of the proposed house.
 - 230 • For expert advice, Lisa Batey referred the Applicants to Master Arborist Jim Wentworth-
231 Plato, who recently visited the site and stated, "Best management practices are to provide 1
232 ft of radius for every inch of tree diameter for a root protection zone, soil compaction,
233 grading, and materials clean out should not be allowed in this area to ensure tree health.
234 The 2 lower trees are already showing signs of stress and you want to minimize the stress to
235 the vascular system and maximize the safety of the building by maintaining the largest
236 distance. These trees provide good habitat." Mr. Wentworth-Plato's report continued,
237 "Locusts are tough, and both the one being saved near the driveway and the double tree
238 near the house are black locusts."
 - 239 • Because of his advice, the Applicants were narrowing and swerving the driveway to
240 accommodate the nearby locust tree, as indicated on drawings in the packet.

- 241 • It was not possible to stay 25 ft away from any of the trees, but to move the house closer
242 than originally planned would certainly increase the risk to the trees.
- 243 • The City report from Engineering Director Gary Parkin stated that the neighborhood needed
244 a transportation improvements plan, but there was no money to do that. The problem is that
245 the street is very unusual topographically and difficult to widen. The neighbors did not want
246 the street widened if it would increase traffic or speed. He knew of no accidents over the 44
247 years he and his wife had lived in the neighborhood.
- 248 • He responded to written questions from Lisa Batey as follows:
- 249 • Increasing the street width to 20 ft did not acknowledge the topography of the site, the
250 environmental zones, or the 2 trees they hoped to save. Houses on the street were
251 located as they were because of the river and flooding in past years. Referring to Exhibit
252 2A Neighborhood Map, he believed the Perkins house was the only one on their block
253 with a 20-ft front yard because it was the most recently built. All other houses in the
254 neighborhood were built before zoning ordinances were created and had various
255 setback issues by today's standards, but they were built where they needed to in order
256 to be above the floodwaters if possible.
- 257 • If the street was widened by 4 ft, the pavement would still be 42 ft from the edge of
258 the new street paving to the closest, most eastern projection of the new house and
259 53 ft to the front of the garage. He believed this was more front yard than most
260 houses in Milwaukie.
- 261 • He suggested that in the future the City vacate 5 ft on each side of the right-of-way,
262 creating a 50-ft right-of-way, which was standard for local streets and would solve
263 many problems. The three houses on the east side would then conform to a 20-ft
264 front yard. The Hamilton house would be 18-ft from the property line, and the
265 Applicant's house would not cross the property line into the right-of-way. The
266 proposed duplex would be 23 ft to the garage and 12 ft at the closest to the property
267 line, which was more than the current 11 ft requirement.
- 268 • Ms. Batey's written comments stated that it was disappointing that the project was going
269 forward without street improvements and that Logus Rd should be a model. However,
270 the Applicant felt that that did not conform to the neighbors' desires. The neighbors
271 believed that the streetscape worked as it was, and that street improvements were costly
272 and seen as a detriment. The neighbors believed Logus Rd was great where it was
273 located with a school and more traffic, but that was very different from their
274 neighborhood.

- 275 • Ms. Batey also mentioned 22nd Ave and River Rd, which had a lot of traffic, relatively
276 flatter topography, school buses, and was not at all similar to 19th Ave. The NDA
277 supported sidewalks and good streets where appropriate, but they were not appropriate
278 on 19th Ave.
- 279 • The Applicants were working with Mr. Albert regarding stormwater along the front of
280 the property. Mr. Albert requested that the little bump along the edge of the street be
281 removed and a little bump be placed at the end of the driveway so street water did
282 not come down the driveway.
- 283 • The Applicants did not use chemicals on the property and hoped their neighbors did
284 not either.
- 285 • Regarding cars backing out of the proposed driveway, he noted the Perkins across the
286 street from the Applicants backed out of their driveway and had not hit the Applicants'
287 cars, which were always parked in front.
- 288 • Tree mitigation included small Oregon Ash, which was on the Oregon plant list. If asked, the
289 Applicants were glad to find another location for them. He did not believe they would have
290 much of an impact on the view corridor from the street, because they were close to the
291 house. Most of the view corridor was on the Applicants' side of the property line, with 26 ft
292 from the end of the existing house to the new property line, plus 11 ft to the new house,
293 providing a large gap. The Applicants believed the view corridor was important.
- 294 • The Applicants believed that the front yard variance was the only feasible alternative, in
295 spite of the fact that they did not know a front yard variance was needed until 7½ months
296 after the pre-application conference. It was not feasible to build a single-family residence.
297 The property was so valuable that it would take a large house or duplex for anyone to afford
298 the property taxes. It was not feasible to unnecessarily endanger the 2 important trees, nor
299 to compromise the functionality of the floor plan or unnecessarily build farther into the flood
300 plain.
- 301 • It was possible to move the structure 4 ft to the west, but it would be farther out over the
302 water and 6 inches lower, although still comfortably above the flood plain. It was not
303 feasible to unnecessarily build closer to the WQR area. It was about 9 months too late to
304 redesign the project after spending a huge amount of time and money on consultants,
305 permits, meetings, and applications.
- 306 • If the front yard variance was denied, the house would be moved 4 ft, but no one gained
307 from that change and it was a lose-lose solution. If the front yard variance was granted,
308 nobody would lose and the environment would win.

309

310 **Commissioner Bresaw** asked for the interior square footage.

- 311 • **Mr. Michael** responded that footprint width was 48 ft, footprint depth at the garage was 37 ft,
312 at the entry it was 40 ft, at the north edge it was 48 ft for basically a square with a chunk
313 carved out for parking in front of the garage. Each dwelling unit, not including the shared
314 space, was 1,884 sq ft and with common areas the total building was 4,561 sq ft. The
315 shared garage was 473 sq ft, with shared shop, mechanical, and storage room under the
316 garage that was also 473 sq ft. The entry and stairway were shared. It would look like a
317 single-family house with one front door and an interior stair to serve the three levels.

318

319 **Commissioner Gamba** understood the 11 ft setback for the front and side yards were to
320 preserve view corridors.

- 321 • **Mr. Kelper** replied that Mr. Michael had referred to that in his presentation.

322

323 **Chair Klein:**

- 324 • Commented that the Commission would return to that.
- 325 • Understood the process began a year ago and the pre-application was in September. He
326 asked if the Applicants already had the building design completed by September 2009.
 - 327 • **Mr. Michael** responded 'no,' the design evolved further after September, but was pretty
328 well set by the time the application was submitted in March 2010. He redesigned the unit
329 to have one front door so it appeared to be a single-family residence, which was
330 appropriate for the zone and made the unit as compact and efficient as possible. The
331 initial front yard setback at the time of the pre-application was approximately 9 ft, but not
332 as much as 11 ft. The averaging formula for setbacks seemed very appropriate.
- 333 • Understood the neighborhood desire to retain the character of the street, but the use of
334 streets changes over time. Although the street had been the same way for a very long time,
335 he believed the street would probably go through some changes relatively soon. The
336 development of the Riverfront Park and Trolley Trail would probably bring pedestrian and
337 bicycle traffic right to the property.
 - 338 • **Mr. Michael** responded that if traffic headed toward a destination, it could be heading
339 toward Elk Rock Island. The Trolley Trail was located 4 or 5 blocks east of his property.
340 The street was only 4 blocks long and served only the 15 or 20 houses on it for mail
341 delivery, garbage pick up, et cetera. There was very little traffic. Cars did go slow,

- 342 watching out for kids, dogs, and people who walked down the middle of the street.
343 Bicycles usually turned east on Bluebird St because 19th Ave was steeper.
- 344 • There was not much room for new development on the street. Street improvements
345 completed to the 70-ft section in front of his property would be piecemeal, unlike the
346 improvements on Logus Rd where a grant was obtained to do the whole street.
 - 347 • The neighborhood was kind of funky with the railroad and sewage treatment plant, but
348 the river and trees made the area worthwhile. It was an HCA because of the tree
349 canopy.
 - 350 • Asked the distance from the front of the duplex to the base of the 2 locust trees in the
351 backyard and for the information from the arborist regarding how much distance was
352 required per inch of tree diameter to preserve the trees.
 - 353 • **Mr. Michael** responded that the distance from the trees to the footings supporting the
354 deck was approximately 11 ft. The arborist said that ideally, for a 24-in tree, there should
355 be no soil compaction or dumping of debris within 24 ft. This was not possible for this
356 application. He was concerned that the City wanted to widen the street within 4 ft of the
357 big maple trees.
 - 358 • Believed that after talking with Mr. Parkin, the widening of the street was not realistic. The
359 house would exist longer than the trees. Houses tended to have permanence, while trees,
360 although of great value, were living things that eventually died. He was concerned about the
361 distance to the trees, but the lot line was moving in. He wondered if there were other options
362 available other than the variance. The front of the house could be brought in 4 ft, reducing
363 the front side of the house and still keeping 11 ft in the rear. The width of the house could
364 also be expanded. He understood that the Applicants spent a lot of time and money to get to
365 this point, but other options were available.
 - 366 • **Mr. Michael** responded that they did not deny that, but it was not feasible for them to
367 redesign the house. He believed Ms. Batey would strongly object if the house was wider.
368 With a 20 ft front yard, the house would be 10 ft wider than depicted. The size of the
369 house could not be reduced. His sons owned very nice houses now, but wanted to
370 return to their neighborhood. He believed the only option without the variance was to
371 move the house 4 ft toward the river, although that made no sense.
 - 372 • Commented that the 5,000 sq ft structure was large, even though a duplex. The Hamilton
373 house was smaller than that.
 - 374 • **Mr. Michael** replied it was not as big as his own house or Ms. Batey's house. He
375 suggested looking across the river at Dunthorpe, where houses were three or four times

376 larger than his own house. The proposed duplex was not an overly large house. They
377 were maintaining the view corridors and being responsible in placement of the house so
378 it was compatible with houses in the neighborhood. They were doing their best for the
379 environment.

380 • The trees would not survive as long as the house. The arborist said there was already
381 evidence of stress because it was bare on top, but that they were tough trees so he
382 could not predict how long the tree would live. One locust tree was lost in the 1996 flood.
383 The 2 remaining locust trees were an important aesthetic feature, as well as important
384 for the habitat. They would provide some shade for house.

385 • **Ms. Tomei** asked if Chair Klein was concerned that the Applicants were not doing
386 everything they could to protect the tree since the distance was 11 ft from the tree to the
387 footing instead of 24 ft as recommended by the arborist.

388 • Clarified that if the arborist recommended 24 ft and the tree was bare on top due to stress,
389 that moving the footing closer would further jeopardize it. Perhaps some design changes
390 could help, such as wrapping around the tree. He believed that at this point the problem was
391 not so much the tree but redesigning the house. Other options were available, but had not
392 really been addressed because the Applicants did not find them feasible.

393 • **Mr. Michael** clarified that the footings within 11 ft were the few footings that supported
394 the deck. Those had been pulled back to be within about 3 ft from the edge of the deck.
395 The house footings were 17 ft from the tree.

396 • The arborist also said that soil compaction and pollution could be more dangerous than
397 footings unless you hit a big root. Barriers would be erected along the edge of the footing
398 excavation to keep equipment away from the root zone. Everything would be done to
399 protect the trees, but no one could guarantee how long the trees would live. If the house
400 was moved 4 ft closer to the trees, they were less likely to survive.

401

402 **Commissioner Gamba:**

403 • Asked how big each pillar footing was for the deck that was located 11 ft from the trees.

404 • **Mr. Michael** replied they were 2 ft square concrete footings supporting 6x6 posts. They
405 were actually pulled back under the deck to the centerline of the spiral stair and farther
406 from the trees.

407 • Indicated other footings for pillars and asked the distance from the trees.

- 408 • **Mr. Michael** replied the pier footings were about 17 ft from the trees and were used to
409 allow floodwaters in the flood plain. They probably projected out from the house about 1
410 ft to 1½ ft. The first full footing that would cut a root was back another 18 to 20 ft.
- 411 • Believed that the distance from the trees to the actual stem wall at the bottom of the house
412 appeared to be 18 to 20 ft away from the tree.
- 413 • **Mr. Kelper** responded that he did not bring a scale, so could not answer the question.
- 414 • **Mr. Michael** believed the distance was about 30 ft from the tree to the stem wall. There
415 were 4 or 5 piers along the west face of the house.
- 416 • **Mr. Kelper** clarified that the dashed line on Exhibits 3 and 4 indicated the stem wall.
- 417

418 No further questions for the Applicants. The Commission took a brief recess and reconvened at
419 8:27 p.m.

420

421 **Chair Klein** called for public testimony in favor of, opposed, and neutral to the application.

422

423 **Richard Hamilton**, 11921 SE 19th St, stated that he was not looking forward to development on
424 the property, but it was perfectly appropriate since they owned the property. He supported the
425 variance for the front yard setback. Mr. Michael's arguments were exactly what he wanted to
426 reiterate to the Commission. He believed precedent was set for granting the variance and the
427 impact to the street would be minimal without compromising anything that could happen in the
428 neighborhood for years.

- 429 • He believed it was reasonable to utilize average setbacks of the adjacent houses because
430 as originally planned, they allowed for some uniformity of the existing buildings. Neighbors
431 would like the uniformity to stay as is. Although he had two small children, he preferred to
432 keep the street narrow with no sidewalks because it was safer and would keep the traffic
433 speed down.
- 434 • The street was 42 ft from the front edge of the house, which was twice the 20-ft setback
435 required in any other neighborhood. There was precedent in the Code that would allow the
436 variance.
- 437 • More importantly was the nature of the property and location. The trees were important
438 habitat for bald eagles, osprey, and turkey vultures. It was difficult to live in the
439 neighborhood and watch someone push the house against the trees, moving the house 4 ft
440 out to maintain a 42-ft buffer from the existing street instead of protecting the habitat. Just
441 moving the house closer to the river or widening the house would impact the people with

442 view corridors to the side. Moving the house 4 ft closer to the trees may impact views, which
443 was not really addressed, but was not enough for him to have a problem with the
444 development. Moving the house more into the flood plain was counterintuitive to the habitat
445 overlay. Any protection that could be given the trees was very important.

446

447 **Chair Klein** asked the square footage of Mr. Hamilton's house.

448 • **Mr. Hamilton** replied that his house was 2,600 sq ft.

449

450 **Steve Gerken**, 12114 SE 19th Ave, stated that he was substantially opposed to the project, but
451 concurred with the Applicants about their attitude toward the village nature of the street. The
452 preference was to retain the width and character of the pavement itself.

453 • In his experience, bicyclists do continue down 19th Ave and there was more bicycle traffic
454 on the street than automotive traffic. The street's existing character was well suited to
455 pedestrian, bicycle, and automotive shared use. He did not believe street improvements
456 would serve any valid purpose for use and safety in the neighborhood.

457 • Regarding the proposed development, there was a HCA overlaying the property that
458 reduced the maximum density to zero. This was called a technicality, but he pointed out that
459 if a variance was allowed every time an HCA became an inconvenience, then the City no
460 longer had an HCA. If a variance was allowed every time someone wanted to do a
461 development when an existing greenway put constrictions on the development, then the
462 community was only paying lip service, which was not in the best interests of the spirit of the
463 HCA.

464 • A house located one block south of the Applicants' property on the river side of the street
465 was remodeled several years ago. When the remodel was started, the owners requested
466 adding another story because the height of the structure as viewed from the street was
467 considerably less than the 35-ft limit for height. The City's response at that time was that the
468 height of the structure was measured as the maximum height of the structure, which on that
469 property and on the Applicants' property was the river side. The owner's request was denied
470 and they raised the house up 3 ft while still remaining under 35 ft.

471 • This established precedent in the neighborhood that the height of a structure was
472 measured from the rear not the front. In light of this, if 2/3 the height of the structure was
473 used to establish a yard setback, then the height of the entire proposed structure had to
474 be considered, not the front elevation. It would not be fair to previous permit requests if
475 different rules were applied to the Applicants.

- 476 • Per the calculation on 5.1 Page 9 of the packet, the square footage of the proposed
477 development did not appear to include the disturbance required to put in the required
478 extensive piping system required for the heat pump. The heat pump area appeared on some
479 diagrams, but the apparent square footage of the building envelope and driveway seemed to
480 account for the entire 3,130 sq ft reported in the application. The additional piping system for
481 the heat pump would require ground disturbance for installation, but was not included in the
482 calculation. It was not clear to him whether the development would come in under the 4,710
483 sq ft of disturbance allowed if the additional area was included.
- 484 • He was concerned about the effect of the sewer line on the root systems of the existing
485 trees.
- 486 • He confirmed he lived about 2 blocks south of the Applicants' property on the inland side of
487 the street.

488

489 **Commissioner Bresaw** recalled that the other house that was raised in the past because the
490 basement's ceiling was very low.

491

492 **Chair Klein** believed that the height requirement was for an existing structure, not new
493 construction. That project occurred about 6 years ago.

494

495 **Ms. Mangle** stated that project occurred before she came to the City. However, another
496 application on 19th Ave involved the height issue, but she believed the Lynn Welsh application
497 was different than that referred to by Mr. Gerken.

498

499 **Mr. Gerken** summarized his points as follows:

- 500 • Granting a variance to maximum density did not honor the spirit of the HCA.
- 501 • Calculations regarding the total disturbance did not include the disturbance required to
502 install heat pump piping.
- 503 • The language of MMC 19.602.1 and the previous application of it in the neighborhood
504 calculated total height of the principal structure as the total height, not the front elevation
505 height, which affected the setback considerably.

506

507 The Commission took a brief recess and reconvened at 8:54 p.m.

508

509 **Chair Klein** called for additional comments from staff.

510

511 **Mr. Kelder** addressed the Applicants' questions and comments as follows:512 • The Code's definition of yard did not indicate or use of either the word "depth" or "width,"
513 which led to the staff interpretation of the CU setback standard as applying to all yards.514 There were more CUs than just those within the WG zone. It seemed reasonable to expect
515 that there may be situations where the Commission could consider all the yards in terms of
516 having additional setbacks.517 • The language of MMC 19.602.1 indicated that the Commission could establish additional
518 setbacks on top of the 2/3 height requirement. This was the basis of the understanding of
519 "yard."520 • He appreciated the Applicants' recounting of the timeline and noted that staff tried to provide
521 all information they could as accurately as possible in pre-application conferences, but there
522 were times when delving into the actual hardcore details and review of an application that
523 they came across clarifications. This CU standard was one of those times.524 • **Ms. Mangle** added that she had asked Mr. Kelder to describe this interpretation because
525 it was within the purview of the Commission to interpret the Code differently. Keep in
526 mind, however, we would apply the same interpretation in all applications.527 • Regarding the relationship of CU setback standards of view corridors, he clarified that the
528 word "corridor" suggested a little bit of a side arrangement, but it was also fair to consider,
529 again, the impact a change in a front yard setback could have on the view corridor that
530 might be possible over a roof. As mentioned, there was at least one past case involving
531 questions about raising a roof. In some situations changing the roof height could make a big
532 difference in the view available. On the low side of 19th Ave, the changes in height would be
533 less significant than if on the high side. Staff wanted to keep the interpretation of view
534 corridor open not only to the sides of the house but also to possibly the view over the house.535 • He clarified that the 11-ft setback requirement was from the CU part of the Code, which
536 applied because language in the WG overlay stated that development in the WG was a
537 CU.538 • **Mr. Kelder** added that one criterion for WG discussed protecting views to and from the
539 river, which led to the discussion of what were the view corridors and how were they
540 maintained or affected by development.541 • Characterizing the variance related to density as a technicality was a fair consideration. The
542 inclusion of a natural resource designation in the calculation of net acreage was complicated
543 by the rules for some of the natural resources such as WQR and HCAs. Neither section of

- 544 Code discussed prohibiting development, but regulating it, and then provided some means
545 for evaluating proposed development and ensuring that impacts were mitigated according to
546 the rules.
- 547 • Considering the 5 underlying subdivision lots and their possibilities, the Applicants could
548 decide to remove their existing house and develop the 5 lots under the standards of the
549 R5 zone and the WG review.
 - 550 • Any existing house in the R5 zone could convert from a single-family residence to a
551 duplex without triggering this requirement because a duplex was allowed outright in the
552 R5 zone. There appeared to be some degree of conflict between the strict application of
553 the definition of net acreage and zero density with respect to natural resource
554 regulations that would unreasonably deprive the owner of some development use of the
555 property.
 - 556 • **Mr. Monahan** agreed with Mr. Kelter's assessment. The intent of the overlays was not
557 to take away all rights to develop property in the existing lots.
 - 558 • He was not familiar with the case Mr. Gerken mentioned regarding how height was
559 considered and measured. The Hamilton and Lynn Welsh WG reviews were done in 2006
560 and at that time, staff looked at how height was evaluated. Because 19th Ave had a high side
561 and low side, staff studied where height was measured because it did make a difference
562 depending on the side of the street. He understood that whatever action taken by staff in the
563 past, at least as part of the Lynn Welsh decision, staff set a practice of evaluating height
564 according to the definition in the Code, which was that height is measured from the front of
565 the building.
 - 566 • He acknowledged that HCAs were a new part of the Code and staff still had to consider how
567 to implement them. The Code referenced definitions of permanent and temporary
568 development, but staff had to determine if an allowable disturbance area included the
569 locations where equipment was staged, delivery vehicles drove, and whether it was
570 temporary or permanent.
 - 571 • He was interested in identifying what parts of the property within the HCA would be
572 permanently altered. He viewed the geothermal area as a disturbance that, like the sewer
573 connection, would be restored; no permanent development would exist so it would not count
574 against the Applicants.
 - 575 • Although shown on the site plan, once the application review process began the
576 Applicants indicated they were no longer sure the geothermal unit would be feasible. He
577 did not think about it as disturbed area. In the findings, he referred to the actual footprint

578 of the duplex plus the driveway and paved areas on the side as being permanently
579 disturbed. However, temporary disturbance could be problematic. The existing driveway
580 on the site would be removed. In being very broad as to what is considered a
581 disturbance, that driveway area was being disturbed, even though it was being removed
582 and restored.

- 583 • The impacts of sewer connections to tree roots were not part of the analysis that he did or
584 the Applicants provided. The representations of the sewer connection location were largely
585 guesswork. If there was a high degree of concern, a condition could be made to be specific
586 about locating the sewer connection as much as practical away from tree roots.

587

588 **Mr. Gerken** believed an area filled with underground piping for geothermal or a septic field
589 might permanently restrict the future viability of tree planting or habitat.

590

591 **Chair Klein** clarified that staff stated geothermal was potentially removed from the application,
592 however because it was still in the application, it needed to be considered.

593

594 **Chair Klein** called for the Applicants' rebuttal.

595

596 **Mr. Michael** stated that at the time of the pre-application conference, the front yard setback was
597 9 ft because at the time a 20-ft deep parking space was required. Since then, the parking
598 regulations have changed to require an 18-ft parking space, so the building was able to be in
599 front of the garage with 18 ft to the property line, making the setback 7 ft instead of 9 ft. The
600 Applicants took advantage of that; they were told it was a risk because they were in the middle
601 of finalizing the design when the City was in the middle of approving parking Code changes.
602 Now, the 2 parking spaces were no longer required, although the Applicants would use them.

- 603 • He emphasized that they would never have designed the project to require a front yard
604 variance. They believed they should be able to rely on the advice of staff early on, not 7½
605 months after the pre-application design was submitted. There was too much at stake,
606 whether it had to do with the height definition or the front yard regulations, they were relying
607 on staff. Maybe they misunderstood but do not think so.

608

609 **Ms. Tomei** stated the Applicants were withdrawing geothermal from the application.

610

611 **Mr. Michael** clarified that they were still interested in geothermal, but there was not enough
612 room without disturbing the WQR buffer area.

- 613 • He clarified that the Applicants' drawing showed the sewer line skirting the drip line south of
614 the trees. He believed it was important to avoid disturbing roots at the drip line. The
615 stormwater sewer lines from the driveway and roof would skirt the drip line of the trees as far
616 as possible and divert water to the rain garden.

617

618 **Chair Klein** asked staff why the additional 4-ft wide strip of pavement was not also required
619 along the other property. He believed when the property was divided, 2 new properties were
620 created, even though one had an existing structure.

621

622 **Mr. Kelper** replied that in a replat, the Chapter 19.1400 Public Facility Improvements did not
623 require street improvements in front of a parcel with existing development. The replat itself
624 actually did not require street improvements for either parcel, but the development proposed on
625 the second parcel was triggering street improvements.

626

627 **Mr. Albert** clarified that it was because the City saw the project as 5 underlying lots that were
628 replatting to 2 lots. According to the Code, if the parcel is replatted without increasing the
629 number of developable lots, then Chapter 19.1400 did not apply and therefore street
630 improvements did not apply. In this case, the development of the new duplex triggered street
631 improvements in front of that property only, not the entire parcel.

632

633 **Commissioner Gamba** said that the Applicants' house and Hamilton's house would not be
634 redeveloped, so the pretty street would have a 4-ft bump out of fresh pavement for 70 ft.

- 635 • **Mr. Albert** replied that the minimum street width required by Code was 16 ft, so the
636 intersection at the Hamilton house was wider and would allow for 16 ft, making it match up
637 to what the Applicants were required to improve. There would be tapers in and out so it was
638 not a rectilinear jog.

639

640 **Chair Klein** asked about parking on the rest of the street because the 4-ft strip was not that
641 much for parking if there was a party at the duplex.

642

643 **Ms. Mangle** responded that a 16-ft wide street did not include on-street parking.

644

645 **Chair Klein** closed the public testimony portion of the hearing at 9:18 p.m.

646

647 **Planning Commission Discussion**

648

649 **Commissioner Wilson** stated that he was on the fence so would not comment yet.

650

651 **Commissioner Bresaw** believed it was a beautiful piece of property and walking down the road
652 was nice and the view was nice even though the trees blocked the view. It was a shame the
653 property would be developed, but she knew it would be developed. She liked the single-family
654 design from the front of the duplex, but it was important to keep the roofline as low as possible.
655 The view corridors were very important so she wanted to be sure there was a good view on the
656 sides. The 11-ft setback on the sides was important to keep without enlarging the structure. The
657 house size was reasonable for a duplex with 5 bedrooms, 2 recreation rooms, and a shop, but it
658 could be made smaller although that was not for her to say. The front yard setback was very
659 hard because the houses were very close. Her first choice was an 11-ft setback, but she
660 suggested that a compromise might be 9 ft.

661

662 **Commissioner Gamba** stated that they were dealing with 2 opposing regulations regarding
663 setback, so it came down to a judgment call. All the reasons for setbacks did not really apply on
664 the Applicants' property because of the steep topography, lack of sidewalks, and no one could
665 foresee a street built up to the front of the existing house. It did not seem logical to push the
666 house back 4 ft into the trees. The argument could be made that the house could be 4 ft
667 smaller, but then the Applicants had the right to build it wider, blocking the existing view corridor.
668 Worrying about the 11-ft setback on the south side was pointless because it was currently a
669 large hedge that blocked the view corridor anyway. On the north side, more view corridor was
670 better for the neighborhood. He was stuck on the zero allowable acreage, but it was difficult
671 because it was private property and the owner should be able to do what they please to some
672 degree. However, if the law was ignored, then what was the point of making laws.

673

674 **Commissioner Harris** stated the decision was difficult. Based on his understanding of the
675 Code and what staff had presented, the front yard setback was not discretionary and had to be
676 applied because it was a CU. The applicable Code required an 11-ft setback, but he would like
677 to step around that requirement gracefully. The zero allowable acreage concept was confusing,
678 but as staff pointed out, the replatting was from 5 lots to 2 lots, which was a better compromise.

679 He hated to see the habitat disturbed, but moving the project back to allow an 11-ft setback
680 would have to be required. He did not believe the tree would survive the move, or if it did survive
681 it would be a hazard to the completed structure.

682
683 **Commissioner Wilson** believed the family had done a good job answering the Commission's
684 questions and designing the house for their sons and grandchildren. He did not see why the
685 variance should not be granted, so he would vote for the application. He noted that in previous
686 decisions such as was made about building sidewalks and preserving trees, yet they were not
687 doing that with this application after denying other applications and causing property owners to
688 give the rights of their trees over to the City so that they could build; that was a bargaining point.
689 But that was not being done in this case. He did not believe it should, but it was amazing that it
690 had not come up. The family had served the City, and was well liked in their neighborhood.
691 Maybe in the future such things could be considered for other property owners of less means
692 and popularity, so that when they wanted to do something to their property, the City did not add
693 on a sidewalk and take over their trees from their properties in order for them to do something
694 on their own property. He planned to vote yes on the application.

695
696 **Chair Klein** stated that this street did not have the capability to build sidewalks. There was
697 minimal vehicular and pedestrian traffic, but a year ago there was potentially one less house
698 than what would be there a year from now. How a street transformed was set by the rules and
699 regulations that the City looked at at any particular time. Sitting here now, it did not fit that there
700 **was a street there now**, but potentially there could be a different type of traffic going through.
701 He did not believe vehicular traffic would be the mainstay through there, but there would be a
702 significant increase in pedestrian traffic because of the Trolley Trail connection with the
703 waterfront.

704 • He agreed with everything submitted and the Applicants did a fantastic job, but everything
705 hinged on the variance for the setback. A rule had been devised to determine that setback,
706 and sometimes the City's own Code tripped the Commission up. He considered the Code
707 now in preparation for where the City was going in the future. He was happy the Applicants
708 were replatting from 5 lots to 2 lots, reducing the potential of something happening in the
709 future, but development could still come. For example, Ms. Batey had a piece of property
710 that she could develop. The increases did not look that dramatic in the beginning, but subtle
711 changes could happen. Existing houses in the neighborhood could be converted to
712 duplexes, so it all came down to the variance.

713 • The variance requirement was simple and included 3 rules: unusual condition, no feasible
714 alternatives, and mitigation of impacts. It was a frustrating point to be at, but he believed
715 feasible alternatives existed, such as a smaller structure, redesigning around the tree,
716 redesigning the deck, or other things. He liked every aspect of the proposal, and agreed that
717 the single-family appearance of the structure was fantastic. However, he had to agree with
718 staff's recommended 11-ft setback.

719

720 **Ms. Mangle** stated that she wanted to clarify strongly and clearly for the record that staff was
721 not applying different rules and standards to this application than it did others. If some aspect or
722 finding was missed by staff, that could be discussed, but in no way was staff treating these
723 Applicants differently for any reason. Regarding the frontage improvement issue, the Applicants
724 were being required to contribute \$5,000 to public improvements, so the requirements were
725 being met.

726

727 **Commissioner Wilson** clarified that was not what he implied, and thanked Ms. Mangle for
728 bringing it up.

729

730 **Chair Klein** reviewed Commissioner Wilson's comments that the Applicants' design plan was
731 okay and that he would vote against staff's recommendation.

732

733 **Commissioner Wilson** clarified that the property belonged to the Applicants and they should be
734 able to do their project.

735

736 **Vice Chair Harris** supported staff's recommendation.

737

738 **Commissioner Gamba** said he was somewhat on the fence, but would support the Applicants
739 if the vote was called right now.

740

741 **Commissioner Bresaw** stated she was slightly on the fence, hoping for the 9-ft compromise,
742 because that was what the Applicants originally planned.

743

744 **Chair Klein** supported staff's recommendation.

745

746 **Mr. Monahan** pointed out that to get to 9 ft, the Commission needed to determine that the
747 variance was approvable and the criteria needed to be applied. To approve the variance, the
748 Commission needed to determine that all of the criteria for the variance were met. To deny the
749 variance, they had to find that one element of the criteria was not met.

750
751 **Mr. Kelper** confirmed that the recommended findings presented that 2 of the criteria were met:
752 criterion number 1 there were unusual conditions (MCC 19.702.1.i), and criterion number 3 any
753 impacts were being mitigated (MCC 19.702.1.ii).

754
755 **Ms. Mangle** read the second criterion on 5.1 Page 30, MMC 19.702.1.ii, stating, "That there are
756 no feasible alternatives to the variance and that the variance is the minimum variance
757 necessary to allow the Applicant the use of his or her property in a manner substantially the
758 same as others in the surrounding area."

759
760 **Chair Klein** said he might be putting words in the Applicants' mouth, but he believed that 9 ft
761 might as well be 11 ft because it still required a change of design. He confirmed with the
762 Applicants that he was correct.

763
764 **Commissioner Gamba** asked for a legal definition of "feasible."

- 765 • **Mr. Monahan** responded that many cases dealt with "feasible," but it depended upon the
766 local interpretation. "Feasible" typically meant that something could be done other than the
767 proposal that still allows the Applicants to have economic use and enjoyment of their
768 property. He also defined the phrase "substantially the same as others in the surrounding
769 area." The Commission needed to look to the size of the footprint, size of total property, or
770 total house compared to other properties in the immediate area. If surrounding properties
771 were able to enjoy their property and build a structure that was similar to the Applicants'
772 then it could meet the definition of feasible development.
- 773 • He reviewed granting or denying a variance. To grant a variance, the Commission had to
774 find that there was no other feasible location, design, or size of the property that would allow
775 the Applicants enjoyment of their property. If the Commission could find that there was no
776 other feasible alternative for the setback, then the variance could be granted. However, if
777 they could not make the determination that no other feasible alternative existed, the
778 variance could be denied.

779

780 **Commissioner Gamba:**

- 781 • Noted the conflicting regulations regarding setbacks between the Code's averaging rule and
782 the WG overlay.
- 783 • Stated that another rule said that the setback was a calculation based on the height of the
784 house. He had questioned and the Applicant made a good point about where the
785 measurement was to be taken.
- 786 • Asked if the WG trumped City regulations.
- 787 • **Ms. Mangle** responded yes, but the City also had a policy in which the Code stated that
788 in the case of a conflict, the most restrictive one applied.

789

790 **Chair Klein** summarized that the Commission liked and supported the project, but the variance
791 request for the front yard setback was the issue. He asked if the Commissioner believed that the
792 alternative criteria had been met.

793

794 **Commissioner Bresaw** acknowledged that it could be feasible to change the plan, although a
795 lot of work.

796

797 **Commissioner Wilson** stated that it appeared the requirements had been met.

798

799 **Commissioner Gamba** stated that the rule was badly written with vague language that was
800 open to interpretation. A lemonade stand would satisfy the economical use of the property. He
801 clarified that he was asking about "feasible," which spoke to...

802

803 **Mr. Monahan** clarified that issue of "feasible" regarded what else was in the neighborhood. If
804 there were lemonade stands in the neighborhood and someone was only allowed something
805 less than a lemonade stand, then that would be an issue. But the issue was that the City was
806 allowing a dwelling size that appeared comparable to other properties in the surrounding area,
807 which might need to be made clearer in the record, so it qualified as feasible. Are there feasible
808 alternatives, such as something else utilizing the site, moving the building plan on the site, or
809 making an alteration to the building plan and still achieving the objective of allowing something
810 to be built that was allowed as a permitted use in the underlying zone?

811

812 **Commissioner Gamba** said that as far as he could tell there was no regulation or rule that
813 would keep the Applicants from moving the house back on the lot because they were a long

814 way from the river. The house could be moved and stay the same size. Making the house
815 smaller was the only logical, feasible alternative, but the City could not make them build a
816 smaller house.

817
818 **Ms. Mangle** said that under WG and the CU, the Commission could ask the Applicants to build
819 a smaller house if it impacted the view.

820
821 **Commissioner Gamba** said the rule had vague wording that could cause the Commission to
822 force the Applicants to kill the trees. The house was 35 ft from the pavement. The spirit of the
823 concept of setback was there naturally. No one would build a sidewalk on that slope; no view
824 would be blocked sideways, so the spirit of the law said that 7 ft was fine.

825
826 **Commissioner Bresaw** stated that setting the building back farther lowered the roofline.

827
828 **Commissioner Gamba** agreed that it improved the view corridors, but he did not believe the
829 framers of the WG intended for the rules to cause prime bird habitat to be killed.

830
831 **Chair Klein** clarified the question was about the variance, not the WG.

832
833 **Commissioner Gamba** agreed, but noted that the problem was that the variance was vague.

834
835 **Chair Klein** agreed, but asked if the Applicants met the criteria for a variance on the setback.

836
837 **Commissioner Gamba** said that by some interpretations, the criteria were absolutely met. He
838 could interpret that the application did meet the criteria.

839
840 **Ms. Mangle** offered that if the Commission could find that no feasible alternatives existed, then
841 they needed to do that.

842
843 **Mr. Monahan** added that the Commission could consider that they were balancing a series of
844 different rules and regulations, including the HCA, WG, and view corridors. If the Commission
845 could balance those, then they could make a determination that in their judgment the criteria
846 were met because there was no feasible way of moving the house or changing the size.

847

848 **Chair Klein** asked Vice Chair Harris if the application met the variance criteria for the setback.

849

850 **Vice Chair Harris** replied that he did not think so. He wished he could say it absolutely did, but
851 there were feasible alternatives.

852

853 **Chair Klein** agreed with Commissioner Gamba that it did not make sense as is, but
854 unfortunately the criteria were what they had to work with. He believed there were other
855 alternatives that could be met. He asked for a motion with a condition of approval to be sure the
856 geothermal heat pump was removed.

857

858 **Commissioner Gamba** liked the heat pump concept. The short-term disturbance for the long-
859 range environmental benefit was brilliant. It was too bad that more rules and regulations
860 prevented the Applicants from installing it.

861

862 **Chair Klein** agreed and wanted to see a heat pump on the property, but there were constraints
863 with what the property allowed.

864

865 **Commissioner Gamba** commented that environmental rules were causing the Commission to
866 do non-environmental things.

867

868 **Vice Chair Harris moved to approve WG-10-01, WQR-10-01, VR-10-02, R-10-01 with**
869 **conditions of approval as stated in the staff report and adding a condition of approval to**
870 **remove the heat pump. Commissioner Bresaw seconded the motion, which passed 3 to**
871 **2, with Commissioners Wilson and Gamba opposing.**

872

873 **Ms. Mangle** noted for the record that the motion called for the changes to the conditions of
874 approval as follows:

- 875 • Attachment 2, Condition 3B, add one sentence at the end of the paragraph stating, "*Plans*
876 *shall not include a geo-thermal heat pump.*"

877

878 **Chair Klein** read the rules of appeal into the record.

879

880 **6.0 Worksession Items—None**

881

882 **7.0 Planning Department Other Business/Updates**

883 7.1 PC Notebook Update Pages

884 **Ms. Mangle** stated that the PC Notebook update pages were available and would be provided
885 to the Commissioners.

886

887 7.2 Commission Training

888 **Ms. Mangle** noted there has been discussion about how to make the Commission more
889 effective, and Chair Klein had suggested that staff make the packet available earlier. While the
890 staff report could not be sent earlier than a week before the meeting, she proposed sending the
891 applicants' material to the Commission earlier. The applicants' material was already being sent
892 with a cover page 20 days before the hearing to NDAs, fire district, and people who comment on
893 it. The 20-day mark was the go/no go decision point as to whether an application was ready for
894 a hearing and notice was put in the newspaper. So, now staff will do 2 different mailings, first
895 the Applicants' material and then the staff report, but it would give Commissioners 2 weekends
896 to review the application material. She requested feedback from the Commission.

897

898 **Commissioner Bresaw** believed it was a good idea.

899

900 **Chair Klein** agreed, and requested that any correspondence received by staff also be sent for
901 their review as early as possible. This would ensure the Commissioners had enough time to
902 review those comments as well.

903

904 **Ms. Mangle** commented that sending the correspondence was a change in procedure that staff
905 was making gradually. The official deadline for people to send comments for the Commission to
906 consider was one week prior to the hearing, but in reality the goal was to provide all of the
907 information to the Commission. Staff could forward public emails and provide printed material.
908 However, staff sometimes received 50 emails regarding an application, so staff would probably
909 batch them together and forward the comments up to once a day before the hearing.

910

911 **Chair Klein** said he would also check to be sure the Commissioners were able to read the
912 material because it was important to do so before getting too deep into discussion. Submitted
913 comments would help with discussions with the applicants and staff.

- 914 • He declared that the Commission would stick with the criteria. He would be asking where it
915 was met in the criteria to prevent wandering into areas that did not pertain to the application.

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950

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954 _____
Jeff Klein, Chair



MILWAUKIE

Dogwood City of the West

To: Planning Commission

Through: Katie Mangle, Planning Director *KM*

From: Brett Kolver, Associate Planner

Date: August 17, 2010, for August 24, 2010, Work session

Subject: Natural Resource Overlay Briefing # 6

ACTION REQUESTED

None. This is a briefing for discussion only, an update on the status of the City's Natural Resources Overlay (NRO) code amendment project.

BACKGROUND INFORMATION

A. History of Prior Actions and Discussions

- **July, 2008:** Work session briefing on requirements of Metro's Title 13, Nature in Neighborhoods.
- **October, 2008:** Work session briefing on options for the City to comply with Title 13.
- **July 14, 2009:** First of two-part work session briefing on project approach.
- **July 28, 2009:** Second of two-part work session briefing on project approach.
- **April, 2010:** Work session briefing on project progress (including review of Draft 2 of proposed code and maps).
- **June, 2010:** Joint meeting with NRO Advisory Group to discuss significant issues.

B. Project Overview

The NRO project is an effort to bring the City into full compliance with Statewide Land Use Planning Goal 5 (Natural Resources, Scenic and Historic Areas, and Open Spaces) and Metro's Title 13 (Nature in Neighborhoods). The new rules designate Habitat Conservation Areas (HCAs) for protection, including many areas contiguous to existing Water Quality Resource (WQR) areas that the City already regulates.

To date, staff's efforts have focused on incorporating the model HCA ordinance provided by Metro with the existing WQR rules provided in Milwaukie Municipal Code (MMC)

Section 19.322. Staff has also been working with the HCA map provided by Metro, making adjustments as appropriate and combining it with the existing map of WQR areas. To assist with these efforts, staff convened the NRO Advisory Group, composed of representatives from local agencies and community organizations as well as property owners and residents who may be directly affected by the proposed code amendments. Since September 2009, the Advisory Group met six times to review and discuss drafts of the proposed code and maps. These meetings provided valuable feedback and highlighted important issues for the project to address.

On June 8, 2010, the Planning Commission met with the Advisory Group to review Draft 2 of the proposed code and the latest draft of the proposed HCA maps. Since then, staff has made additional edits to both the code and maps to address the suggestions put forward.

NATURAL RESOURCES CODE DRAFT 3

The latest version of the proposed code is Draft 3 and is included as Attachment 1. Draft 3 of the code is similar in structure to Draft 2, with various modifications to address the issues that the Advisory Group and Planning Commission have raised. As you review the draft, please note the following:

1. **Organization.** In general, the organization of the code follows that of the current MMC 19.322 Water Quality Resources. The section starts by describing the intent of the regulations, making connections to other parts of the zoning code, and outlining the applicability of the rules. It lists activities that are exempt, those that are prohibited, and those that require different levels of review (Type I, Type II, minor quasi-judicial). There are application submission requirements and approval criteria, as well as review standards for the various types of activities. Finally, there is a short list of adjustments that offer some relief from the rules as well as the guidelines for administering the related resource maps.
2. **Exempt activities** are listed in Subsection 19.322.4. It is important to note that there are some activities that are exempted within both WQR areas and HCAs (Subsection 19.322.4.A) and some activities that are only exempted within HCAs (Subsection 19.322.4.B).
3. **Activities requiring Type I review** are listed in Subsection 19.322.6. This subsection has been expanded to allow more administrative review of activities for which there are clear and objective standards and that staff believes will tend to be more common occurrences. Type I items include construction management plans and map verification, limited tree removal, and agency-approved natural resource management plans. Activities within HCAs that can meet the non-discretionary standards provided in Subsection 19.322.12 can also be reviewed through the Type I process.
4. **Type II activities** (Subsection 19.322.7) include items for which it is not as easy to identify clear and objective standards and/or that warrant some level of public scrutiny but not a public hearing. These items include walkways and bike paths, utility and stormwater facilities, independently crafted natural resource management plans, and partitions that can place the designated resource area in a separate tract.
5. Most other allowed activities that would significantly impact a WQR area or HCA will require **minor quasi-judicial review**. When applicants cannot meet the standards for the lower levels of review, they will end up at a hearing with the Planning Commission and must provide substantial analysis of the impacts.

6. Because the structure of the proposed code generally sends an applicant to the next higher level of review when the standards of the lower level cannot be met, and because there is so much discretion provided in the minor quasi-judicial review, there should be less of a need to provide opportunities for **variances**. However, there are some adjustments provided in Subsection 19.322.16 that are available to proposals at any level of review when the allowance would avoid or limit impacts to the designated resource. Allowances include a reduction of the required building setbacks and up to a 30% adjustment in other required dimensional standards.

To help show how a property owner would navigate through the code, a flowchart is attached (see Attachment 2, Process Flowchart).

DRAFT MAP 3

The latest version of the proposed Water Quality and Natural Resources Area Map is Draft Map 3 (see Attachment 3). Draft Map 3 reflects the small adjustments and corrections staff has made, both in response to comments by the Advisory Group and some field verification. The attached map is of such a scale that makes detailed examination difficult, though it does continue to reflect that the newly recognized HCAs tend to be in close proximity to the existing WQR areas that the City is already regulating.

Attachment 4 is a set of 25 mapbook pages that show Milwaukie's adjustments to Metro's baseline HCA maps. Staff will soon submit these more detailed sectional maps to Metro for preliminary concurrence. The small map in the lower right-hand corner of each page shows each section's location with respect to the whole city.

NEXT STEPS

During the upcoming briefing on August 24, 2010, staff will walk through a few specific examples to explain how the proposed code and maps would work. Staff will also respond to the questions raised by Commissioners at Briefing #4 on April 27, 2010, related to other measures being taken by the City to protect and monitor the long-term health of the community's natural resources. The working schedule for this project for the remainder of 2010 is as follows:

- August 24: Review of draft code and maps with Planning Commission
- Late September/October: Community Open House
- November/December: PC and CC hearings

ATTACHMENTS

1. Draft 3 of proposed code (MMC 19.322)
2. Process Flowchart
3. Water Quality and Natural Resource Area Draft Map 3 (11"x17")
4. Mapbook pages (adjustments to HCA maps)

TITLE 19 ZONING**CHAPTER 19.300 USE ZONES****Section 19.322 Water Quality and Natural Resource Regulations****Subsections**

- 322.1 Intent
- 322.2 Coordination with Other Regulations
- 322.3 Applicability
- 322.4 Exempt Activities
- 322.5 Prohibited Activities
- 322.6 Activities Permitted Under Type I Application Review
- 322.7 Activities Permitted Under Type II Review
- 322.8 Activities Permitted Under Minor Quasi-Judicial Review
- 322.9 Construction Management Plans
- 322.10 Submittal Requirements
- 322.11 Approval Criteria
- 322.12 Standards for Non-Discretionary Review for Habitat Conservation Areas (HCAs)
- 322.13 Standards for Special Uses
- 322.14 Standards for Partitions and Subdivisions
- 322.15 Standards for Discretionary Review
- 322.16 Adjustments and Variances
- 322.17 Boundary Verification and Map Administration
- 322.18 Natural Resource Management Plans

19.322.1 Intent

- A. This Section provides protection for water quality resources under Statewide Land Use Planning Goal 6 and Sections 1 - 4 of Title 3 of the Metro's Urban Growth Management Functional Plan (UGMFP). This Section also provides protection for natural resources that have been identified for the purposes of implementing Statewide Planning Goal 5 relating to significant natural riparian, wildlife, and wetland resources and Title 13 of the UGMFP
- B. Many of Milwaukie's riparian, wildlife, and wetland resources have been adversely affected by development over time. These regulations seek to minimize additional adverse impacts and to restore and improve resources where possible while balancing property rights and development needs of the city.
- C. It is the intent of this Section to:

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1. Establish Water Quality Resource (WQR) areas to protect the functions and values of WQR areas at the time of development.
 2. Protect and improve the functions and values that contribute to water quality and to fish and wildlife habitat in urban streamside areas. These functions and values include, but are not limited to:
 - a. Vegetated corridors to separate protected water features from development.
 - b. Microclimate and shade.
 - c. Stream flow moderation and water storage.
 - d. Water filtration, infiltration, and natural purification.
 - e. Bank stabilization and sediment and pollution control.
 - f. Large wood recruitment and retention and channel dynamics.
 - g. Organic material resources.
 3. Establish Habitat Conservation Areas (HCAs) to implement the performance standards of Title 13 of the UGMFP for riparian areas and fish and wildlife habitat and to protect significant local Goal 5 resources such as wetlands.
 4. Provide non-discretionary (clear and objective) standards as well as a discretionary review process, applicable to development in HCAs, in accordance with Goal 5.
 5. Allow and encourage habitat-friendly development while minimizing the impact on water quality and fish and wildlife habitat functions.
 6. Provide mitigation standards for the replacement of ecological functions and values lost through development in wetlands, water quality resources, and HCAs.
 7. Preserve existing native vegetation against removal and replacement with lawns or gardens or other non-native plantings.
- D. It is not the intent of this Section to:
1. Impose any obligation on property owners to restore existing developed sites to pre-development or natural conditions when no new activity is proposed.
 2. Impose any hardship or limitation against the continued maintenance of existing legal site conditions.
 3. Apply to activities that do not affect WQR areas or HCAs.
 4. Prohibit normal lawn and yard landscape planting and maintenance. Normal lawn and yard planting and maintenance does not include the planting of invasive non-native or noxious vegetation, including but not limited to species listed as nuisance plants or prohibited plants on the Milwaukie Native Plant List.
- This Section is to be interpreted consistently with this intent.
- E. The Milwaukie Water Quality and Natural Resource Area Map (hereafter WQNR Map) is incorporated by reference as part of this Section.
- F. The water quality and natural resource area regulations allow development in situations where adverse impacts from the development can be avoided or mitigated and where the strict application of these rules would deny reasonable economic use of property.

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- G. Conditions legally existing as of December 17, 2002, with regard to WQR areas and as of *[insert new adoption date]* with regard to HCAs, that are inconsistent with this Section shall not be considered “nonconforming” and shall not be subject to the limitations of Chapter 19.800 if the nonconformity is solely the result of the standards of this Section. However, any expansion of a nonconforming condition or development shall, for the expanded portion thereof, be subject to the standards of this Section.
- H. A document or other list used to identify native, nuisance, and prohibited plants shall be maintained by the Planning Director and shall be referred to as the “Milwaukie Native Plant List.”

19.322.2 Coordination with Other Regulations

- A. Implementation of this Section is in addition to and shall be coordinated with Milwaukie Municipal Code Title 19 Zoning, Title 18 Flood Hazard Regulations, and Chapter 16.28 Erosion Control.
- B. For properties along the Willamette River, nothing in this Section shall prohibit the maintenance of view windows authorized under Section 19.320 Willamette Greenway Zone.
- C. Except as provided for in Subsection 19.322.2.B, provisions of this Section shall apply where they are more restrictive than Section 19.320 Willamette Greenway Zone.
- D. Development in or near wetlands and streams may require permits from the Oregon Department of State Lands (DSL) and the U.S. Army Corps of Engineers (Corps). If a federal permit is required, a water quality certification from the Oregon Department of Environmental Quality may also be required. The Planning Director shall notify DSL and the Corps when an application for development within streams and wetlands is submitted. Because these agencies may have more restrictive regulations than the City, applicants are encouraged to contact them before preparing development plans.
- E. The requirements of this Section apply in addition to all applicable local, state, regional, and federal regulations, including those for wetlands and flood management areas.

19.322.3 Applicability

- A. The regulations in this Section apply to all properties containing a WQR area and/or HCA (including any locally significant Goal 5 wetlands or habitat areas identified by the City of Milwaukie) as shown on the City's official WQNR Map.
- B. The regulations in Subsections 19.322.9 Construction Management Plans and Subsection 19.322.17 Boundary Verification and Map Administration also apply to properties that do not contain but are within 100 feet of a WQR area and/or HCA.
- C. Proposed activities which occur more than 100 feet from a WQR area or HCA do not require review under the provisions of this Section.
- D. Natural resources are designated on the City's official WQNR Map as follows:
 1. Water Quality Resource (WQR) Areas, which include protected water features and their associated vegetated corridors, as specified in Table 19.322.17-1. The vegetated corridor is a buffer around each protected water feature, established to prevent damage to the water feature. The width of the vegetated corridor varies depending on the type of protected water feature, upstream drainage area served, and slope adjacent to the protected water feature. The WQNR Map is a general indicator of the

Proposed Code Amendment

location of vegetated corridors; the specific location of vegetated corridors must be determined in accordance with Table 19.322.17-1.

2. Habitat Conservation Areas (HCAs), which include significant Goal 5 wetlands, riparian areas, and fish and wildlife habitat. HCA locations on the WQNR Map are assumed to be correct until demonstrated otherwise; verifications and corrections must be processed in accordance with Subsection 19.322.17.

E. The requirements of this Section apply as shown in Table 19.322.3-1.

Table 19.322.3-1 Applicability of Requirements of Section 19.322			
Situations/activities that trigger 19.322	Prepare Construction Management Plan (19.322.9)	Prepare Boundary Verification (19.322.17)	Comply with the rest of 19.322
On properties that include a designated resource (WQR area and/or HCA)			
Activities within WQR area or HCA that are exempted by 19.322.4.A	No	No	No
Activities within HCA that are exempted by 19.322.4.B	Yes, if activity is within 100 ft of WQR area	Yes, if activity is within 100 ft of WQR area	No
Non-exempt activities outside of WQR area and HCA	Yes, if activity is within 100 ft of WQR area or HCA	Yes, if activity is within 100 ft of WQR area or HCA	No
Non-exempt activities within WQR area or HCA	Yes	Yes	Yes
On properties that do not include a designated resource but are within 100 ft of a WQR area or HCA			
Any activities separated from designated resource by paved roadway	No	No	No
Activities exempted by 19.322.4.A	No	No	No
Activities exempted by 19.322.4.B, proposed where land slopes away from WQR area	No	No	No
Activities exempted by 19.322.4.B, proposed within 100 ft of WQR area and where land slopes toward WQR area	Yes	Yes	No
Non-exempt activities within 100 ft of a designated resource	Yes	Yes	No

F. Following the completion of a construction management plan and boundary verification, when required, an applicant may utilize the Adjustments to Use Zone Standards in Subsection 19.322.16.A in order to avoid impacts to a WQR area or HCA.

19.322.4 Exempt Activities

A. Exemptions within all Designated Resource Areas

The following activities are exempt from the provisions of this Section:

1. A building permit for a phased development project for which the applicant has previously met the application requirements of this Section, so long as the building site for new construction was identified on the original permit and no new portion of the WQR area and/or HCA will be disturbed.
2. Stream, wetland, riparian, and upland enhancement or restoration projects and development in compliance with a natural resource management plan or mitigation plan approved by the City or by a state or federal agency.
3. Landscape planting and maintenance that does not involve the removal of native plants or plants required as mitigation, does not involve the planting of vegetation identified as “nuisance” or “prohibited” species on the Milwaukie Native Plant List, or does not produce an increase in impervious area or other changes that could result in increased direct stormwater discharges to the WQR area.
4. Removal of plants identified on the Milwaukie Native Plant List as “nuisance” or “prohibited” species and/or the planting or propagation of plants identified on the list as “native” plants. After removal of nuisance or prohibited plants, all open soil areas must be replanted and/or protected from erosion.
5. Removal of manmade debris during the allowable windows for in-stream water work as designated by the Oregon Department of Fish and Wildlife.
6. Farming practices or farm uses, excluding buildings and structures, provided that such activities or uses do not increase direct stormwater discharges to WQR areas.
7. Maintenance, alteration, expansion, replacement, repair, and/or change of use of existing legal buildings or structures, provided that:
 - a. There is no change in the location of the existing area of disturbance within the WQR area or HCA.
 - b. There is no increase in building footprint or size, impervious surface, or outdoor storage area(s) within the WQR area or HCA.
 - c. There are no other site changes proposed that could result in increased direct stormwater discharges to the WQR area.
8. Maintenance, alteration, and repair of existing utilities, access, streets, driveways, and parking improvements, including asphalt overlays, provided there is no increase in impervious area, reduction in landscaped areas or tree cover, or other changes that could result in increased direct stormwater discharges to the WQR area.
9. Emergency procedures or activities undertaken which are necessary to remove or abate hazards or for the protection of public health, safety, and welfare; provided that such remedial or preventative action must take place within a timeframe too short to allow for compliance with the requirements of this Section. After the emergency, the person or agency undertaking the action shall repair any impacts to the natural resources resulting from the emergency action (e.g., remove any temporary flood protection such as sandbags, restore hydrologic connections, replant disturbed areas with native vegetation).

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10. Maintenance of public and private storm drainage facilities in accordance with a stormwater management plan approved by the City.
11. Activities and improvements in public rights-of-way, which are subject to MMC Title 12 and the Milwaukie Public Works Standards and related stormwater management requirements.
12. Removal of trees under any of the following circumstances:
 - a. The tree is downed by natural causes and no earth disturbance will occur during the removal of the tree.
 - b. The tree is classified as a “prohibited” or “nuisance” species on the Milwaukie Native Plant List and no more than three such trees will be removed from one property during any 12-month period.
 - c. The tree presents an immediate danger to public health, safety, and welfare as described in Subsection 19.322.4.A.9. Any damage or impacts to the designated natural resource area shall be repaired after the emergency has been resolved.
 - d. Removal of the tree is in accordance with an approved natural resource management plan per Subsection 19.322.18.

B. Additional Exemptions within HCAs

In addition to the activities listed in Subsection 19.322.4.A, within an HCA the following activities are exempt from the provisions of this Section, as long as activities within 100 feet of a WQR area meet the requirements to complete a construction management plan and boundary verification as per Subsections 19.322.9 and 19.322.17, respectively:

1. The alteration, expansion, or replacement of existing structures, provided that both of the following standards are met:
 - a. The alteration, expansion, or replacement of a structure shall not intrude more than 500 square feet into the HCA, in addition to the area defined as the building footprint as of *[insert new adoption date]*.
 - b. No new intrusion into the HCA shall be closer to a protected water feature than the pre-existing structure or improvement.
2. Minor encroachments not to exceed 120 square feet of impervious surface, such as accessory buildings, patios, walkways, retaining walls, or other similar features.
3. Temporary and minor clearing or excavation not to exceed 200 square feet for the purpose of site investigations, pits for preparing soil profiles, installing underground utilities or other infrastructure, or similar activities, provided that such areas are restored to their original condition when the investigation is complete.
4. Low-impact outdoor recreation facilities for public use, including, but not limited to, multi-use paths, access ways, trails, picnic areas, or interpretive and educational displays and overlooks that include benches and outdoor furniture, provided that such a facility meets the following requirements:
 - a. It contains less than 500 square feet of new impervious surface.
 - b. Its trails shall be constructed using non-hazardous, pervious materials, with a maximum width of 5 feet.
5. Facilities that infiltrate stormwater onsite, including the associated piping, may be placed within the HCA so long as the forest canopy and the areas within the driplines

of the trees are not disturbed. Such facilities may include, but are not limited to, vegetated swales, rain gardens, vegetated filter strips, and vegetated infiltration basins. Only native vegetation may be planted in these facilities.

19.322.5 Prohibited Activities

The following activities are prohibited within WQR areas and HCAs:

- A. New structures, development, or activity other than those allowed by this Section.
- B. Uncontained areas of hazardous materials.
- C. Planting any vegetation listed as “prohibited” or “nuisance” on the Milwaukie Native Plant List.
- D. Outside storage of materials, unless such storage began before the *[insert new adoption date]*; or, unless such storage is approved according to the provisions of this Section.
- E. Application of pesticides with any of the following active ingredients is prohibited within WQR areas (sample trade names are listed in parentheses for reference): 2,4-D (in various Weed ‘n Feed products, but prohibited only for direct aquatic application), Azinphos-methyl (Guthion), Bensulide (Prefar), Bromoxynil (Buctril), Carbaryl (Sevin), Chlorpyrifors (Dursban, Lorsban), Diazinon (many brand names), Dimethoate (Cygon), Diuron (Direx, Karmex), Fenbutatin-oxide (Vendex), Malathion (many brand names), Methomyl (Lannate), Methyl-parathion (Penncap-M), Metolachlor (Dual), Naled (Dibrom), Phorate (Thimet), and Triclopyr BEE (Garlon-4). This prohibition shall extend to include any other limitations enacted by federal or state agencies that ban the use of pesticides with certain active ingredients within at least 50 feet of protected water features.

19.322.6 Activities Permitted Under Type I Application Review

The following activities are allowed within either WQR areas or HCAs, subject to Type I review as per MMC 19.1011.1:

- A. Construction management plans and boundary verifications, as outlined in Subsections 19.322.9 and 19.322.17.
- B. Limited Tree Removal
 1. The Planning Director shall approve an application for limited tree removal or significant pruning within WQR areas and HCAs under any of the following circumstances:
 - a. The tree removal is necessary to eliminate an imminent hazard to person or property.
 - b. The tree is diseased or dying and cannot be saved, as determined by a certified arborist.
 - c. A certified arborist has determined that the tree will survive the proposed significant pruning as defined in MMC 19.103.
 - d. The proposal would remove 4 or more trees classified on the Milwaukie Native Plant List as “prohibited” or “nuisance” species from a particular location during any 12-month period. This Subsection does not apply to tree removal associated with development or other activities that are subject to either the standards for non-discretionary review in 19.322.12 or the discretionary review standards in 19.322.15.

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2. Any tree that is removed in accordance with this Subsection shall be replaced with a new tree, at least 1/2 inch in caliper. An exception to this requirement may be granted if the applicant can demonstrate that a replacement tree has already been planted in anticipation of tree removal or if the existing site conditions somehow preclude tree replacement (e.g., due to inadequate space, dense canopy coverage, etc.).
3. The replacement tree(s) shall be located in the general vicinity of the removed tree(s), somewhere within the designated resource area (WQR area or HCA). The replacement tree(s) does not have to be a native species, but, in accordance with Subsection 19.322.5.C, the replacement tree(s) shall not be a species categorized as “prohibited” or “nuisance” on the Milwaukie Native Plant list. The property owner shall ensure that the replacement tree(s) survives at least two years beyond the date of planting.

C. Activities within HCAs in Compliance with Non-Discretionary Standards

Within HCAs, but outside of WQR areas, development that is in compliance with the non-discretionary standards of Subsection 19.322.12 is subject to Type I review.

D. Natural Resource Management Plans

Natural resource management plans that meet the standards outlined in Subsection 19.322.18.A are subject to Type I review. These are typically plans that have already been approved by a qualified agency.

E. Nuisance Abatement

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

19.322.7 Activities Permitted Under Type II Review

Unless otherwise exempt or permitted as a Type I activity, the following activities are allowed within either WQR areas or HCAs, subject to Type II review and approval by the Planning Director as per MMC 19.1011.2:

A. Special Uses

If in compliance with the Special Use standards provided in Subsection 19.322.13, the activities listed below are subject to Type II review:

1. Improvement of existing public utility facilities
2. New stormwater pre-treatment facilities
3. Walkways and bike paths
4. New public or private utility facility construction
5. Stormwater management plans

If the proposed activity is not in compliance with the standards in Subsection 19.322.13, it shall be subject to minor quasi-judicial review and the discretionary standards of 19.322.15.

B. Natural Resource Management Plans

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Natural resource management plans that do not meet the Type I review standards provided in Subsection 19.322.18.A but that meet the standards provided in Subsection 19.322.18.B are subject to Type II review. These are typically plans that have been prepared independently of a qualified agency but that are in accordance with particular standards and guidelines related to enhancing natural resources.

C. Other Uses and Activities

The activities listed below are subject to Type II review and the discretionary standards in Subsection 19.322.15:

1. Farming practices or farm uses, excluding buildings and structures, that increase direct discharges to WQR areas.
2. Landscape planting and maintenance that would increase impervious area within the WQR area by less than 100 square feet and/or result in increased direct stormwater discharges to the WQR area.
3. Alteration, expansion, and/or replacement of existing legal buildings or structures, provided that the proposed alteration or expansion does not disturb more than 100 square feet within the WQR area and does not encroach closer to the protected water feature than the existing buildings or structures.
4. Alteration and repair of existing utilities, access, streets, driveways, and parking improvements, including asphalt overlays, provided that the proposed improvements do not disturb more than 100 square feet within the WQR area and do not encroach closer to the protected water feature than the existing improvements.

D. Partitions that meet the standards provided in Subsection 19.322.14.E.

19.322.8 Activities Permitted Under Minor Quasi-Judicial Review

Unless otherwise exempt or permitted as a Type I or Type II activity, the following activities are allowed within either WQR areas or HCAs, subject to minor quasi-judicial review and approval by the Planning Commission under MMC 19.1011.3:

- A.** The activities listed below shall be subject to the discretionary standards in Subsection 19.322.15:
1. Any activity allowed in the base zone that is not otherwise exempt or permitted as a Type I or Type II activity.
 2. Within HCAs, development that is not in compliance with the non-discretionary standards of Subsection 19.322.12.
 3. New roads to provide access to protected water features; necessary ingress and egress across WQR areas; or the widening an existing road.
 4. Improvement of existing public utility facilities that cannot meet the standards of Subsection 19.322.13.
 5. New stormwater pre-treatment facilities that cannot meet the standards of Subsection 19.322.13.
 6. New public or private utility facility construction that cannot meet the standards of Subsection 19.322.13.
 7. Walkways and bike paths that cannot meet the standards of Subsection 19.322.13.

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8. Tree removal in excess of that permitted under Subsections 19.322.4 or 19.322.6.
 9. Landscape planting and maintenance that would increase impervious area by more than 100 square feet.
 10. Maintenance, alteration, expansion, replacement, repair, and/or change of use of existing legal buildings or structures that would disturb more than 100 square feet within the WQR area or would encroach closer to the protected water feature than the existing buildings or structures.
 11. Maintenance, alteration, and repair of existing utilities, access, streets, driveways, and parking improvements, including asphalt overlays, that would disturb more than 100 square feet within the WQR area or would encroach closer to the protected water feature than the existing improvements.
- B. The activities listed below shall be subject to the discretionary standards in Subsection 19.322.14:
1. The partitioning of land containing a WQR area or HCA that cannot meet the standards in Subsection 19.322.14.E.
 2. The subdividing of land containing a WQR area or HCA.

19.322.9 Construction Management Plans

- A. Construction management plans are required in the following situations:
1. On properties that contain a WQR area and/or HCA, in either of the following situations:
 - a. Where the proposed activity is within, or within 100 feet of, the verified boundary of the designated resource and is not exempted by Subsection 19.322.4.
 - b. Where the proposed activity is within the verified boundary of the HCA and is exempted by Subsection 19.322.4.A but is also within 100 feet of the WQR area.
 2. On properties that do not contain a WQR area and/or HCA, in either of the following situations:
 - a. Where the proposed activity is exempted by Subsection 19.322.4.B but is within 100 feet of the verified boundary of a WQR area and where the property slopes in the direction of the WQR area.
 - b. Where the proposed activity is not exempted by Subsection 19.322.4 and is within 50 feet of the verified boundary of the designated resource.

No construction management plan is required for any proposed activity on a property that does not contain a designated resource, where the proposed activity is separated from the designated resource by a paved roadway as defined in MMC 19.103.
- B. Construction management plans shall provide the following information:
1. Description of work to be done.
 2. Location of site access and egress that construction equipment will use.
 3. Equipment and material staging and stockpile areas.
 4. Erosion and sediment control measures.

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5. Measures to protect trees and other vegetation located within the potentially affected WQR area and/or HCA.

When required for properties that do not include designated resources, construction management plans shall show protective measures that will be established on the property that is the subject of the application.

- C. To ensure that trees and vegetation within a WQR area or HCA are not damaged during construction, construction management plans shall ensure that:
 1. Prior to construction, the WQR area and/or HCA shall be flagged, fenced, or otherwise marked and shall remain undisturbed except as may be allowed by this Section. Such markings shall be maintained until construction is complete.
 2. A root protection zone shall be established around each tree in the WQR area or HCA that is adjacent to any approved work area. The root protection zone shall extend from the trunk to the outer edge of the tree's canopy, or as close to the outer edge of the canopy as is practicable for the approved project. The perimeter of the root protection zone shall be flagged, fenced, or otherwise marked and shall remain undisturbed. Material storage and construction access is prohibited within the perimeter. The root protection zone shall be maintained until construction is complete.
 3. Site preparation and construction practices shall be followed that prevent drainage of hazardous materials or erosion, pollution, or sedimentation to the adjacent WQR area.
 4. Storm water flows as a result of proposed development within and to natural drainage courses shall not exceed pre-development flows.
 5. The construction phase of the development will be done in such a manner to safeguard the resource portions of the site that have not been approved for development.
- D. Construction management plans are subject to Type I review as per MMC 19.1011.1.

19.322.10 Submittal Requirements

A. Requirements for All Applications

Except for boundary verifications and construction management plans, all Water Quality and Natural Resource applications shall include the following, in addition to the information contained in the submittal requirements and site plan requirements forms prescribed by the Planning Director:

1. For that portion of the subject property within, or within 100 feet of, a WQR area or HCA, applicants must submit a site plan of the property that includes all information listed on the City's site plan checklist.
2. If grading will occur within a WQR area or HCA, a grading plan showing the proposed alteration of the ground at 2-foot vertical contours in areas of slopes less than 15%, and at 5-foot vertical contours of slopes 15% or greater.
3. Additional information as necessary to demonstrate compliance with the applicable standards.

B. Additional Requirements for Type II and Minor Quasi-Judicial Applications

Applications submitted for Type II and minor quasi-judicial review, other than for special uses identified in Subsection 19.322.7.A, shall provide the following additional information:

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1. Where wetlands are identified, the applicant shall follow the DSL wetlands delineation process. The delineation shall be prepared by a professional wetlands specialist and will be accepted only after approval by DSL.
2. An inventory and location of existing debris and noxious materials within the WQR area or HCA.
3. An inventory of vegetation, including the percentage of ground and canopy coverage materials within the WQR area or HCA.

19.322.11 Approval Criteria

All applications that require review according to this Section shall demonstrate compliance with the applicable approval criteria as outlined in Table 19.322.11-1.

Table 19.322.11-1 Approval Criteria for Various Activities			
Activity	Subsection(s) outlining Applicable Criteria		
	Type of Review		
	Type I (19.1011.1)	Type II (19.1011.2)	Minor Quasi- Judicial (19.1011.3)
Construction management plan	19.322.9		
Boundary verification	19.322.17		
Limited tree removal	19.322.6.B		
Activities within HCA that meet non-discretionary standards	19.322.6.C 19.322.12		
Non-emergency abatement of nuisances or violations	19.322.6.D 19.322.9		
Special use activities		19.322.7.A 19.322.13	
Limited disturbance to WQR areas		19.322.7.C 19.322.15	
Partitions that put designated resource in separate tract		19.322.7.D 19.322.14	
Other partitions, subdivisions, and development activities			19.322.8 19.322.14.F or G 19.322.15
Agency-approved natural resource management plans	19.322.18.A and C		
Independent natural resource management plans		19.322.18.B and C	

19.322.12 Standards for Non-Discretionary Review for Habitat Conservation Areas (HCAs)

The non-discretionary standards may be applied to proposals that are subject to Type I review and located within HCAs only. These standards do not apply to projects within WQR areas.

- A. Disturbance Area Limitations to Minimize Impact to HCA

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1. Detached and attached single-family residential uses

The amount of disturbance allowed within an HCA is determined by subtracting the area of the lot or parcel outside of the HCA from the maximum disturbance area calculated as described in Figure 19.322.12-1. Such disturbance is subject to the mitigation requirements described in Subsection C, below.

Figure 19.322.12-1 Method for Calculating Allowable Disturbance within an HCA
<p>X = The net amount of disturbance area allowed within the HCA ($X = Y - Z$)</p> <p>Y = The maximum potential disturbance area is 50% of the total HCA, up to a maximum of 5,000 square feet.</p> <p>Z = The area of the lot or parcel outside the HCA.</p> <p>If the area of the lot or parcel outside the HCA (Z) is greater than the maximum potential disturbance area (Y), then development shall not be permitted within the HCA; otherwise the applicant may disturb up to the net amount of disturbance area allowed (X).</p>
<p><u>Example 1:</u> 8,000-sq-ft lot with 3,000 sq ft of HCA and 5000 sq ft outside of HCA</p> <p>$Y = 1500$ sq ft (50% of HCA)</p> <p>$Z = 5000$ sq ft outside of HCA</p> <p>$X = - 3500$ sq ft (1500 sq ft – 5000 sq ft)</p> <p>Conclusion: Z is greater than Y; therefore, development is not permitted within the HCA.</p>
<p><u>Example 2:</u> 8,000-sq-ft lot with 6,000 sq ft of HCA and 2000 sq ft outside of HCA</p> <p>$Y = 3000$ sq ft (50% of HCA)</p> <p>$Z = 2000$ sq ft outside of HCA</p> <p>$X = 1000$ sq ft (3000 sq ft – 2000 sq ft)</p> <p>Conclusion: Z is not greater than Y; therefore, the applicant may disturb up to the value of X (1000 sq ft) within the HCA).</p>

2. All Other Uses

A net amount of disturbance area of 10% of the HCA on the site is allowed by right, subject to the mitigation requirements described in Subsection 19.322.12.C.

3. Disturbance Area Will Not Change HCA Status

Development within an HCA in accordance with these provisions shall not result in a change of the HCA status of such developed areas on a property. In the case of a later development request seeking to develop within a previously undisturbed HCA on a property where a prior development request was subject to these provisions, the calculation of the net amount of disturbance area allowed on the property shall be based on the location of the HCA, notwithstanding the location of any authorized development within the HCA.

4. Disturbance in Excess of that Allowed by this Section

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In accordance with Subsection 19.322.8, proposed development that would disturb more HCA than allowed by Subsections 19.322.12.A.1 and 19.322.12.A.2 shall be subject to minor quasi-judicial review.

B. Protection of Habitat During Site Development

During development of any site containing a HCA, the following standards shall apply:

1. Work areas shall be marked to reduce potential damage to the HCA.
2. Trees in HCAs shall not be used as anchors for stabilizing construction equipment.
3. Native soils disturbed during development shall be conserved on the property.
4. An erosion and sediment control plan is required and shall be prepared in compliance with requirements set forth in the City's Public Works Standards.
5. Prior to construction, the HCA that is to remain undeveloped shall be flagged, fenced, or otherwise marked and shall remain undisturbed.
6. All work on the property shall conform to a construction management plan prepared according to Subsection 19.322.9.
7. Where practicable, the types, sizes, and intensities of lights shall be placed so that they do not shine directly into the WQR area and/or HCA locations.

C. Mitigation Requirements for Disturbance in HCAs

To achieve the goal of reestablishing forested canopy that meets the ecological values and functions described in Subsection 19.322.1, when development intrudes into a HCA, tree replacement and vegetation planting are required according to the following standards, unless the planting is also subject to wetlands mitigation requirements imposed by state and federal law:

1. Required Plants and Plant Densities

All trees, shrubs and ground cover must be native plants as identified on the Milwaukee Native Plant List. An applicant must meet Mitigation Option 1 or 2, whichever results in more tree plantings; except that where the disturbance area is 1 acre or more, the applicant shall comply with Mitigation Option 2.

a. Mitigation Option 1

This mitigation requirement is calculated based on the number and size of trees that are removed from the site. Trees that are removed from the site shall be replaced as shown in Table 19.322.12-1. Conifers shall be replaced with conifers. Bare ground shall be planted or seeded with native grasses or herbs. Non-native sterile wheat grass may also be planted or seeded, in equal or lesser proportion to the native grasses or herbs.

Size of tree to be removed (inches in diameter)	Number of trees and shrubs to be planted
6 to 12	2 trees and 3 shrubs
13 to 18	3 trees and 6 shrubs
19 to 24	5 trees and 12 shrubs
25 to 30	7 trees and 18 shrubs
over 30	10 trees and 30 shrubs

b. Mitigation Option 2

This mitigation requirement is calculated based on the size of the disturbance area within a HCA. Native trees and shrubs are required to be planted at a rate of 5 trees and 25 shrubs per 500 square feet of disturbance area. This is calculated by dividing the number of square feet of disturbance area by 500, multiplying that result times 5 trees and 25 shrubs, and rounding all fractions to the nearest whole number of trees and shrubs. For example, if there will be 330 square feet of disturbance area, then 330 divided by 500 equals 0.66, and 0.66 times 5 equals 3.3, so 3 trees must be planted, and 0.66 times 25 equals 16.5, so 17 shrubs must be planted. Bare ground shall be planted or seeded with native grasses or herbs. Non-native sterile wheat grass may also be planted or seeded, in equal or lesser proportion to the native grasses or herbs.

2. Plant Size

Replacement trees must be at least 1/2 inch in caliper, measured at 6 inches above the ground level for field-grown trees or above the soil line for container-grown trees (the 1/2-inch minimum size may be an average caliper measure, recognizing that trees are not uniformly round), unless they are oak or madrone, which may be 1-gallon size. Shrubs must be in at least a 1-gallon container or the equivalent in ball and burlap and must be at least 12 inches in height.

3. Plant Spacing

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

4. Plant Diversity

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

5. Location of Mitigation Area

a. On-site Mitigation

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

b. Off-site Mitigation

Mitigation vegetation may be planted off-site within an area contiguous to the subject-property HCA, provided there is documentation that the applicant possesses legal authority to conduct and maintain the mitigation, such as having a sufficient ownership interest in the mitigation site. If the off-site mitigation is not within an HCA, the applicant shall document that the mitigation site will be protected after the monitoring period expires, such as through the use of a restrictive covenant.

6. Invasive Vegetation

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Invasive non-native or noxious vegetation must be removed within the mitigation area prior to planting.

7. Tree and Shrub Survival

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

a. Required Practices

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

- (1) Mulch new plantings a minimum of 3 inches in depth and 18 inches in diameter to retain moisture and discourage weed growth.
- (2) Water new plantings 1 inch per week between June 15th and October 15th for the first three years following planting.
- (3) Remove or control non-native or noxious vegetation throughout the maintenance period.

b. Recommended Practices

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

- (1) Plant bare root trees between December 1st and February 28th, and potted plants between October 15th and April 30th.
- (2) Use plant sleeves or fencing to protect trees and shrubs against wildlife browsing and the resulting damage to plants.

c. Monitoring and Reporting

Monitoring of the mitigation site is the ongoing responsibility of the property owner. Plants that die must be replaced in kind. The developer shall submit a two-year maintenance bond covering the continued health and survival of all plantings.

8. Light Impacts

Where practicable, the types, sizes, and intensities of lights shall be placed so that they do not shine directly into the WQR area and/or HCA locations.

19.322.13 Standards for Special Uses

Special uses listed in Subsection 19.322.7.A are subject to Type II review if they comply with the applicable standards in this Section. Otherwise, the special uses listed in Subsection 19.322.7.A are subject to minor quasi-judicial review and the discretionary standards of Subsection 19.322.15.

A. Except for stormwater management plans, all Type II special uses listed in Subsections 19.322.13.B through 19.322.13.E shall comply with the following standards:

1. A mitigation plan shall be submitted as per Subsections 19.322.12.C or 19.322.15.A for HCAs, as applicable, or as per Subsection 19.322.15.B.2.e for WQR areas. WQR areas and HCAs shall be restored and maintained in accordance with the approved mitigation plan.
2. Existing vegetation outside of approved work areas shall be protected and left in place. Work areas shall be carefully located and marked to reduce potential damage to WQR

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areas and HCAs. Trees in WQR areas or HCAs shall not be used as anchors for stabilizing construction equipment.

3. Where existing vegetation has been removed or the original land contours disturbed, the site shall be revegetated and the vegetation shall be established as soon as practicable. Nuisance plants, as identified by the City, may be removed at any time. Interim erosion control measures such as mulching shall be used to avoid erosion on bare areas. Nuisance plants shall be replaced with native plants by the next growing season.

B. New Stormwater Pre-treatment Facilities

In addition to the requirements of Subsection 19.322.13.A, new stormwater pre-treatment facilities shall not encroach more than 25 feet into the outside boundary of the WQR area of a primary protected water feature.

C. Improved Pedestrian and Bike Paths

In addition to the requirements of Subsection 19.322.13.A, pedestrian and bike paths that are proposed to be constructed or improved with gravel, pavement, pavers, wood or other materials, shall comply with the following standards:

1. Pedestrian and bike paths within WQR areas or HCAs shall not exceed 10 feet in width.
2. If the proposed path will be located within a WQR area and will be paved, then, for the purposes of evaluating the proposed project, the vegetated corridor shall be widened by the width of the path.
3. The path shall be designed to avoid WQR areas and HCAs and shall be constructed so as to minimize disturbance to existing vegetation and slope stability.
4. The path shall be a minimum of 10 feet from the boundary of the protected water feature.
5. Where practicable, the types, sizes, and intensities of lights shall be placed so that they do not shine directly into the WQR area and/or HCA locations.

D. New Public or Private Utility Facility Construction

In addition to the requirements of Subsection 19.322.13.A, the following disturbance area limitations apply to new utilities, private connections to existing or new utility lines, and upgrades:

1. The disturbance area for connections to utility facilities shall be no greater than 10 feet wide.
2. The disturbance area for the upgrade of existing utility facilities shall be no greater than 15 feet wide.
3. The disturbance area for new underground utility facilities shall be no greater than 25 feet wide and shall disturb no more than 200 linear feet of WQR area within any 1,000-linear-foot stretch of WQR area; provided that this disturbance area shall be restored with the exception of necessary access points to the utility facility.
4. No fill or excavation is allowed within the ordinary high water mark of a stream, unless a permit is obtained from the U.S. Army Corps of Engineers through the Standard Local Operating Procedures for Endangered Species (SLOPES) process.

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- E. Stormwater management plans that authorize disturbance within the WQR area or HCA may be approved subject to the following standards:
1. Stormwater facilities will be designed to provide an environmentally beneficial hydrological impact on protected water features.
 2. Protected water features will be protected from erosion by implementing a stream protection strategy and quantity control strategies.
 3. Watershed health will be improved through the use of vegetated facilities to meet pollution reduction, flow control, and infiltration goals and these facilities will be maintained in a manner which ensures a continued benefit to watershed health.
 4. Proposed stormwater management facilities will correct or improve conditions caused by past management and/or disturbance events, if any are present.
 5. Where no reasonable expectation of returning to natural conditions exists, beneficial habitat, vegetation, and stream function and hydrology will be restored to the fullest extent possible within developed areas.

19.322.14 Standards for Partitions and Subdivisions

These standards apply in addition to the other land division requirements provided in Title 17 Land Division and Title 19 Zoning.

A. Boundary Verification

The applicant shall verify the boundaries of the WQR area and HCA on the property according to Subsection 19.322.17.

B. Construction Management Plans

1. Subdivision and partition applications that will require physical improvements (e.g., grading and/or the construction of structures, streets, or utilities) within, or within 100 feet of, a WQR area or HCA shall include a construction management plan in accordance with Subsection 19.322.9.
2. Subdivision and partition applications that do not require grading or constructing structures, streets, or utilities or making other physical improvements to the site are not required to submit a construction management plan.

C. Impacts from Site Improvements

Subdivision and partition applications that will require site improvements (e.g., grading and/or the construction of streets, sidewalks, culverts, bridges, or utilities) within a WQR area or HCA shall comply with the applicable standards in Subsections 19.322.12, 19.322.13, and 19.322.15.

D. Mitigation for Future Structures

Applications that propose partitioning or subdividing land on which future construction may impact a WQR area or HCA must choose to comply with one of the following standards:

1. Complete the mitigation requirements for any impacts to the WQR area or HCA in accordance with the requirements of this Section and thereby exempt all subsequent development on lots containing a WQR area and/or HCA from further review.
2. Not complete the mitigation requirements, thus requiring that any subsequent development be subject to review under this Section.

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E. Low-impact Partitions

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

1. For properties that contain HCAs but no WQR areas, the partition shall achieve either of the following results:
 - a. There shall be no more than a 30-point difference in the percentage of HCA coverage on each of the new parcels. For example, a two-lot partition that produces one parcel that is 55% HCA and the other that is 30% HCA is permissible; whereas a two-lot partition that produces one parcel that is 75% HCA and the other that is 40% HCA is not permissible.
 - b. At least 90% of the original property's HCA is on a separate unbuildable parcel, protected by a conservation restriction.
2. For properties that contain WQR areas, the applicant must place 100% of the WQR area in a separate unbuildable tract, protected by a conservation restriction.
3. For properties that contain both WQR areas and HCAs, the applicant must comply with both of standards listed in this Subsection.

F. All Other Partitions

Applications for partitions that cannot comply with Subsection 19.322.14.E are subject to minor quasi-judicial review and the following standards:

1. For properties that do not contain any WQR areas but for which it is not practicable to comply with the partition standards in Subsection 19.322.14.E.1, the application shall meet the following standards:
 - a. The partition plan shall result in the smallest practicable percentage point difference in the percentage of HCA on the parcels created by the partition.
 - b. To the extent possible, the parcel configuration shall mitigate the potential future impacts to the HCA from access and development.
2. For properties that contain WQR areas but cannot comply with Subsection 19.322.14.E.2, or that contain both WQR areas and HCAs but cannot comply with Subsection 19.322.14.E.3, the application will be reviewed against the following standards:
 - a. To the extent possible, the parcel configuration shall mitigate the potential future impacts to WQR areas from access and development.
 - b. An Impact Evaluation and Alternatives Analysis shall be prepared in accordance with Subsection 19.322.15.

G. Subdivisions

Applications for subdivisions are subject to minor quasi-judicial review and the following standards:

1. At least 90% of the property's HCA and 100% of the property's WQR area shall be located in a separate tract.
2. If a subdivision cannot comply with standard in Subsection 19.322.14.G.1, the application will be reviewed against the following standards:

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- a. All proposed lots shall have adequate buildable area outside of the WQR area and HCA.
 - b. To the extent possible, the lot configuration shall mitigate the potential future impacts to the WQR area and HCA from access and development.
 - c. An Impact Evaluation and Alternatives Analysis shall be prepared in accordance with Subsection 19.322.15.
- H. Where required by this Section, the new subdivision or partition plat shall delineate and show all WQR areas and HCAs as a separate unbuildable tract(s) according to the following process:
- 1. For residences, if the separate tract is adjacent to the rear yard, the minimum rear yard requirement is reduced to 10 feet.
 - 2. Prior to preliminary plat approval, the designated natural resource area (whether WQR area or 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.
 - 3. 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. The tract(s) may be identified as any one of the following:
 - a. Private natural area held by the owner or homeowners association by a restrictive covenant and/or conservation easement.
 - b. For residential subdivisions, private natural area subject to an easement conveying storm and surface water management rights to the City of Milwaukie, Clackamas County Water Environment Services, and/or any other relevant jurisdiction, and preventing the owner of the tract from activities and uses inconsistent with the purpose of this Section.
 - c. Public natural area where the tract has been dedicated to the City of Milwaukie or a private non-profit with the mission of land conservation.

19.322.15 Standards for Discretionary Review

The standards in this Section apply to all applications for discretionary review. Uses and activities listed in Subsection 19.322.7 are subject to Type II review; all other applications for discretionary review are subject to minor quasi-judicial review.

- A. 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 19.322.12 (for example, to plant fewer larger trees and shrubs or to plant more smaller trees and shrubs) but who will comply with all other provisions of Subsection 19.322.12 may seek review under this Subsection if the all of the following standards are met:

- 1. The applicant has provided all of the following information:
 - a. A calculation of the number of trees and shrubs the applicant would be required to plant under Subsection 19.322.12.
 - b. The numbers and sizes of trees and shrubs that the applicant proposes to plant.

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- c. An explanation of why the numbers and sizes of trees and shrubs that the applicant proposes to plant will achieve, at the end of the fifth year after initial planting, comparable or better mitigation results as the results that would be achieved if the applicant complied with all of the requirements of Subsection 19.322.12. Such explanation shall be prepared and signed by a knowledgeable and qualified natural resources professional or a certified landscape architect and shall include discussion of site preparation including soil additives and removal of invasive and noxious vegetation, plant diversity, plant spacing, planting season, and immediate post-planting care including mulching, irrigation, wildlife protection, and weed control.
 - d. A mitigation site-monitoring and -reporting plan.
2. The proposed planting will achieve, at the end of the fifth year after initial planting, comparable or better mitigation results as the results that would be achieved if the applicant complied with all of the requirements of Subsection 19.322.12.
 3. The proposed mitigation adequately addresses the plant diversity, plant survival, and monitoring practices in Subsection 19.322.12.

B. General Discretionary Review

This Subsection provides a discretionary process by which the City analyzes the impacts of development on WQR areas and HCAs, as well as measures to prevent negative impacts, and also provides mitigation and enhancement requirements.

1. Professional Consultation

The Planning Director may consult with a professional with appropriate expertise to evaluate an application, or may rely on appropriate staff expertise to properly evaluate the report's conclusions.

2. Impact Evaluation and Alternatives Analysis

An impact evaluation and alternatives analysis is required to determine compliance with the approval criteria and to evaluate development alternatives for a particular property. The alternatives must be evaluated on the basis of their impact on WQR areas 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:

- a. Identification of the ecological functions of riparian habitat found on the property as described in Subsection 19.322.1.C.2.
- b. An assessment of the water quality impacts related to the development, including sediments, temperature and nutrients, sediment control, and temperature control, or addressing any other condition with the potential to cause the protected water feature to be listed on DEQ's 303(d) list.
- c. An alternatives analysis demonstrating that:
 - (1) No practicable alternatives to the requested development exist that will not disturb the WQR area or HCA.
 - (2) Development in the WQR area and/or HCA has been limited to the area necessary to allow for the proposed use.
 - (3) The WQR area can be restored to an equal or better condition in accordance with Table 19.322.15-1.

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(4) Road crossings will be minimized as much as possible.

The analysis shall provide an explanation of the rationale behind choosing the alternative selected, including how adverse impacts to natural resource areas will be avoided and/or minimized.

- d. For applications proposing an alteration, addition, rehabilitation, or replacement of existing structures located within the WQR area, the applicant shall do the following:
- (1) Demonstrate that no reasonably practicable alternative design or method of development exists that would have a lesser impact on the WQR area than the one proposed. If no such reasonably practicable alternative design or method of development exists, the project shall be conditioned to limit its disturbance and impact on the WQR area to the minimum extent necessary to achieve the proposed addition, alteration, restoration, replacement, or rehabilitation.
 - (2) Provide mitigation to ensure that impacts to the functions and values of the WQR area will be mitigated or restored to the extent practicable.
- e. A WQR area mitigation plan that contains the following information:
- (1) A description of adverse impacts that will be caused as a result of development.
 - (2) An explanation of how adverse impacts to WQR areas will be avoided, minimized, and/or mitigated in accordance with, but not limited to, Table 19.322.15-1.
 - (3) A description of how the following standards will be achieved:
 - (a) Where existing vegetation has been removed, the site shall be revegetated as soon as practicable.
 - (b) Where practicable, the types, sizes, and intensities of lights shall be placed so that they do not shine directly into the WQR area and/or HCA locations.
 - (c) 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 natural resource area and to provide opportunity for food, water, and cover for animals located within the WQR area.
 - (4) A map showing where the specific mitigation activities will occur. Offsite mitigation related to WQR areas shall not be used to meet the mitigation requirements of this Section.
 - (5) 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 Oregon Department of Fish and Wildlife in-stream timing schedule.

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Table 19.322.15-1 Restoration and Mitigation Requirements for WQR Areas	
Existing Condition of WQR Area	Requirements Applicable to Portions of the WQR Area Disturbed During Development or Land Disturbance
Good Existing Corridor	
Combination of trees, shrubs and groundcover are 80% present, and there is more than 50% tree canopy coverage in the vegetated corridor.	<ul style="list-style-type: none"> • Submit an inventory of vegetation in areas proposed to be disturbed and a plan for mitigating water quality impacts related to the development, including: sediments, temperature and nutrients, sediment control, and temperature control, or addressing any other condition that may have caused the protected water feature to be listed on DEQ's 303 (d) list. • Inventory and remove debris and noxious materials.
Marginal Existing Vegetated Corridor	
Combination of trees, shrubs and groundcover are 80% present, and 25 - 50% canopy coverage in the vegetated corridor.	<ul style="list-style-type: none"> • Vegetate disturbed and bare areas with non-nuisance plantings from the Milwaukie Native Plant List. • Revegetate with native species using a City-approved plan developed to represent the vegetative composition that would naturally occur on the site. Revegetation must occur during the next planting season following site disturbance. Annual replacement of plants that do not survive is required until vegetation representative of natural conditions is established on the site. • Restore and mitigate according to approved plan using non-nuisance plantings from the Milwaukie Native Plant List. • Inventory and remove debris and noxious materials.
Degraded Existing Vegetated Corridor	
Less vegetation and canopy coverage than Marginal Vegetated Corridors, and/or greater than 10% surface coverage of any non-native species.	<ul style="list-style-type: none"> • Vegetate disturbed and bare areas with non-nuisance plantings from the Milwaukie Native Plant List. • Remove non-native species and revegetate with non-nuisance plantings from the Milwaukie Native Plant List. • Plant and seed to provide 100% surface coverage. • Restore and mitigate according to a City-approved plan using non-nuisance plantings from the Milwaukie Native Plant List. • Inventory and remove debris and noxious materials.

19.322.16 Adjustments and Variances

A. Adjustments to Base Zone Standards

Following the completion of a construction management plan pursuant to Subsection 19.322.9 and boundary verification pursuant to Subsection 19.322.17, an applicant may utilize the adjustments established in this Subsection to avoid or minimize impacts to a WQR area or HCA. These adjustments may not be used to avoid the requirement to submit a construction management plan or boundary verification but may be used with a Type I, Type II, or minor quasi-judicial application. The allowable adjustments are as follows:

1. The required building setback of the base zone may be reduced the minimum amount necessary to any distance between the base-zone minimum and 0 feet, unless this reduction conflicts with applicable fire or life safety requirements.

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2. Landscaping requirements, apart from those required for parking lots, may be met by preserving the WQR area and/or HCA.
3. To accommodate the allowable residential density, dimensional standards and lot sizes may be adjusted by up to 30%.
4. **Include language for density bonus, from 30% to 50%.**

B. Variance

A variance to avoid the unreasonable loss of economically viable use of a lot that contains a WQR area and/or HCA may be granted by the Planning Commission through minor quasi-judicial review. Such a variance request is not subject to the requirements of Chapter 19.700 but shall be reviewed as part of the related Water Quality and Natural Resources application.

1. A variance request must demonstrate that without the proposed variance, the reasonable economic use of the property would be denied. The applicant must show that no other development proposal could result in permission for an economically viable use of the property.
2. In granting a variance request, the Planning Commission may impose such conditions as are deemed necessary to minimize adverse impacts that may result from granting relief from provisions of this Section. Examples of such conditions include, but are not limited to, maintaining a minimum width of the vegetated corridor alongside a primary protected water feature and limiting the amount of WQR area for which the adjacent vegetated corridor width can be reduced.

19.322.17 Boundary Verification and Map Administration

The preparation of the Milwaukie Water Quality and Natural Resources (WQNR) Map did not include specific field observations of every individual property. The map is designed to be specific enough to determine whether further review of a development proposal is necessary. If any portion of the development or alteration of the land (except those exempted by this Section) is located within the boundary of a designated natural resource area, then map verification is required before any development permit can be issued.

A. Boundary Verification for WQR Areas

To verify the boundary of a WQR area, the applicant shall provide a topographic map of the site at contour intervals of 5 feet or less, showing a demarcation of the WQR area, which includes protected water features and vegetated corridors as outlined in Table 19.322.17-1.

Protected Water Feature Type	Slope Adjacent to Protected Water Feature	Starting Point for Measurements from Protected Water Feature	Width of Vegetated Corridor²
Primary Protected Water Features ¹	< 25%	<ul style="list-style-type: none"> • Edge of bankful flow or 2-year storm level • Delineated edge of Title 3 wetland 	50 ft

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Primary Protected Water Features ¹	> 25% for 150 ft or more ³	<ul style="list-style-type: none"> • Edge of bankful flow or 2-year storm level • Delineated edge of Title 3 wetland 	200 ft
Primary Protected Water Features ¹	> 25% for less than 150 ft ³	<ul style="list-style-type: none"> • Edge of bankful flow or 2-year storm level • Delineated edge of Title 3 wetland 	Distance from starting point of measurement to top of ravine (break in > 25% slope) ⁴ , plus 50 ft. ⁵
Secondary Protected Water Features ⁶	< 25%	<ul style="list-style-type: none"> • Edge of bankful flow or 2-year storm level • Delineated edge of Title 3 wetland 	15 ft
Secondary Protected Water Features ⁶	> 25% ³	<ul style="list-style-type: none"> • Edge of bankful flow or 2-year storm level • Delineated edge of Title 3 wetland 	50 ft
<p>¹ Primary Protected Water Features include: all perennial streams and streams draining greater than 100 acres, Title 3 wetlands, and natural lakes and springs. See MMC 19.103 for the full definition.</p> <p>² Vegetated corridor width shall be applied to the outer boundaries of water features, such as the edge of a wetland and both banks of a watercourse.</p> <p>³ Vegetated corridors in excess of 50 feet for primary protected features, or in excess of 15 feet for secondary protected features, apply on steep slopes only in the uphill direction from the protected water feature.</p> <p>⁴ Where the Protected Water Feature is confined by a ravine or gully, the top of ravine is the break in the > 25% slope.</p> <p>⁵ A maximum reduction of 25 feet may be permitted in the width of the vegetated corridor beyond the slope break if a geotechnical report demonstrates that slope is stable. To establish the width of the vegetated corridor, slope should be measured in 25-foot increments away from the water feature until slope is less than 25% (top of ravine).</p> <p>⁶ Secondary Protected Water Features include intermittent streams draining 50 to 100 acres. See MMC 19.103 for the full definition.</p>			

B. Boundary Verification and Correction of HCAs

The boundary verification approaches described below are available for applicants to address potential inaccuracies in the WQNR map, such as a simple incongruity between the WQNR map and the lot-line boundaries of a property, existing development on a property prior to *[insert new adoption date]*; or other inaccuracies.

1. Simple Incongruities

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

a. The information required for basic verification of the natural resource area boundary:

- (1) A detailed property description and site plan of the property that includes all existing conditions information listed on the City's site plan checklist.
- (2) A copy of the applicable WQNR map section.

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- (3) A summer 2005 aerial photograph of the property, with lot lines shown, at a scale of at least one map inch equal to 50 feet for lots of 20,000 or fewer square feet, and a scale of one map inch equal to 100 feet for larger lots.
 - (4) Any other factual information that the applicant wishes to provide to support boundary verification.
- b. A documented demonstration of the misalignment between the WQNR map and the property's tax lot boundary lines and/or the location of existing legally established development.
2. Development Prior to Adoption Date

Where a property was developed between the summer of 2002 (when the aerial photo used to determine the regional habitat inventory was taken) and *[insert new adoption date]*, the applicant shall submit the following information regarding the real property lot or parcel:

- a. The information described in Subsection 19.322.17.B.1.a.
 - b. A summer 2002 aerial photograph of the property, with lot lines shown, at a scale of at least one map inch equal to 50 feet for lots of 20,000 or fewer square feet, and a scale of one map inch equal to 100 feet for larger lots.
 - c. Any approved building permits or other development plans and drawings related to the development of the property that took place between summer 2002 and *[insert new adoption date]*.
 - d. A clear explanation and documentation, such as supporting maps or drawings or a more recent aerial photograph, indicating the new development that has occurred and where previously identified habitat no longer exists because it is now part of a developed area.
3. WQNR Map is Inaccurate for Other Reasons

An applicant who believes that an HCA shown on the WQNR map is inaccurate for a reason other than those described in Subsections 19.322.17.B.1 or 19.322.17.B.2 may request a detailed verification. The applicant shall submit a report prepared and signed by either a knowledgeable and qualified natural resource professional, such as a wildlife biologist, botanist, or hydrologist; or by a civil or environmental engineer registered in Oregon to design public sanitary or storm systems, storm water facilities, or other similar facilities. The report shall include:

- a. A description of the qualifications and experience of all persons that contributed to the report and, for each person that contributed, a description of the elements of the analysis to which the person contributed.
- b. The information described in Subsection 19.322.17.B.1.a.
- c. The information described in Subsections 19.322.17.B.1.b and/or 19.322.17.B.2.b through 19.322.17.B.2.d, if the applicant believes such information is relevant to the verification of habitat location on the subject lot or parcel.
- d. Additional aerial photographs if the applicant believes they provide better information regarding the property, including documentation of the date and process used to take the photos and an expert's interpretation of the additional information they provide.

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- e. A map showing the topography of the property shown by two-foot vertical contours in areas of slopes less than 15%, and at 5-foot vertical contours of slopes 15% or greater.
- f. Any additional information necessary to address each of the verification criteria in Subsection 19.322.17.B.4, a description of where any HCAs are located on the property based on the application of the verification criteria, and factual documentation to support the analysis.

4. Detailed Verification Criteria

A boundary verification request submitted under Subsection 19.322.17.B.3 shall be evaluated according to the following three-step process:

a. Step 1 - Verify the Boundaries of Inventoried Riparian Habitat

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

- (1) Locate the water feature that is the basis for identifying riparian habitat.
 - (a) Locate the top of bank of all streams, rivers, and open water within 200 feet of the property.
 - (b) Locate all flood areas within 100 feet of the property.
 - (c) Locate all wetlands within 150 feet of the property based on the WQNR Map. Identified wetlands shall be further delineated consistent with methods currently accepted by DSL and the Corps.
- (2) Identify the vegetative cover status of all areas on the property that are within 200 feet of the top of bank of streams, rivers, and open water, are wetlands or are within 150 feet of wetlands, and are flood areas and within 100 feet of flood areas.
 - (a) Vegetative cover status shall be as identified on the Metro Vegetative Cover Map, available from the City and/or the Metro Data Resource Center.
 - (b) The vegetative cover status of a property may be adjusted only if: (1) the property was legally developed prior to the time this Section was adopted (see Subsection 19.322.17.B.2), or (2) an error was made at the time the vegetative cover status was determined. To assert the latter type of error, applicants shall submit an analysis of the vegetative cover on their property using summer 2002 aerial photographs and the definitions of the different vegetative cover types identified in Table 19.322.17-2.
- (3) Determine whether the degree that the land slopes upward from all streams, rivers, and open water within 200 feet of the property is greater than or less than 25% using the methodology outlined in Table 19.322.17-1.
- (4) Identify the riparian habitat classes applicable to all areas on the property using Table 19.322.17-2 and the data identified in Subsections 19.322.17.B.5.a.1 through 19.322.17.B.5.a.3.

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Table 19.322.17-2 Method for Determining Classification of Riparian Areas			
Distance from Protected Water Feature	Development/Vegetation Status¹		
	Low structure vegetation or open soils²	Woody vegetation (shrub and scattered forest canopy)³	Forest Canopy (closed to open forest canopy)⁴
(a) Surface Streams			
0 to 50 ft	Class I ⁵	Class I	Class I
50 to 100 ft	Class II ⁶	Class I	Class I
100 to 150 ft	Class II ⁶ if slope>25%	Class II ⁶ if slope>25%	Class II ⁶
150 to 200 ft	Class II ⁶ if slope>25%	Class II ⁶ if slope>25%	Class II ⁶ if slope>25%
(b) Wetlands (Wetland feature itself is a Class I Riparian Area)			
0 to 100 ft	Class II ⁶	Class I	Class I
100 to 150 ft			Class II ⁵
(c) Flood Areas			
Within 300 ft of river or surface stream	Class I	Class I	Class I
More than 300 ft from river or surface stream	Class II ⁶	Class II ⁶	Class I
0 to 100 ft from edge of flood area		Class II ^{6,7}	Class II ⁶
<p>¹ The vegetative cover type assigned to any particular area was based on two factors: the type of vegetation observed in aerial photographs and the size of the overall contiguous area of vegetative cover to which a particular piece of vegetation belonged.</p> <p>² "Low structure vegetation or open soils" means areas that are part of a contiguous area one acre or larger of grass, meadow, crop-lands, or areas of open soils located within 300 feet of a surface stream. Low structure vegetation areas may include areas of shrub vegetation less than one acre in size if they are contiguous with areas of grass, meadow, crop-lands, orchards, Christmas tree farms, holly farms, or areas of open soils located within 300 feet of a surface stream and together form an area of one acre in size or larger.</p> <p>³ "Woody vegetation" means areas that are part of a contiguous area one acre or larger of shrub or open or scattered forest canopy (less than 60% crown closure) located within 300 feet of a surface stream.</p> <p>⁴ "Forest canopy" means areas that are part of a contiguous grove of trees of one acre or larger in area with approximately 60% or greater crown closure, irrespective of whether the entire grove is within 200 feet of the relevant water feature.</p> <p>⁵ Except that areas within 50 feet of surface streams shall be Class II riparian areas if their vegetation status is "Low structure vegetation or open soils," and if they are high gradient streams. High gradient streams are identified on the Metro Vegetative Cover Map. If a property owner believes the gradient of a stream was incorrectly identified, then the property owner may demonstrate the correct classification by identifying the channel type using the methodology described in the Oregon Watershed Assessment Manual, published by the Oregon Watershed Enhancement Board, and appended to the Metro's Riparian Corridor and Wildlife Habitat Inventories Report, Attachment 1 to Exhibit F to Metro Ordinance No. 05-1077C.</p> <p>⁶ Areas that have been identified as habitats of concern, as designated on the Metro Habitats of Concern Map (on file in the Metro Council office), shall be treated as Class I riparian habitat areas in all cases, subject to the provision of additional information that establishes that they do not meet the criteria used to identify habitats of concern as described in Metro's Technical Report for Fish and Wildlife. Examples of habitats of concern include: Oregon white oak woodlands, bottomland hardwood forests, wetlands, native grasslands, riverine islands or deltas, and important wildlife migration corridors.</p> <p>⁷ Only if within 300 feet of a river or surface stream.</p>			

b. **Step 2 - Determine the Urban Development Value of the Property**

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

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- (1) A property's urban development value designation shall be adjusted upward if the Metro 2040 Design Type designation for the property lot or parcel has changed from a category designated as a lower urban development value category to one designated as a higher urban development value category. 2040 Design Type designations are identified on the Metro 2040 Applied Concept Map (available from the Metro Data Resource Center).
 - (2) Properties in areas designated on the 2040 Applied Concept Map as the Central City, Regional Centers, Town Centers, and Regionally Significant Industrial Areas are considered to be of high urban development value; properties in areas designated as Main Streets, Station Communities, Other Industrial Areas, and Employment Centers are of medium urban development value; and properties in areas designated as Inner and Outer Neighborhoods and Corridors are of low urban development value.
 - (3) As designated in Title 13 of Metro's Urban Growth Management Functional Plan, properties owned by a regionally significant educational or medical facility are designated as high urban development value.
- c. Step 3 - Cross-Reference Habitat Class with Urban Development Value
- City verification of the locations of HCAs shall be consistent with Table 19.322.17-3.

Table 19.322.17-3 Method for Identifying Habitat Conservation Areas (HCAs)				
Fish & wildlife habitat classification	High Urban development value¹	Medium Urban development value²	Low Urban development value³	Other areas: Parks and Open Spaces, no design types outside UGB
Class I Riparian	HCA	HCA	HCA	HCA / HCA+ ⁴
Class II Riparian	No HCA	No HCA	HCA	HCA / HCA+ ⁴
Class A Upland Wildlife	No HCA	No HCA	No HCA	No HCA / HCA ⁵ / HCA+ ⁴
Class B Upland Wildlife	No HCA	No HCA	No HCA	No HCA / HCA ⁵ / HCA+ ⁴
<p>NOTE: The default urban development value of property is as depicted on the Metro Habitat Urban Development Value Map. The Metro 2040 Design Type designations provided in the following footnotes are only for use when a city or county is determining whether to make an HCA adjustment.</p> <p>¹ Primary 2040 design type: Regional Centers, Central City, Town Centers, and Regionally Significant Industrial Areas</p> <p>² Secondary 2040 design type: Main Streets, Station Communities, Other Industrial areas, and Employment Centers</p> <p>³ Tertiary 2040 design type: Inner and outer neighborhoods, Corridors</p> <p>⁴ Cities and counties shall give Class I and II riparian habitat and Class A and B upland wildlife habitat in parks designated as natural areas even greater protection than that afforded to High Habitat Conservation Areas.</p> <p>⁵ All Class A and B upland wildlife habitat in publicly-owned parks and open spaces, except for parks and open spaces where the acquiring agency clearly identified that it was acquiring the property to develop it for active recreational uses, shall be considered High HCAs.</p>				

C. Water Quality and Natural Resource Area Map Corrections: Deletions

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1. Improperly mapped protected water features shown on the WQNR Map may be deleted by Type II administrative review, subject to the following criteria:
 - a. In the case of wetlands, submission of a wetland delineation prepared by a professional wetland scientist in accordance with the 1996 Oregon Freshwater Wetland Assessment Methodology, demonstrating that the site does not contain wetlands.
 - b. In the case of drainages, submission of a hydrology report prepared by a professional engineer, demonstrating that the drainage does not meet the definition of a protected resource.
 2. The Planning Director shall confer with DSL and Metro to confirm delineation and hydrology reports as may be needed prior to issuing a notice of decision on a requested map deletion.
 3. The City shall amend the WQNR Map if the wetland or hydrology report demonstrates any of the following:
 - a. That a primary protected water feature no longer exists because the area has been legally filled, culverted, or developed prior to the adoption of this Section.
 - b. That the boundaries of the WQR area have changed since adoption of the WQNR Map.
 - c. An error in the original mapping.
- D. Water Quality and Natural Resource Area Map Corrections: Additions and Modifications
1. Map corrections that require the addition of a protected water feature to the WQNR map shall be made in accordance with MMC 19.900 Amendments.
 2. To modify a WQR area on the WQNR map, the applicant shall demonstrate that the modification will offer the same or better protection of the protected water feature, WQR area, and flood management area by doing all of the following:
 - a. Preserving a vegetated corridor that will separate the protected water feature from proposed development.
 - b. Preserving existing vegetated cover or enhancing the WQR area sufficient to assist in maintaining or reducing water temperatures in the adjacent protected water feature.
 - c. Enhancing the WQR area sufficient to minimize erosion, nutrient and pollutant loading into the adjacent protected water feature.
 - d. Protecting the vegetated corridor sufficient to provide filtration, infiltration, and natural water purification for the adjacent protected water feature.
 - e. Stabilizing slopes adjacent to the protected water feature.

19.322.18 Natural Resource Management Plans

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

A. Plans Eligible for Type I Review

The plan has already been approved by the U.S. Fish and Wildlife Service, Oregon Department of Fish and Wildlife (ODFW), Oregon Division of State Lands (DSL), Oregon

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Watershed Enhancement Board (OWEB), Metro, Clackamas County Soil and Water Conservation District, or other agency approved by the Planning Director.

B. Plans Eligible for Type II Review

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

C. Approval Criteria

Every plan prepared for approval under this section, the plan must demonstrate that it encourages restoration activities that have any of the following effects:

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

D. A construction management plan prepared in accordance with Subsection 19.322.9 is required with each natural resource management plan.

E. Natural resource management plans shall address a minimum activity period of five years and must demonstrate how ongoing maintenance is part of the associated restoration or enhancement activities.

F. Expiration of plans. The approval of a natural resource management plan shall be valid for five years. Approved plans may be renewed through the Type I review process by demonstrating xxxxx.

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CHAPTER 19.100 INTRODUCTORY PROVISIONS

Section 19.103 Definitions

Definitions to be amended (related to natural resources):

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

“Downed Tree” means any tree that is no longer standing upright, as the result of natural or human forces, and that has come to rest either directly within a protected water feature, a WQR area, or an HCA.

“Habitat Conservation Area (HCA)” means significant Goal 5 wetlands, riparian areas, and fish and wildlife habitat, as established in MMC Section 19.322.

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

“Protected water features”:

“Primary protected water features” means and includes any of the following:

- a. Title 3 wetlands, which means wetlands of metropolitan concern as shown on the Metro Water Quality and Flood Management Area Map and other wetlands added to City-adopted Water Quality and Flood Management Area maps consistent with the criteria in Title 3 of Metro’s Urban Growth Management Functional Plan, Section 3.07.340(E)(3). Title 3 wetlands do not include artificially constructed and managed stormwater and water quality treatment facilities.
- b. Rivers, streams and drainages downstream from the point at which 100 acres or more are drained to that water feature (regardless of whether it carries year-round flow).
- c. Streams carrying year-round flow.
- d. Springs which feed streams and wetlands and have year-round flow.
- e. Natural lakes.

“Secondary protected water features” means and includes intermittent streams and seeps downstream of the point at which 50 acres are drained and upstream of the point at which 100 acres are drained to that water feature.

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

“Tree” means a living or dead, standing or downed, woody plant characterized by one main stem or trunk and many branches, or a multi-stemmed trunk system with a definitely formed crown, and having a trunk 4 inches or more in diameter (maximum cross section) at a point 24 inches above mean ground level at the base of the trunk.

“Vegetated corridor” means the area of setback between the top of the bank of a protected water feature or the edge of a delineated wetland and the delineated edge of the WQR water quality resource area as defined in Table 19.322.17-1 Table 4.

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“Water quality resource (WQR) areas” means a protected water feature(s) and the adjacent vegetated corridors and the adjacent water feature as established in Chapter MMC Section 19.322. The following definitions relate to WQR areas and Habitat Conservation Areas in particular:

“Mitigation” means the reduction of adverse effects of a proposed project on the natural environment by considering, in this order: (1) avoiding the impact altogether by not taking a certain action or parts of an action; ~~(42)~~ minimizing impacts by limiting the degree or magnitude of the action and its implementation; ~~(23)~~ rectifying the impact by repairing, rehabilitating, or restoring the affected environment; ~~(34)~~ reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action by monitoring and taking appropriate measures; and/or ~~(45)~~ compensating for the impact by replacing or providing comparable substitute WQR water quality resource areas or HCAs.

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

“Water quality and floodplain management area” means the area that identifies where the WQR water quality resource area and floodplain management area overlay zone is applied.

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

Other Definitions related to natural resources (no proposed changes):

“Restoration” means the process of returning a disturbed or altered area or feature to a previously existing natural condition. Restoration activities reestablish the structure, function and/or diversity to that which occurred prior to impacts caused by human activity.

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

Page 1 – Properties that include a designated resource

ATTACHMENT 2

Process Flowchart (draft)

(for proposed changes to MMC 19.322)

August 2010

1. Is there a WQR area or HCA on the development property?

Yes

No

If No, go to Page 2.

2. Check exemptions (19.322.4) and prohibitions (19.322.5) subsections.

Proposed activity is not listed in either section, so it is subject to review. Go to # 3.

Proposed activity is prohibited (19.322.5) = not allowed w/in HCA or WQR area.

Proposed activity is exempt from 19.322.4.A = no further review required.

Proposed activity is exempt from 19.322.4.B but within 100 ft of WQR area = Construction Management Plan (19.322.9) and Boundary Verification (19.322.17) are required. No other requirements.

3. If activity area is within 100 ft of WQR area or HCA, Construction Management Plan (19.322.9) and Boundary Verification (19.322.17) are required. Proceed to #4.

Yes

Type I review

criteria

- Non-discretionary HCA Development Standards (19.322.12)
- Limited tree removal (19.322.6.B)
- Agency-approved Natural Resource Management Plans (19.322.18.A)
- Construction Management Plans (19.322.9)
- Boundary Verification (19.322.17)

If need to vary the # / size of HCA mitigation plantings...

4. Will the project avoid the WQR area and meet the clear & objective standards of 19.322.12?

No

Yes

Type II review

criteria

- Special Use Standards (19.322.13)
- Low-Impact Partitions (19.322.14.E)

If can't meet these standards...

5. Is the project on the list of Type II activities (19.322.7)?

No

Minor Quasi-Judicial review

criteria

- Discretionary Development Standards (19.322.15)**
- General discretionary review (19.322.15.B)
 - Impact evaluation
 - Alternatives analysis
 - Partition/Subdivision standards (19.322.14)
 - HCA mitigation adjustment (19.322.15.A)

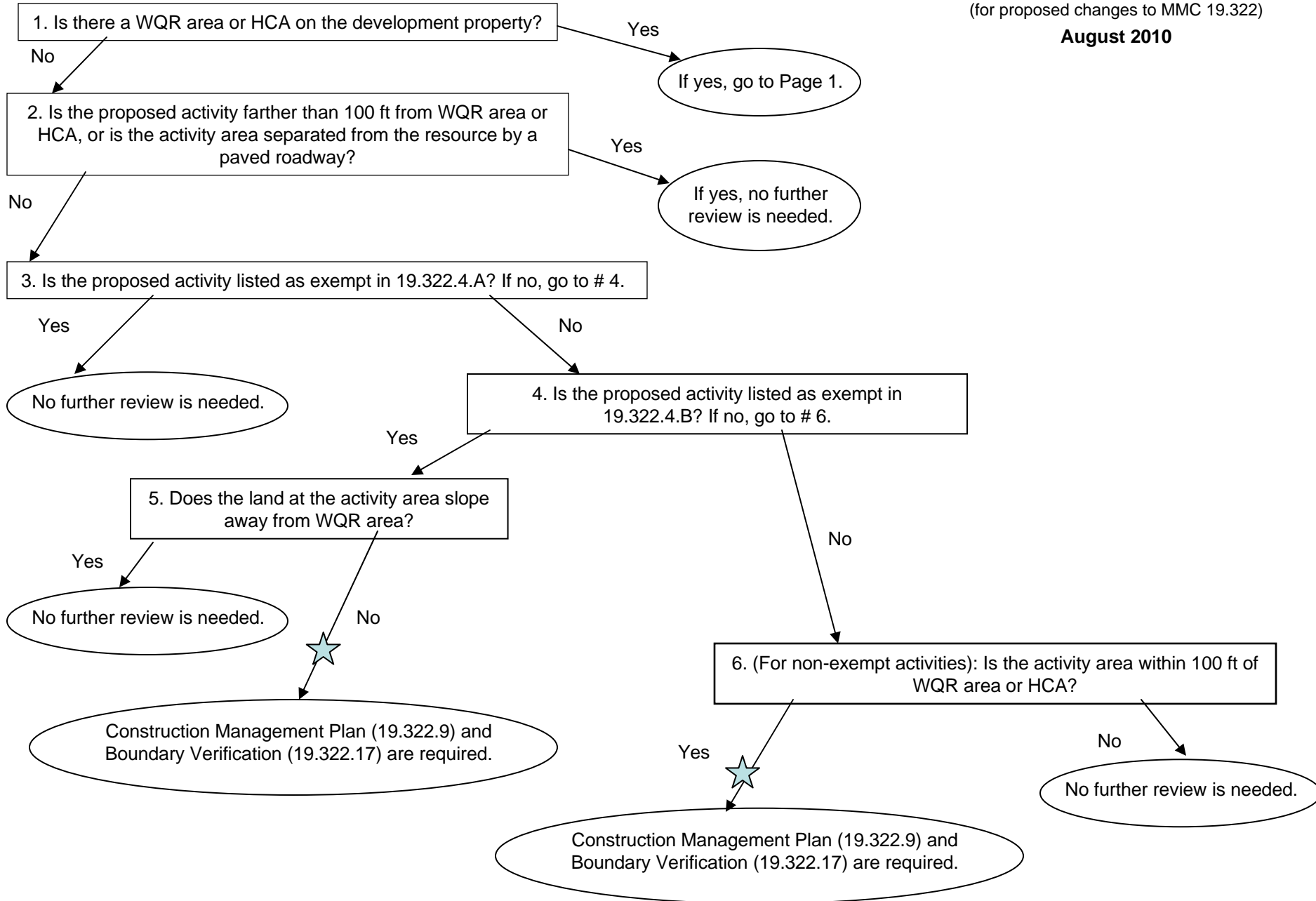
If can't meet these standards...

Variance (19.322.17.B)



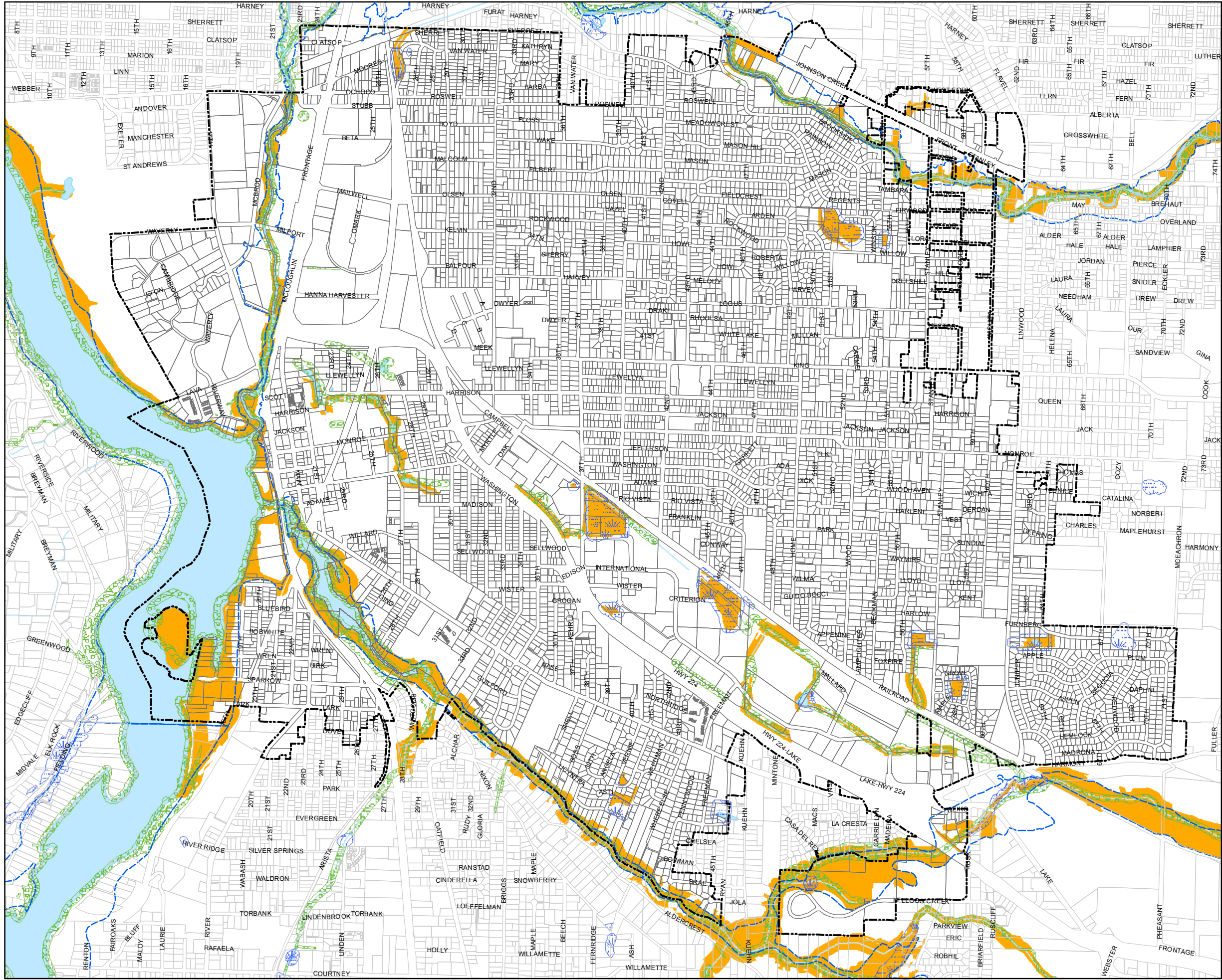
Can an adjustment help to avoid impacts to the resource? (19.322.16.A)












City of Milwaukie Water Quality and Natural Resources Area Map

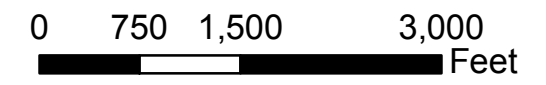
Draft Map 3



Legend

-  City Limits
-  Taxlots
- Water Quality Resource Areas**
 -  Protected Water Features
 -  Vegetated Corridor/Buffer
 -  Wetlands
- Other Natural Resources**
 -  Habitat Conservation Areas
 -  100-Year Floodplain

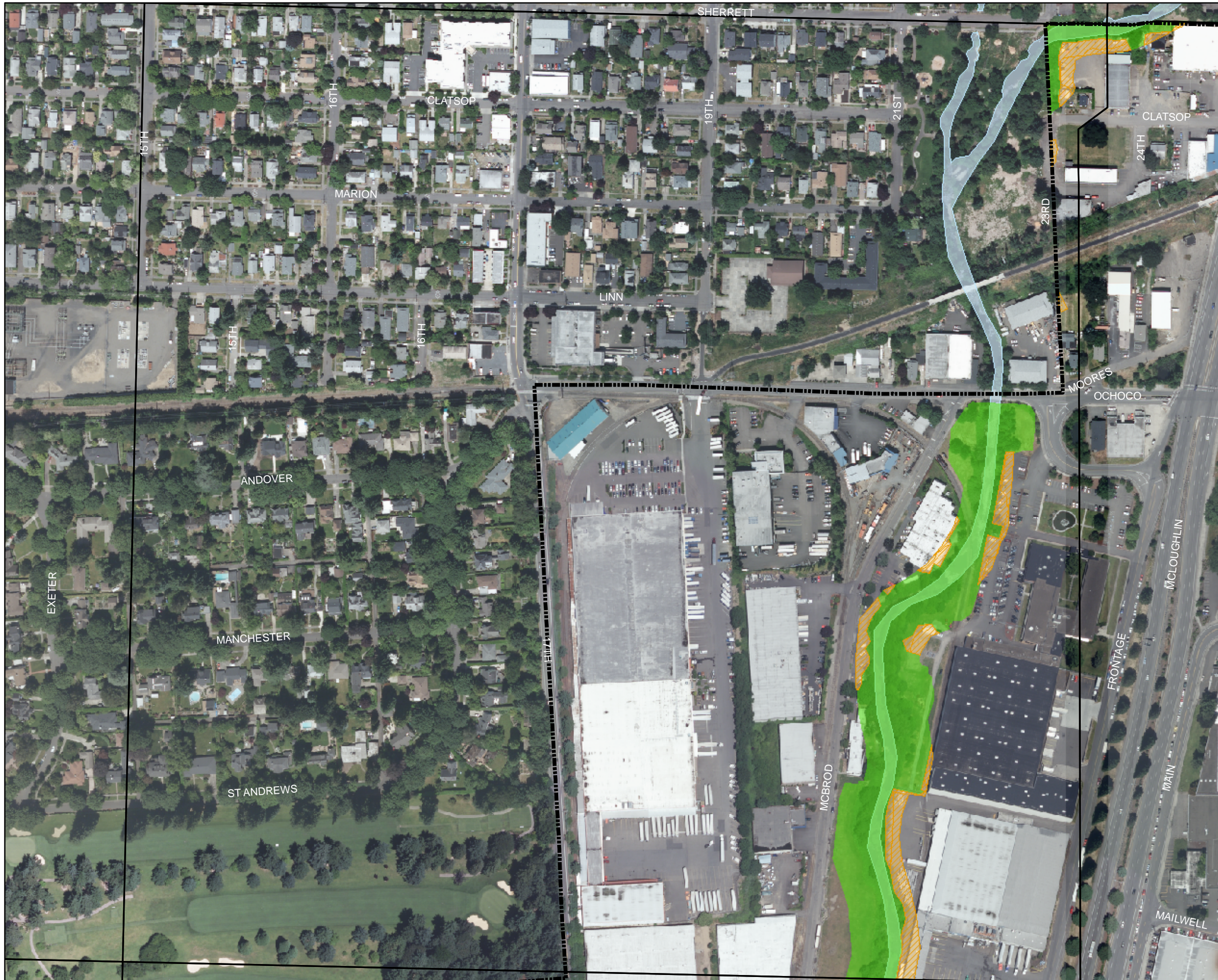
Data Sources: City of Milwaukie,
Metro's RLIS Lite CD (May 2010)
and Metro's Title 13 GIS Data



Author: City of Milwaukie Planning Department
 Revised: July 2010
 Source: City of Milwaukie GIS, Clackamas County GIS,
 Metro Data Resource Center
 All data depicted is approximate.
 Not suitable for building or engineering purposes.

City of Milwaukie

Proposed Corrections to draft HCA Map



Legend

- City Limits
- Urban Growth Management Area
- Quarter Sections
- Streams
- Rivers & Ponds

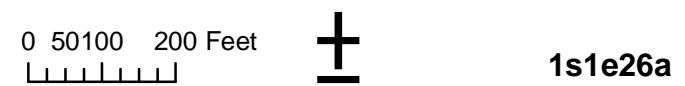
HCA Value & Proposed Changes

- Regulate
- Remove

Reason for Removal

- Isolated
- Developed
- Questionable Value

1s1e23d	1s1e24c	1s1e24d	1s2e19c	1s2e19d	1s2e20c
1s1e26a	1s1e25b	1s1e25a	1s2e30b	1s2e30a	1s2e29b
1s1e26d	1s1e25c	1s1e25d	1s2e30c	1s2e30d	1s2e29c
1s1e35a	1s1e36b	1s1e36a	1s2e31b	1s2e31a	1s2e32b
1s1e35d	1s1e36c	1s1e36d	1s2e31c	1s2e31d	1s2e32c
2s1e02a	2s1e01b	2s1e01a	2s2e06b	2s2e06a	2s2e05b
2s1e02d	2s1e01c	2s1e01d	2s2e06c	2s2e06d	2s2e05c



Sources: Metro RLIS Lite May 2010, City of Milwaukie, Angelo Planning Group.



To: Planning Commission

From: Katie Mangle, Planning Director *KM*
Susan P. Shanks, Senior Planner

Date: August 17, 2010 for August 24, 2010 Worksession

Subject: Land Use and Development Review Process Tune-Up
Code Amendment Project Briefing #3

ACTION REQUESTED

None. This is a briefing for informational purposes only. Staff is seeking feedback from the Commission to incorporate into draft chapters that regulate Development Review, Conditional Uses, Variances, and Nonconforming Situations.

BACKGROUND INFORMATION

The "Land Use /Development Review Process Tune Up" is the new title for the project staff has described as the "Land Use Procedures review", or, jokingly, the "Dry Rot" project. The TGM grant-funded project is an opportunity for the City to finally address some serious problems with the policy structure that underlies Milwaukie's land use and development review responsibilities. The development review process should protect the rights of property owners while ensuring public involvement and implementing the goals of the Comprehensive Plan. The process should be efficient and effective, as well as inclusive. Over the years, staff and Commissioners have identified ways in which the process, in response to the policies outlined in the Zoning Code, are not as effective as they should be.

As a reminder, the goals of this project are to create a code that is:

Smart. A smart code is one that contains everything it should and nothing that it shouldn't. Its structure and content are easy to understand and follow.

Flexible. A flexible code is one that enables the City to meet all of its legal requirements for processing applications while not hampering its desire to maintain high service standards.

Local. A local code is one that provides for meaningful public involvement in a way that reflects Milwaukie's small-town and neighborhood-based character.

This project is focused on improving development review processes by re-writing 5 existing chapters of Title 19 - Zoning Code, and creating one new process.

Chapters to be re-written:

- Chapter 19.600 Conditional Uses

- Chapter 19.700 Variances, Exceptions, and Home Improvement Exceptions
- Chapter 19.800 Nonconforming Uses
- Chapter 19.900 Amendments
- Chapter 19.1000 Review Procedures

New process to be added:

- Development Review application

A. History of Prior Actions and Discussions

- **July 2010:** Briefing #2 on Review Procedures Code Amendment Project, with a focus on time limits and extensions of land use approvals.
- **May 2010:** Briefing #1 on Review Procedures Code Amendment Project, with a focus on project goals and the City's code history and current review procedures.
- **March 2010:** Staff provided the Commission with a copy of the intergovernmental agreement between the City and the State of Oregon that commits the City to prepare draft code amendments based on priorities that were identified in the 2009 Smart Growth Code Assessment Final Report.
- **October 2009:** Staff presented the 2009 Smart Growth Code Assessment Final Report to Council. Council concurred with the code amendment priorities identified in the report and requested that staff move forward with the next phase of the project.
- **September 2009:** Design and Landmarks Committee held a worksession to discuss the residential design standards element of the code assessment project.
- **August 2009:** Planning Commission reviewed and provided concurrence on the Action Plan presented in the 2009 Smart Growth Code Assessment Final Report.
- **August 2009:** Planning Commission held a worksession to discuss the consultant's code assessment findings prepared during Phase I of the Smart Growth Code Assistance project.
- **July 2009:** Planning Commission held a worksession to discuss the consultant's code assessment findings prepared during Phase I of the Smart Growth Code Assistance project.

B. Discussion Items

Summary of proposed key changes

Staff has conducted a detailed assessment of the City's provisions as they relate to conditional uses, variances, nonconforming situations, and map and text amendments (see Attachment 1). The primary purpose of this briefing is to summarize the key changes that staff is proposing in these areas, get feedback from the Commission on these changes, and to discuss the policy implications.

Variances and Nonconforming Situations

As explained in Attachment 1, the major policy changes recommended by staff include changes to the City's approach to approving variances and dealing with nonconforming situations. Angelo Planning Group, the consultant working on this project, has prepared a memorandum

describing alternative approaches to dealing with these issues (see Attachment 2). Comments are welcome on all aspects of the project, but at this meeting, staff suggests that the primary goal for the Commission is providing guidance to how the City should change its variance policies, with guidance on nonconforming situations as a secondary goal. This will be the first of several work session discussions of proposed changes; draft revised chapters will be shared in subsequent meetings.

Cleaning the Closet: Code Reorganization

Though the focus of this project is the 6 revised or new code sections outlined on the first page of this memo, doing so presents an opportunity to clarify many other parts of Title 19. Though staff is being very careful to limit the policy changes to those being targeted by this project (i.e., variances), revising the Procedures chapter and adding a new Development Review process will be an opportunity for the City to streamline and improve other parts of the code. For example:

- Currently, there is no one place in the Code where all application types are clearly listed.
- There is no logical order to the listing of the use zones (e.g., Manufacturing) and overlay zones (e.g., Historic Resources) since new zones and overlays were added to the end of the list each time.

See Attachment 3 for a working draft of a revised table of contents for Title 19. For reference, the existing table of contents is presented in the Overview of Code Projects table, included as Attachment 4. During the meeting, staff will share the preliminary proposal to restructure Title 19 to take most advantage of the Land Use/Development Review Process Tune-up project.

C. Next Steps

The schedule for this ambitious project is tight, as this “Tune Up” is the first of two phases of code amendment projects funded by the TGM Smart Growth grant, which must be expended by July 2011. The current project schedule is as follows:

- **September 2010:** Commission review of the remaining first drafts of the five revised/new chapters (Development Review, Variances, Nonconforming Situations, Conditional Uses, and Amendments). Commission review of second draft of the revised Review Procedures chapter.
- **October:** Commission review of second drafts, and changes to other affected chapters
- **Nov/December:** Final draft of amendments for public review
- **December/ January 2011:** Public Hearings
- **November – July:** Residential Design Standards project (part 2 of TGM grant)

ATTACHMENTS

1. Code Assessment Memo dated July 28, 2010
2. Angelo Planning Group Variance and Nonconforming Situations Policy Memo dated August 10, 2010
3. Draft Table of Contents for Title 19
4. Overview of Code Projects Table



MILWAUKIE

Dogwood City of the West

To: Mary Dorman & Serah Breakstone, Angelo Planning Group
From: Susan Shanks, City of Milwaukie Planner
Through: Katie Mangle, City of Milwaukie Planning Director
Date: July 28, 2010
Project: Review Procedures Code Amendment Project
Subject: Task 3 City Deliverable – Code Assessment Memo

This memo reviews and evaluates four chapters in Title 19 of the Milwaukie Municipal Code.

Chapter 19.600 Conditional Uses

Chapter 19.700 Variances, Exceptions, and Home Improvement Exceptions

Chapter 19.800 Nonconforming Uses

Chapter 19.900 Amendments

Each chapter review includes the following six sections.

1. Chapter Summary (Key Provisions)
2. Chapter History
3. Identified Problems
4. Proposed Changes
5. Deferred Changes
6. Legal and/or Policy Issues

The purpose of this memo is to consolidate information about these chapters into one location and to identify which code provisions staff proposes to change in the course of this project and which code amendments are proposed for deferral. Staff has noted at the end of each Proposed Changes section which changes are outside the scope of Angelo Planning Group's work plan for this project. These changes will be completed by staff. Additionally, the legal and policy issues identified in this memo will be resolved by Planning staff in consultation with the Planning Commission, other City departments, and the City Attorney.

Staff is proposing the following policy changes at this time:

- Revisions to the Variance chapter to include three types of variances with review criteria that allow for an appropriate amount of discretion based on the associated review level. Type III review to allow for variances that improve the function or design of a project.
- Deletion of the Home Improvement Exception and Alteration of Nonconforming Structure applications. These types of requests to be subsumed by the new variance review process.
- Revisions to approval time limits and extensions for variances, conditional uses, and

nonconforming situations to provide for more reasonable time frames, appropriate level of review, and clearly defined thresholds. New provisions to apply to all land use approvals to ensure that projects are permitted under the conditions in which they were approved, community expectations are met, and neighborhoods are not unduly disrupted.

- Expansion of Director's Determination provisions, which now only allows an applicant to request a determination on a site's conformity, to allow determinations as an option in situations not involving a nonconforming use or structure in order to improve the community's land use toolkit.
- Addition of a purpose statement and/or applicability section to clarify which nonconforming uses or structures should be allowed to continue and which should be eliminated. Possibly create amortization schedule for specific nonconforming uses and structures.
- Addition of Comprehensive Plan amendment criteria from Chapter 2 of the Comprehensive Plan to Chapter 19.900 of the Zoning Ordinance.
- Allow simple map amendments (i.e. zone changes) to be decided by the Planning Commission through a Type III review process.

CHAPTER 19.600 CONDITIONAL USES (CU)

1. Chapter Summary (Key Provisions)

- Provides for Type III review of CU applications.
- Provides approval criteria.
- Voids CU approval if substantial construction not complete within specified timeframe.
- Allows for reconsideration, suspension, and/or revocation of CU permit at a public hearing.
- Provides development standards for specific conditional uses.
- Provides development standards and conditions for Type 2 Accessory Dwelling Units (ADU).

2. Chapter History

1968: CU chapter adopted.

1979: CU chapter amended to include 5 approval criteria (Subsection 19.601.2.A - F). Subsections 19.601.5 - 7 regarding reconsideration, revocation, and review upon change in ownership, use, or tenant also added.

3. Identified Problems

- No purpose statement.
- Time limits and extensions are problematic.
 - No definition of substantial construction.
 - No approval criteria for extensions.
 - Unclear what should happen when project underway but substantial construction deadline not met.
- Review procedures in 19.601.5 – 7 are not associated with existing review types.

4. Proposed Changes

- Create new time limit and extension language and move to new Procedures chapter.
- Move or delete review procedures in 19.601.5 – 7. (If keep 19.601.5 – 7, clarify level of review.)
- Move 19.602.10 Type 2 ADU to new Applications chapter.
- **Add purpose statement.
- **Refine approval criteria.
- **Clarify how 19.602.10 applies to new home construction with new ADU.
- **Clarify 19.601.2.A and how CU standards trump.
- **Clarify 19.601.1 regarding status of pre-existing uses.

(**Outside APG scope. City staff task.)

5. Deferred Changes

- 19.602 Standards Governing Conditional Uses. Possible changes include:
 - Delete standards for surface mining and junk yards if not listed anywhere as CU.
 - Restate 19.602.3 as a standard or list as type of condition of approval.
 - Restate 19.602.6 – 9 as standards or list as review criteria.

6. Legal and/or Policy Issues

- 19.601.1 – Does this imply that a pre-existing use is a defacto CU not a NC use?
- 19.601.4 – Should we continue to require recordation with the County?
- 19.601.5 – Is this legal? (And duplicative with noncompliance penalties?)
- 19.601.6 – Is this legal? (And what is the hearing process exactly?)
- 19.601.7 – Is this legal? (And duplicative with 19.601.5 & 6 and conflicting with 19.601.4 which says that approval runs with the land and not affected by change in ownership)
- 19.602.10 – Should the consolidated ADU application be a CU or its own application type?

CHAPTER 19.700 VARIANCE, EXCEPTIONS, AND HOME IMPROVEMENT EXCEPTIONS

1. Chapter Summary (Key Provisions)

- Provides for Type II and III review of Variance applications; Type III review of Use Exception applications; and Type II review of Home Improvement Exception (HIE) applications.
- Provides clear and objective threshold for Type II Variance eligibility, i.e. 10%.
- Provides review criteria for Variance, Use Exception, and HIE approval.
- Provides purpose and standards for HIE approval.
- Voids all approvals authorized under Chapter 19.700 if substantial construction not complete within specified timeframe.

2. Chapter History

- 1968:** Variance and use exception chapter adopted.
Use exception approval criteria remain unchanged.
- 1977:** Amended to give Planning Commission more discretion in granting variances.
- 1979:** Amended to allow variances up to 25% to be reviewed through Type II administrative review and variances over 25% to be reviewed by Planning Commission.
- 1994:** Amended to provide more clear and objective approval criteria (Section 19.702).
- 1998:** Amended to add HIE provisions (Sections 19.707 – 9) and to reduce administrative variances from 25% to 10% (in response to many flag lot and variance applications).
- 2003:** Planning Commission discussed the variance process at multiple worksessions. Planning Director wrote a memo to staff in June 2004 on how the variance criteria should be implemented.

3. Identified Problems

- No purpose statement.
- Time limits and extensions are problematic. (See Conditional Use section for more detail.)
- Having the same approval criteria for Type II and Type III variances defeats the purpose of having two kinds of variances.
- Approval criteria for variances are extremely narrow and rigid and allow for limited discretion. No allowance for variances that would result in better projects and/or have undiscernable impacts. No allowance for small adjustments to standards on any but the most complex sites.
- HIE and Variance applications are somewhat duplicative.
- HIE standards are unclear and overly complex.

4. Proposed Changes

- Add purpose statement and identify which standards, if any, are not eligible for variances.
- Create new time limit and extension language in new Procedures chapter.
- Create Type I, II, and III variances to address a wider array of situations.
- Allow variances that result in better projects and/or have undiscernable impacts.
- Provide new approval criteria that allow for an appropriate amount of discretion based on the associated level of review.
- Provide applicability language that clearly delineates between Type I, II, and III variances. New language to address how variance provisions apply to different variance situations, e.g. new development, existing conforming development, and existing nonconforming development.
- Delete HIE provisions. Allow future HIE-type requests to be processed through revised variance review process.

5. Deferred Changes

- Updated review criteria for Use Exceptions.

6. Legal and/or Policy Issues

- None

CHAPTER 19.800 NONCONFORMING (NC) SITUATIONS

1. Chapter Summary (Key Provisions)

- Provides for Type II review for alteration of a NC structure and Type III review for alteration or replacement of a NC use with minimal approval criteria.
- Allows for continuation of NC uses and structures.
- Requires new use or structure to conform when NC use or structure discontinued for more than 6 months or destroyed/demolished in excess of 50% of its real market value.
- Allows for replacement of NC uses and structures if destroyed by accident or natural hazard.
- Allows for a NC situation determination through a Type I review.

2. Chapter History

- 1946:** NC chapter adopted. This chapter did not address nonconforming structures, except to note that if a nonconforming building was destroyed by fire, its replacement was required to conform to the provisions of the zoning ordinance.
- 1968:** Amended to include NC structures and the allowance to rebuild if destroyed by accident or natural hazard.
- 1975:** Amended to include Subsection 19.806.2 allowing replacement of a NC use with another NC use with Planning Commission review.
- 1979:** Amended allowing extensions or alterations of a nonconforming structure through Type II administrative review.
- 2002:** Amended to include Section 19.809 Planning Director's Determination.
- 2002:** Amended to allow more time, i.e. up to 18 months, to rebuild NC structure if damaged or destroyed by accident or natural hazard.

3. Identified Problems

- No purpose statement. Policy gaps and conflicts exist between this chapter and other code provisions governing conforming situations and variances.
- Allowing alterations of NC structures has presented equity issues for those properties that have conforming structures since Variance and HIE allowances are more limiting.
- Approval criterion for alteration of NC structure is too discretionary for Type II review.
- It is unclear how provisions apply to NC situations generally, such as NC accesses or parking areas.
- Key terms and phrases require ongoing interpretation, specifically "altered," "discontinued," and "destroyed to an extent exceeding 50% of its real market value."
- Section 19.806.2, which allows a new nonconforming use upon a determination that the existing structure cannot house a conforming use, duplicates Section 19.705, which allows for use exceptions.
- Timeline for replacement of uses or structures destroyed by accident or natural hazard is unclear and unrealistic.

4. Proposed Changes

- Delete allowance for alteration or extension of NC structures and handle alterations through variance process.
- Clarify how provisions apply to NC situations generally.
- Clarify and/or define key terms and phrases.
- Possibly Delete Section 19.806.2.
- Allow more flexibility for replacement of uses or structures destroyed by accident or natural hazard.
- Move NC determination process out of NC chapter and expand its usefulness by applying it to other situations.
- **Provide purpose statement and/or applicability section that provides policy direction on which NC uses should be allowed to continue and which should be eliminated (amortization schedule?);

whether NC structures should be treated differently than NC uses; whether alterations to nonconforming situations and variance requests for conforming situations should be evaluated using the same criteria; and, how much alteration to a NC use or structure can occur before land use review is triggered.

(**Outside APG scope. City staff task.)

5. Deferred Changes

- None

6. Legal and/or Policy Issues

- Need legal direction from City Attorney regarding purpose/applicability section and amortization of nonconforming uses and structures. Check Comp Plan for policy direction.
- 19.804 regarding nonconforming screening – Can we delete this section?
- 19.808 regarding completion of a nonconforming use or structure – Is this the best place for this provision since it involves a building permit and not a land use approval? What should happen when project underway but not completed or in use by deadline? Similar to issue involving time limits on land use approvals when substantial construction not complete.
- 19.806.2 – Is there any reason why we shouldn't use the Use Exception process to handle these types of situations?

CHAPTER 19.900 AMENDMENTS

1. Chapter Summary (Key Provisions)

- Provides for major quasi-judicial review for amendments to the Zoning Map and legislative review for amendments to the Zoning Ordinance.
- Provides review procedures and notification requirements.
- Provides approval criteria.
- Allows for revocation of approval through a Type III review process if conditions of approval not met within two years of approval with allowance for a one-time extension.

2. Chapter History

- 1946:** Amendments chapter adopted.
- 1968:** Amendments chapter modified.
- 1977:** Minor amendments regarding procedures for amendments.
- 1980:** Amended to require zone change to be to the maximum comprehensive plan density and require adequate public facilities.
- 1987:** Amended to have map changes be major quasi-judicial decisions and text changes be legislative decisions.
- 1990:** New Section 19.900 added; revised criteria, revised criteria for map amendments, text amendments, and all amendments, allowed conditions of approval and revocation.
- 1999:** Amended to include Metro notification and Functional Plan compliance.

3. Identified Problems

- No purpose statement.
- Major quasi-judicial review is unnecessary for simple map amendments.
- It is not clear whether provisions apply to amendments to Comprehensive Plan text, Comprehensive Plan maps, Titles 14 and 17, or Chapter 16.32.
- Most approval criteria relate to map amendments (i.e. zone changes) not text amendments.
- Approval criteria for amendments to the Comprehensive Plan are in Chapter 2 of the Comprehensive Plan. They are referenced but not located in the Zoning Ordinance.

4. Proposed Changes

- Move review procedures to new Procedures chapter.
- Allow Type III review for simple map amendments and require Type IV review for more substantive map amendments. Identify what types of amendments trigger the higher level of review.
- Possibly apply new approach to time limits and extensions to map amendment approvals.
- **Add purpose statement.
- **Clarify that amendment provisions apply to all ordinances that the Planning Department is responsible for implementing.
- **Refine approval criteria so that they appropriately relate to the type of amendment being proposed, i.e. text or map.
- **Add approval criteria from Chapter 2 of the Comprehensive Plan for amendments to the Comprehensive Plan.

(**Outside APG scope. City staff task.)

5. Deferred Changes

- None

6. Legal and/or Policy Issues

- Do approval criteria for Comprehensive Plan amendments need to be in the Comprehensive Plan or can they exclusively reside in the Zoning Ordinance?
- Do we want Type III and Type IV map amendments. If so, what types of amendments should trigger the higher level of review?
- Should new approach to time limits and extensions apply to map amendments?



Memorandum

Date: August 10, 2010

To: Katie Mangle, City of Milwaukie
Susan Shanks, City of Milwaukie

cc: Rachel Ferdaszewski, TGM
Ryan Marquardt, City of Milwaukie
Li Alligood, City of Milwaukie

From: Mary Dorman, AICP, Angelo Planning Group
Serah Breakstone, AICP, Angelo Planning Group

Re: City of Milwaukie Code Assistance Phase 2 – Task 3.1 Non-conforming Uses
and Variance Provisions Research Memorandum

The purpose of this memorandum is to identify issues with existing Milwaukie code provisions relating to non-conforming uses and variances and to summarize potential approaches to addressing those issues. Potential approaches are based on discussions with city staff and research of other jurisdictions' variance and non-conforming code provisions. This memorandum does not recommend new code language, but will serve to guide the creation of new non-conforming and variance chapters during subsequent tasks of this code assistance project.

An overview and history of the city's non-conforming and variance chapters was provided by city staff in a memo dated July 28, 2010. That memo also provided a summary of existing issues and identified elements that the city would like to integrate into new non-conforming and variance chapters. This memorandum combines the information provided in the city's memo with the code review and research conducted by Angelo Planning Group.

Variations

Chapter 19.700 of Milwaukie's zoning code contains provisions for granting variances, exceptions and home improvement exceptions. The language allows for a 10 percent variance of the required standard if an applicant can demonstrate, through a Type II procedure, that certain criteria have been met. If an applicant is requesting a variance greater than 10 percent, a Minor Quasi-judicial (Type III) procedure is required; however, the same criteria apply. This chapter also allows the Planning Commission to authorize exceptions to uses under certain circumstances; approval of an exception is also done through the Minor Quasi-judicial procedure. An exception to yard or lot coverage standards for single-family

home improvements is also allowed through this chapter if an applicant can meet certain standards. Home improvement exceptions require a Type II procedure.

Generally, the city has indicated that the provisions in this chapter are difficult to administer because they lack flexibility, clarity and, in some cases, are overly complex. Specific issues that have been identified are summarized below.

- The chapter does not include a purpose statement.
- The time limits and extensions for variances (as established in Chapter 19.1013) are problematic.
- Having the same approval criteria for Type II and Type III variances defeats the purpose of having two levels of variance.
- The approval criteria for variances are rigid and allow for limited discretion. The language provides no allowance for variances that would result in better projects and/or have indiscernible impacts. There is also no allowance for small adjustments to standards on any but the most complex sites.
- The home improvement exception and variance applications are somewhat duplicative.
- The home improvement exception standards are unclear and overly complex.

In order to explore options for addressing these issues, several other Oregon jurisdictions' variance provisions were reviewed, including the Cities of Portland, Eugene, Hillsboro and the Model Code¹. Relevant components of those provisions are summarized below and highlight the purpose, review procedure, applicability and approval criteria for each.

City of Portland. Portland's Adjustments Chapter (Chapter 33.805) is brief, covering all adjustments (they use the term "adjustment" in place of "variance") provisions in only two pages.

Purpose	The purpose statement is very clear, stating that "The adjustment process provides a mechanism by which the regulations in the zoning code may be modified if the proposed development continues to meet the intended purpose of those regulations." Adjustments may also be used when strict application of the code would preclude use of a site. The intent is to provide flexibility for "unusual situations" and allow for alternative ways to meet the intent of the code.
Review Procedure	All adjustments are processed through a Type II procedure.
Applicability	An adjustment can be requested to any regulation in the code, with the following exceptions: <ul style="list-style-type: none"> ▪ To allow a use that is not permitted, either city-wide or in specific zones ▪ To adjust any restrictions on development or uses that contain the word "prohibited" ▪ To adjust a threshold for a review such as conditional use ▪ To adjust a definition or classification ▪ To adjust procedural steps of a procedure or change the required

¹ *Model Development Code and User's Guide for Small Cities – 2nd Edition*, Transportation and Growth Management Program, Oregon Department of Transportation.

	<p>procedure type</p> <ul style="list-style-type: none"> ▪ To allow increased density in certain residential zones
Approval Criteria	<p>There are two categories of approval criteria provided: one category is more applicable to situations where flexibility is needed and the other is more specific to economic hardship situations. Applicants must meet the criteria in one of those categories, but not both. Adjustments to sign provisions and ground floor window requirements have their own set of criteria located in other sections of the code.</p> <p>Flexibility criteria include:</p> <ul style="list-style-type: none"> ▪ Adjustment will “equally or better” meet the purpose of the regulation ▪ In residential zones, will not “significantly detract from the livability” of the residential area ▪ If more than one adjustment, the cumulative effect will still be consistent with overall purpose of the zone ▪ Scenic and historic resources will be preserved ▪ Impacts from adjustment will be mitigated to extent practicable ▪ In environmental zones, the proposal will minimize impacts as much as possible <p>Economic hardship criteria include:</p> <ul style="list-style-type: none"> ▪ Application of regulation will preclude all reasonable economic use of the site ▪ The adjustment is the minimum adjustment necessary ▪ Any impacts will be mitigated to the extent practicable

The benefit to Portland’s approach is its simplicity; there is only one level of review, no limits on the scope of the adjustment that can be requested, and the approval criteria allow for some flexibility depending on the reason for the adjustment request. The Type II process allows for discretionary decision-making but does not require a public hearing, providing a faster and more efficient process for the applicant. However, the Type II process may not be appropriate for smaller and simpler adjustment requests that do not require discretion and could otherwise be approved administratively through a Type I procedure.

City of Eugene. Eugene’s code provides a process for both adjustments and variances and contains different applicability language and approval criteria for each.

Purpose	<p>For adjustments, the intent is to “Encourage design proposals that respond to the intent of the code and creatively meet or exceed the specific development standards.”</p> <p>For variances, the purpose is limited to allowing partial or full exemption from standards only when the strict application of the regulation would “deny the property owner uses enjoyed by other property owners in the vicinity and under identical zones.”</p>
Review Procedure	Adjustments and variances are processed through a Type II procedure, unless an applicant requests that they be processed concurrently with a related Type III application.

<p>Applicability</p>	<p>Adjustments are only available where the code specifically states that a specific standard may be adjusted. The code lists 28 different standards for which an adjustment can be requested.</p> <p>Variations may only be requested and granted for the following:</p> <ul style="list-style-type: none"> ▪ Building height ▪ Fence and wall standards ▪ Front and interior yard setbacks ▪ Vehicle parking standards ▪ Sign standards ▪ Certain other setback “intrusions” <p>Variations to Special Flood Hazard Area standards and Transmission Tower standards are also provided in separate sections of the code.</p>
<p>Approval Criteria</p>	<p>For adjustments, each specific standard for which an adjustment is available (total of 28) has its own set of approval criteria.</p> <p>Variance approval criteria include:</p> <ul style="list-style-type: none"> ▪ Strict application of the regulation would result in hardship due to site dimensions, other physical conditions on or near the site, or street locations and traffic conditions near the site ▪ There are exceptional circumstances applicable to the property that do not apply to other properties in the same zone ▪ The variance will not be detrimental to public health, safety or welfare ▪ Additional criteria specific to variances to parking standards ▪ Additional criteria specific to variances to sign standards

Eugene’s approach is somewhat similar to Portland’s in that it distinguishes between the different reasons for an adjustment or variance request (flexibility/creativity versus hardship). However, Eugene’s approach is much more specific in terms of when an adjustment or variance can be requested. Furthermore, the fact that each of the 28 possible adjustments has its own set of approval criteria makes this section of code long and seemingly complex. Again, not providing a Type I procedure for some adjustments or variances rules out the possibility of a faster administrative process for straight-forward requests.

City of Hillsboro. Hillsboro is currently in the process of a major code consolidation project that includes amendments to their adjustment and variance provisions. The following is a summary of the draft language that is expected to be included in the public review draft. Of the examples reviewed, Hillsboro’s provisions are the most complex in terms of levels of review; the code includes variances, minor adjustments, and special adjustments.

<p>Purpose</p>	<p>The variance and adjustment provisions are intended to “provide mechanisms by which the regulations in the code may be modified if the proposed development continues to meet the intended purpose of those regulations.” In addition, the variance process is intended for use when strict application of regulations would preclude all use of a site.</p>
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Review Procedure	<p>Minor adjustments are processed through a Type II procedure. Special adjustments and variances require a Type III procedure.</p>
Applicability	<p>Variations are used for proposed development on an existing lot, in response to a pre-existing condition that creates a hardship.</p> <p>Minor adjustments are used for proposed lots in conjunction with a Subdivision application or on existing lots in conjunction with a Development Review application.</p> <p>Special adjustments are used for development on existing or proposed lots in conjunction with a Planned Unit Development application.</p> <p>These processes are available for all regulations in the code, with the following exceptions (similar to Portland):</p> <ul style="list-style-type: none"> ▪ To allow a use not permitted in the base zone ▪ To adjust a definition or use category classification ▪ To adjust any restrictions on development or uses that contain the word “prohibited” ▪ To adjust a threshold for review such as the size of accessory dwelling units ▪ To adjust procedural steps or change the assigned procedure
Approval Criteria	<p>The variance criteria are similar to Portland and include:</p> <ul style="list-style-type: none"> ▪ Application of regulation will preclude all reasonable economic use of the site ▪ The variance is the minimum variance necessary ▪ Any impacts will be mitigated to the extent practicable ▪ If more than one variance, the cumulative effect will still be consistent with overall purpose of the zone ▪ Special conditions (such as lot shape and topography) apply to the site that do not generally apply to other sites in the same zone <p>Criteria for a minor adjustment include:</p> <ul style="list-style-type: none"> ▪ The adjustment is for 20 percent or less of a numeric dimensional standard (does not include densities) ▪ The adjustment will not obstruct pedestrian or vehicle movement on or off the site ▪ Natural and cultural resources will be preserved ▪ If more than one adjustment, the cumulative effect will still be consistent with overall purpose of the zone <p>Criteria for special adjustments vary depending on the standard being adjusted. A request for special adjustment may only be submitted in conjunction with a Planned Unit Development application. The code lists ten different adjustments that can be requested as part of the application; each adjustment has its own set of approval criteria.</p>

Of the codes reviewed, Hillsboro’s is unique in that it links adjustments to other specific applications (Development Review, Subdivision and Planned Unit Development). Requiring a Type III procedure for all variances and special adjustments may result in excessive processing for some requests.

Model Code. The Model Code provides for three levels of variance review, including a Type I administrative variance for straight-forward requests not involving any discretion.

Purpose	The variance provisions are intended to provide flexibility, while maintaining the purposes and intent of the code. The variance process provides “relief from specific code provisions when they have the unintended effect of preventing reasonable development”.
Review Procedure	Class A Variance – Type I procedure Class B Variance – Type II procedure Class C Variance – Type III procedure
Applicability	Class A Variances are used for variances of up to 10 percent of specific dimensional standards such as setbacks, lot coverage and landscape area. Class B Variances apply to specific types of requests such as adjustments to density, vehicle parking standards, street tree requirements and transportation improvement requirements. A Class B Variance may only be used on single lots and cannot be used to change permitted or prohibited uses in a zone. Class C Variances are used for all other types of requests and may only be used to modify standards on three or fewer lots during a partition process. Again, no change to permitted or prohibited uses is allowed through the variance process.
Approval Criteria	Each class of variance has a separate set of approval criteria that range from non-discretionary (Class A) to discretionary (Class B and C). The specific types of variance requests applicable in the Class B variance each have a separate set of approval criteria. The Class C criteria, which are the most discretionary, include: <ul style="list-style-type: none"> ▪ Variance will not be detrimental to purposes of the code or surrounding properties ▪ A hardship exists which is due to lot size, shape or topography ▪ The hardship is not self-imposed ▪ The variance will not adversely affect natural systems, traffic, drainage, parks, etc.

The benefit to the Model Code approach is that it provides for a full range of variances depending on the nature of the request and the amount of discretion necessary for approval.

The examples above provide a range of possible approaches to new variance provisions for Milwaukie. When developing the new variance chapter, the city will need to address the following:

- Does the city want to provide multiple levels of review for variance requests, or is one level (likely a Type II review similar to Portland’s approach) sufficient?

- Should Milwaukie’s variance provisions specifically identify which types of standards and regulations are eligible for a variance request (similar to Eugene and Hillsboro)? The alternative would be to apply variances across the board but list those specific standards for which a variance is not allowed.
- If new variance criteria require consistency with the “intent or purpose” of the standard being varied, the city will need ensure that such standards have clear and concise purpose statements.

Non-conforming Uses

Chapter 19.800 of the Milwaukie code contains provisions for dealing with non-conforming uses and structures. The current provisions allow for the continuation of a non-conforming structure or use and allow limited alteration or expansion if approved through a Type II (non-conforming structure) or Type III (non-conforming use) procedure. Applicants must demonstrate that the alteration or expansion will not cause more detriment to surrounding properties than already exists. If a non-conforming use or structure is discontinued for more than six months or damaged to an extent exceeding 50 percent of the real market value, further use of the property must be in compliance with the code. The code does allow a non-conforming structure or use to be rebuilt if damage or destruction occurs by accident or natural hazard. Determination of a non-conforming use or structure is made by the Planning Director through a Type I review.

City staff has identified a number of issues with the existing non-conforming provisions, including:

- There is no purpose statement for these provisions. Policy gaps and conflicts exist between this chapter and other code provisions governing conforming situations and variances.
- Allowing alterations of non-conforming structures has presented equity issues for those properties that have conforming structures since variance and home improvement exception allowances are more limited.
- The approval criterion for alteration of a non-conforming structure is too discretionary for Type II review.
- It is unclear how provisions apply to non-conforming situations generally, such as non-conforming accesses or parking areas.
- Key terms and phrases require on-going interpretation by staff, specifically “altered,” “discontinued,” and “destroyed to an extent exceeding 50% of its real market value.”
- Section 19.806.2, which allows a new non-conforming use upon a determination that the existing structure cannot house a conforming use, duplicates Section 19.705, which allows for use exceptions.
- The established timeline for replacement of uses or structures destroyed by accident or natural hazard is unclear and unrealistic.

To consider options for new non-conforming provisions, this memo reviews language from the Model Code and from the Cities of Portland and Beaverton. The summaries below include an overview of the purpose statement, the approach to alterations and continuations, and procedures for each.

Model Code. The Model Code’s provisions for non-conforming uses and developments are fairly simple and allow for limited continuation of non-conforming situations.

Purpose	The provisions are intended to “provide some relief from code requirements for uses and developments that were established prior to the effective date of this code and do not comply with current standards.”
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<p>Continuations & Alterations</p>	<p>Non-conforming uses may be continued as long as they are not enlarged, increased or extended. No additional structures related to the non-conforming use may be constructed. If a non-conforming use is discontinued for more than six months (or up to 12 months depending on jurisdiction), subsequent use of the land must be in conformance with current code.</p> <p>Non-conforming developments have similar provisions, although they may be enlarged or altered so long as it does not increase non-conformity. The expansion or alteration must be in conformance with the current code. If a non-conforming structure is destroyed by more than 50 percent of its current value, it may only be reconstructed in conformance with the code.</p> <p>In the case of non-conforming road accesses, the city may require the access to be made conforming as a condition of a new access permit request or a change in land use.</p>
<p>Procedures</p>	<p>There is no specified procedure for making a non-conforming determination in the Model Code. The provisions state that if the use or development is made non-conforming by adoption of code provisions, and was in conformance prior to that adoption, the use or development remains legal so long as it complies with the non-conforming standards in this chapter.</p>

Generally, the Model Code provisions are clear and concise; however, they do not differentiate between “harmless” non-conforming situations and those that may be more impactful to surrounding properties. Any use or development is allowed to continue without expiration so long as it does not expand or increase non-conformity.

City of Portland. Portland’s code identifies three different types of non-conforming situations on a site: non-conforming uses, non-conforming residential densities, and non-conforming development. Definitions for each of these are provided in the general definitions section. The provisions also address certain non-conformities differently, depending on their impact to surrounding uses. Per the code, “Nonconforming uses in residential zones are treated more strictly than those in commercial, employment or industrial zones to protect the livability and character of residential neighborhoods. In contrast, nonconforming residential developments in residential zones are treated more liberally because they do not represent a major disruption to the neighborhood and they provide needed housing opportunities in the City.”

<p>Purpose</p>	<p>Portland’s provisions are intended to “guide future uses and development in a new direction consistent with City policy, and, eventually, bring them into conformance.”</p>
<p>Continuations & Alterations</p>	<p>Non-conforming uses in residential zones may not operate between the hours of 11 pm and 6 am. A change of use to another use in the same use category is allowed if certain off-site impact standards are met. Non-conforming uses are allowed to expand under certain conditions and specific standards must be met depending on the underlying zone. If a non-conforming use is discontinued for three years, it will lose its legal non-conforming status and must go through additional review prior to re-establishment. Upon accidental destruction of the use of more than 75 percent of its value, re-establishment of the use is</p>

	<p>prohibited.</p> <p>For non-conforming residential densities, existing dwelling units may continue, may be removed or enlarged, and amenities may be added to the site. Nonconforming residential density rights continue even when a building has been unoccupied for any length of time. If damaged or destroyed, dwelling units can be rebuilt depending on how many units were destroyed and the length of time it takes to re-establish them.</p> <p>Changes may be made to non-conforming development as long as they bring the development closer to conformity and comply with other parts of the code. In some situations, non-conforming developments must be brought into conformance with certain standards when changes are made. Examples include bicycle parking and landscape setback standards for parking areas. Non-conforming development status is generally lost if discontinued for more than two years. A partially destroyed structure may be rebuilt using the same footprint. A totally destroyed structure must be rebuilt in conformance with the current code.</p>
Procedures	<p>Non-conforming situations must be documented to demonstrate their legal non-conforming status and on-going maintenance. The code provides a list of documents that can be used to establish non-conforming status and show continued maintenance over time. Without this documentation, a Determination of Legal Nonconforming Status review is required, which is a Type II procedure.</p>

The benefit to Portland’s approach is that it more specifically addresses different types of non-conforming situations. It also allows more flexibility in terms of altering or expanding non-conforming uses or structures within certain parameters. The emphasis is more on bringing non-conformities into eventual compliance without placing undue burden upon the property owner.

City of Beaverton. Beaverton’s non-conforming provisions are similar to Portland’s in that they are more detailed and complex relative to the Model Code. The code language also specifically addresses pending building permits by allowing a non-conforming situation to be constructed if the permit was issued prior to effective date of the ordinance creating the non-conforming situation. A non-conforming use created pursuant to a master plan or development plan may be allowed, completed or altered through a conditional use procedure (and is therefore subject to denial if determined inappropriate by the Planning Commission).

Purpose	<p>The intent of Beaverton’s non-conforming provisions is to “permit these non-conformities to continue until they are removed, but not to encourage their perpetuation.” The provisions also intend that non-conformities not be enlarged or expanded or be used as “grounds for adding other structures or uses not permitted elsewhere”.</p>
Continuations & Alterations	<p>Generally, non-conforming uses and structures may not be enlarged, increased or extended to occupy a greater area of land than currently exists. If a use or structure is discontinued or abandoned for more than one year, any subsequent use or structure must be in conformance with the current code. If a structure</p>

	<p>is destroyed by more than 50 percent of its replacement cost, it may only be reconstructed in conformance with the code.</p> <p>The code also states that non-conforming uses or structures that are destroyed or limited in some way by a governmental action such as eminent domain or right-of-way dedication requirements, the use or structure can be re-established or moved on the same lot or onto an abutting lot.</p> <p>The code also provides a means for exempting historical land uses and structures that existed prior to 1945. Exemption requires a review by the Planning Commission and City Council and must demonstrate “sufficient historical significance” to warrant such exemption.</p>
Procedures	Determination of non-conforming status is made through a Director’s Interpretation, which is a Type II procedure.

Again, Beaverton’s approach more specifically addresses the various non-conforming situations that may occur. However, the language is difficult to follow in places and is somewhat more restrictive in terms of allowing changes to non-conforming situations. The emphasis with Beaverton’s provisions is on removing non-conforming situations in a more expedited manner relative to Portland’s code.

When developing new non-conforming language for Milwaukie’s code, the city will need to consider the degree of flexibility that should be provided to non-conforming situations in terms of allowing them to continue and expand. Further, the city will need to decide whether or not to differentiate between non-conforming situations in industrial and commercial zones versus residential zones based on their potential impact to surrounding uses.

Based on review of this information and feedback from city staff, new variance and non-conforming chapters will be developed for Milwaukie’s code in Task 3.3 of this code assistance project.

IRecommended Table of Contents for Title 19 – Milwaukie Zoning Code

CODE CHAPTER	TITLE	COMMENTS
19.100	Introductory Provisions	No change.
19.200	Basic Provisions	No change. Maybe include language from Chapter 19.1100 Misc. Provisions and Chapter 19.1200 Remedies. Maybe include NC rights?????????
19.300	Use Zones	
19.301	R-10	
19.302	R-7	
19.303	R-5	
19.304	R-3	
19.305	R-2.5	
19.306	R-2	
19.307	R-1	
19.308	R-1-B	
19.309	R-O-C	
19.310	Downtown	
19.311	C-N	
19.312	C-L	
19.313	C-G	
19.314	C-CS	The procedural language and approval criteria currently in 315.3 and 315.4 would be removed. Process as Conditional Use?
19.315	M	Remove vague PC review language.
19.316	BI	Move BI-specific conditional use approval criteria to CU chapter?
19.317	PD	
19.400	Overlay Zones	
19.401	WG	The procedural language and approval criteria in existing sections 317.5 – 7 would be removed. If all uses are to remain conditional uses, approval criteria could be moved to Conditional Use chapter.
19.402	WQR	
19.403	HP	Section 319.5 would state that designation, deletion, demolition, or alteration would require a land use application and would reference the appropriate section of the code.
19.405	MU	The procedural and application language currently in 318.4 – 7 would be removed and consolidated with the Design Review section of the Applications chapter????
19.406	LF	Delete? Add as CU?
19.500	Supplementary Development Regulations	
19.501	General Exceptions	

CODE CHAPTER	TITLE	COMMENTS
19.502	Accessory Structures and Uses	
19.502.1	Accessory Structures, General Provisions	
19.502.2	Accessory Structures, Single-Family Provisions	Remove language in B(1)(c) about barbed fencing and put in new Applications chapter.
19.502.3	Accessory Uses, General Provisions	
19.503	Site and Building Design Provisions	No change except to remove TAR. Consider integrating with the new DR chapter. How coordinate with BI & M Zone site & building design provisions?
19.504	Temporary Dwelling Unit Provisions	Move to new Applications chapter?
19.505	Manufactured Dwelling Parks	Move to new Applications chapter?
19.506	Manufactured Dwelling Placement	May want to add MDUs as a permitted use in each zone. Need to decide whether or not to permit outright or require DR. Recommend permitting outright for single unit on one lot.
19.507	Home Occupation Provisions	No change.
19.600	Off-Street Parking & Loading	No change.
19.700	Public Facility Improvements	No change.
19.800	Solar Access Protection	Delete?
19.900	Land Use Applications	New. Chapter to include table in introduction that lists ALL land use applications with references to applicable code section for applications not included in this chapter: <ul style="list-style-type: none"> - CCS? - PD - WG - WQR/HCA - HP - MU (maybe keep DR here for now since this chapter will be completely overhauled with Central Milwaukee project) - Parking - Public Facilities
19.901	Development Review	New. Include TAR. How incorporate Parking, Public Facilities, BI/M siting & design standards?
19.902	Design Review	For Downtown zones (and MU zone?)
19.903	Type I ADU	
19.904	Type II ADU	Remain CU?
19.905	Conditional Uses	Move Wireless Comm. Facility from CSU to CU?
19.906	Community Service Uses	
19.907	Variances & Exceptions	
19.908	Director's Interpretation	
19.909	Director's Determination	Expanded.
19.910	Temporary Use or Structure??	Is this meant to allow more temp. structures and include existing temp. dwelling unit provisions?
19.911	Alteration to Nonconforming Use	New.

CODE CHAPTER	TITLE	COMMENTS
19.912	Modification to Approved Plan	New.
19.913	Quasi-Judicial & Legislative Amendments	
19.1000	Review Procedures & Administration	Overhauled.
19.1001	General Provisions	
19.1002	Type I Review	
19.1003	Type II Review	
19.1004	Type III Review	
19.1005	Type IV Review	
19.1006	Pre-Application Conference	
19.1007	Application Submittal & Completeness Review	
19.1008	Public Hearings	
19.1009	Appeals	
19.1100	Annexations & Boundary Changes	No change except title.

DRAFT

(FOR DISCUSSION PURPOSES)

ATTACHMENT 4 OVERVIEW AND ASSESSMENT OF PLANNING CODE

Assessment based on how well the Code implements the Comprehensive Plan
May 2010

CHAPTER	SECTION	NAME	SUMMARY	CODE ASSESSMENT						Code Project In Process	Code Project Completed	Notes
				Candidate for . . .								
				Better Organization and Streamlining	Best Practice Updates	Policy Changes	Legal Updates (incl. Metro compliance)	Deletion (of code section and policies)	Maintenance			
TITLE 14 SIGNS												
			Contains permitting procedures and standards for signs in the right-of-way and on private property with respect to size, type, number, illumination, height, location, and duration.		●	●					2006	Update in 2006 to meet constitutional requirements to not regulate sign content. Future project to address commercial signage.
TITLE 16 ENVIRONMENT												
16.32		Tree Cutting	Contains procedures and approval criteria for the removal and pruning of trees in the right-of-way.		●	●						Future project to improve criteria and procedures.
TITLE 17 LAND DIVISION												
			Contains procedures, approval criteria, and lot design standards for all property boundary changes that are not annexations (i.e. property line adjustments, partitions, subdivision, and replats). Coordinates with Title 16 Environment, Title 18 Flood Hazard Regulations, and Title 19 Zoning.	●	●	●					2003	Future project to improve criteria and procedures.
TITLE 19 ZONING												
19.100		Introductory Provision	Contains the title's purpose and definitions.						●			
19.200		Basic Provision	Contains general information about zones and zoning map.						●			
19.300	300	Use Zones	Use zones regulate lot size and density and dictate where different types of land uses are outright allowed, conditionally allowed, or prohibited. Each use zone contains development standards that define a lot's buildable envelope with respect to height, setbacks, etc. Overlay zones regulate how allowed uses can develop in certain areas. They apply in addition to and often modify a use zone's development standards.	●	●	●						
	301	R-10 Residential	Use zone (low density residential)	●	●	●				★		Focus of pending 2010-11 Residential Standards project.
	302	R-7 Residential	Use zone (low density residential)	●	●	●				★		
	303	R-5 Residential	Use zone (medium density residential)	●	●	●				★		
	304	R-3 Residential	Use zone (medium density residential)	●	●	●				★		
	305	R-2.5 Residential	Use zone (high density residential)	●	●	●				★		
	306	R-2 Residential	Use zone (high density residential)	●	●	●				★		
	307	R-1-B Residential-Business Office-Commerical	Use zone (mixed use)	●	●	●						Future project to overhaul commercial zones and add design standards.

CHAPTER	SECTION	NAME	SUMMARY	CODE ASSESSMENT						Code Project In Process	Code Project Completed	Notes
				Candidate for . . .								
				Better Organization and Streamlining	Best Practice Updates	Policy Changes	Legal Updates (incl. Metro compliance)	Deletion (of code section and policies)	Maintenance			
	308	R-1 Residential	Use zone (high density residential)	●	●	●				★		Focus of pending 2010-11 Residential Standards project.
	309	R-O-C Residential-Office-Commercial	Use zone (mixed use)	●	●	●						Future project to overhaul commercial zones and add design standards.
	310	C-N Neighborhood Commercial	Use zone	●	●	●						
	311	C-L Limited Commercial	Use zone	●	●	●						
	312	DS, DC, DO, DR, DOS Downtown Zones (Downtown Storefront, Commercial, Office, Residential, and Open Space)	Use zone (mixed use and open space)	●	●	●				★		Pending code project to coordinate with long range downtown planning efforts.
	313	C-G General Commercial	Use zone	●	●	●						Future project to overhaul commercial zones and add design standards.
	314	M Manufacturing	Use zone	●	●	●					2009	Minor update in 2009 to comply with Metro Title 4. Future project to improve design standards and clarify purpose and allowed uses. The latter is dependent upon long range planning efforts.
	315	C-CS Community Shopping Commercial	Use zone	●	●	●						Future project to overhaul commercial zones and add design standards.
	316	L-F Aircraft Landing Facility	Overlay zone					●				2010 Review Procedures project will address.
	317	(Reserved)						●				2010 Review Procedures project will address.
	318	MU Mixed Use Overlay	Overlay zone		●	●						Pending code project to coordinate with downtown planning efforts.
	319	PD Planned Development	Type of use zone involving a rezone		●							
	320	WG Willamette Greenway	Overlay zone		●							
	321	CSU Community Service Use	Type of use not associated with a specific use zone		●						2006	
	322	WQR Water Quality Resource	Overlay zone		●	●	●			★		Major update in progress to incorporate Metro Title 13 Habitat Conservation Areas.
	323	HP Historic Preservation Overlay	Overlay zone		●	●	●					Future project to meet state eligibility requirements for HP grant funding.
	324	BI Business Industrial	Use zone	●	●	●						Future project to evaluate allowed uses and improve design standards.
19.400		Supplementary Development Regulations	Contains supplementary development regulations and standards (e.g. home occupation, accessory structure, and single-family dwelling design standards). Applies in addition to use zone development standards.	●	●	●	●					2010 Review Procedures project will address some, but not all, of this section's issues.
19.500		Off-Street Parking and Loading	Contains site development regulations specific to the provision of off-street parking. Applies in addition to use zone development standards.	●					●	★		Adoption of new amendments imminent.

CHAPTER	SECTION	NAME	SUMMARY	CODE ASSESSMENT						Code Project In Process	Code Project Completed	Notes
				Candidate for . . .								
				Better Organization and Streamlining	Best Practice Updates	Policy Changes	Legal Updates (incl. Metro compliance)	Deletion (of code section and policies)	Maintenance			
19.600		Conditional Uses	Contains procedures, approval criteria, and development standards for approving conditional uses. Applies in addition to use zone development standards.	●	●	●				★		Focus of 2010 Review Procedures project.
19.700		Variances, Exceptions, and Home Improvement Exceptions	Contains procedures and approval criteria for varying development standards and allowed uses in any use or overlay zone.	●	●	●				★		
19.800		Nonconforming Uses	Contains procedures and approval criteria for approving the continuation and/or alteration of nonconforming uses and structures. Contains procedures and review criteria for determining the legal status of nonforming uses and structures.	●	●	●				★		
19.900		Amendments	Describes the different types of zoning map and zoning code amendment actions and the procedures and approval criteria associated with each.	●	●	●				★		
19.1000		Administrative Provisions	Describes the different levels of land use review (i.e. Type I, Type II, Minor Quasi-judicial, Major Quasi-judicial, and Legislative) and the procedural requirements associated with each (e.g. neighbor notification, hearing date requirements, appeal rights, etc.)	●	●	●	●			★		
19.1100		Miscellaneous Provisions	Contains legal provisions for applying Title 19.						●			
19.1200		Remedies	Describes the penalties for violating Title 19.						●			
19.1300		Solar Access Protection	Contains site development regulations to protect residential solar access. Applies in addition to use zone development standards.					●				2010 Review Procedures project will address.
19.1400		Public Facility Improvements	Contains street and utility improvement requirements. Applies to development with impacts on public facilities.	●					●		2009	
19.1500		Boundary Changes	Contains annexation petition requirements, procedures, and approval criteria.						●			



To: Planning Commission
From: Katie Mangle, Planning Director *KM*
Date: August 17, 2010, for August 24, 2010, Other Business
Subject: Wastewater Master Plan – Comprehensive Plan Amendment

ACTION REQUESTED

None. This is a briefing for information only. The first public hearing on the adoption of the Wastewater Master Plan (WWMP) will be held later in 2010.

BACKGROUND INFORMATION

A. History of Prior Actions and Discussions

2006: Planning Commission recommended adoption of Comprehensive Plan Amendments. The amendments affect the Public Facilities and Services Element, Objective # 5 – Sanitary Sewer Service, and the City's policy stance regarding the Kellogg Wastewater Treatment Plant.

This is the first time the WWMP has been discussed with the Planning Commission.

B. Wastewater Master Plan Background

Wastewater Master Plan (WWMP) is one of several utility master plans that the City relies on to maintain, manage, and set policy for public facilities. It is an important document that should provide accurate information on the City's infrastructure to support the operation and upkeep of the City's wastewater system. The goal for this project is to produce a useful document that provides a road map for the successful management of the City's wastewater system. The document was drafted to addresses wastewater issues in a straightforward, understandable fashion.

Milwaukie's current Wastewater Master Plan (WWMP) was adopted by City Council by resolution in 1994. Engineering staff started a project to update the plan 2003, but the project was not completed due to the need to coordinate with the Clearwater Plan, an interjurisdictional effort to address issues with the Kellogg Treatment Plant. Since the Clearwater Plan was underway as the WWMP update was nearing completion, Council delayed adoption of the update until the Clearwater Plan was completed. Ultimately the

Clearwater Plan was aborted by the County, and subsequent policy debates ensued about the future of the plant. Although some uncertainty surrounding the Kellogg Treatment Plant still remains, the City's utility master plan update still must be completed to provide accurate information for the operation and upkeep of the City's wastewater system, and to make use of the modeling and other work done from 2003 to 2005.

In 2008, the Engineering department picked up the project again and significantly updated the information in the 2003 draft plan to prepare a new plan for adoption. Milwaukie's Citizen's Advisory Board (CUAB) participated in the master plan process and helped in its review. An Open House for the plan was held on February 25, 2009 at the Public Service Building. In spite of a targeted outreach effort, only twelve people signed in at the open house. The concerns voiced at the open house were regarding the Kellogg Treatment Plant, and the extension of service outside the City. In preparation for adoption of the plan in late 2010, Engineering staff will conduct additional outreach to let interested persons review the final draft document.

C. Master Plan Adoption Process

The WWMP will come before the Planning Commission as a Comprehensive Plan amendment. The amendments will include adopting the WWMP itself as an ancillary document to the Comprehensive Plan, and amending text within the existing Comprehensive Plan so it is consistent with the WWMP.

The City endeavors to adopt all long range plans like the WWMP as ancillary documents to the Comprehensive Plan. These plans establish goals and policies for how the City will manage its resources to provide basic services to its residents, businesses, and institutions. It is important that such plans to be incorporated into the document that guides how the City will manage future growth and development. The most recent example of the master plan adoption process is the 2007 Transportation System Plan (TSP). The TSP itself was adopted as an ancillary document and changes to the text of the Comprehensive Plan were adopted at the same time.

For legislative land use applications, such as a zoning text amendment or Comprehensive Plan amendment, the Planning Commission is required to hold a public hearing on the proposed amendments and make a recommendation to the City Council.

Key elements of the WWMP will be presented at a worksession in September 2010. The introductory section of the draft WWMP is attached as an executive summary of the document.

ATTACHMENTS

1. Introduction to the Wastewater Master Plan, August 2010 (attached)

INTRODUCTION

Parametrix was selected in February 2008 to prepare an update to the City's Wastewater Master Plan. This update completes work prepared by Crane and Merseth Engineering in 2004 which provided a summary of the existing system, a list of projects for the existing system Capital Improvements Plan (CIP), several options for sewerage areas presently unsewered, system hydraulic modeling, and general background data. The 2010 Plan summarizes Crane and Merseth's work, provides a link to future planning and CIP tasks, recommends future maintenance projects for the collection system, offers technical assistance to sewerage of portions of the existing system, reviews existing Intergovernmental Agreements (IGAs) with neighboring public agencies, and assesses staffing needs.

The intent of this introduction is to provide City Staff and Council with a brief overview of previous planning work to help bridge the understanding of previous planning efforts with this current effort.

EXECUTIVE SUMMARY

Chapter 1, The Existing System Summary. This chapter provides a summary of the existing sanitary sewer collection system. The following is a brief review of key aspects provided within this chapter:

- Current (2009) service population of 20,920.¹
- Projected 2030 service population of 22,249.²
- Approximately 396,327 feet (75.1 miles) of collection system piping.
- Approximately 1650 manholes.
- Five raw sewage pumping stations.
- Wastewater treatment provided by the Kellogg Creek wastewater treatment facility.

Chapter 2, The Existing System Study Area Definition. This chapter describes the study area considered. Figures are provided that depict the Milwaukie service area and collection system sub basins. The six major collection system sub basins are North Milwaukie, Mid-Milwaukie, Johnson Creek, South Milwaukie, Harmony, and Lower Kellogg. The chapter notes that sanitary sewer service is provided by the Clackamas County Service District No. 1 (CCSD #1) in some areas on the east and south sides of Milwaukie. Service billings from CCSD #1 to Milwaukie are based on flow recorded by meters. These billings pay for services provided by CCSD #1.

The city of Portland borders Milwaukie on the north and provides sewer service as far south as Johnson Creek Boulevard. Service is provided through the Lents trunk line.

¹ Based on data from the Portland State University Population Research Center, Population Estimates for Oregon Estimated and Its Counties and Incorporated Cities: April 1 1990 to July 1 2009, prepared March 2010.

² Based on a linear growth rate of 0.28% per year between 2005 and 2030

Milwaukie pays Portland a charge based upon water consumption records for approximately 15 residential and commercial properties connected to the Lents line.

The Oak Lodge Sanitary District provides sanitary sewer service near the southwest perimeter of the Milwaukie system. An agreement between the Oak Lodge Sanitary District and the City governs the charges Milwaukie pays for the collection and treatment of sewage from these customers.

Chapter 3, The Existing System Current and Future Conditions. The intent of this chapter is to provide a baseline for existing conditions and estimate future flow impacts if full build out were to occur. Chapter 4 contains a more detailed discussion of the existing sanitary sewer system. The characteristics of each basin are described in detail. Information provided for each basin includes service acreage, current and future peak flows, length of piping, and existing information on pump stations and flowmeters. The chapter also contains a summary of the existing system deficiencies and an infiltration and inflow analysis by basin.

Chapter 4, The Existing System Future Flows Analysis. This chapter updates demographic projections from the 1994 Master Plan. It outlines the methodology used for collection system modeling using the hydraulic model Storm Water Management Model (SWMM). Sewage quantity parameters used in modeling and the availability of flow data were also described in this chapter. Flow data includes portable flowmeter data gathered by City staff from several locations in the collection system. This field data was used to establish diurnal flow patterns. In addition, flow information was used from the Harmony meter and the Milwaukie meter to provide modeling data. The completed model along with an operating guide was provided as part of Crane and Merseith's work.

Chapter 5, The Existing System Capital Improvement Projects Identification. This chapter provides a review of the CIP projects identified in the 1994 Master Plan. Eight of the 13 projects identified have been completed or terminated. The remaining five projects were included in the CIP recommendations listed below. This chapter also reviewed Kellogg Creek wastewater treatment plant options. The chapter then proceeded on a basin by basin basis to outline the current CIP recommendations. These are summarized below:

- Decommission Kellogg Creek WWTP, construction of pump station and force main.
- Construct a 200 foot bypass around the Lakeside Apartments.
- Initiate a detailed flow monitoring program.
- Conduct CCTV inspections of all basins.
- Monitor flows in the Brookside trunkline; replace 1040 feet of trunkline with 12 inch piping.
- Jefferson Street to Kellogg WWTP, replace existing sewer with 30 inch line or construct a 21 inch parallel sewer line.

Chapter 6, CCSD#1 Agreements. This chapter provides a review of previous agreements with CCSD#1, a review of the proposed Intergovernmental Agreement (IGA) between CCSD#1 and Milwaukie, and makes recommendations for consideration by Milwaukie regarding the proposed IGA.

Chapter 7, Collection System Asset Management. This chapter provides an abbreviated sewer collection system asset management strategy for the City of Milwaukie. It will enable the City to make informed decisions on how to most effectively allocate resources for capital improvements to the collection system on an annual basis.

Chapter 8, Waverly Heights Sewer System Analysis, The purpose of this chapter is to provide an analysis of the existing sewer collection system within Waverly Heights, a residential neighborhood within the city of Milwaukie, in terms of existing lateral conditions and recommendations for future sewer service. Several viable options for the City of Milwaukie to improve the management of the sanitary sewer system within the Waverly Heights community are presented.

Chapter 9, Lents Sewer Line Analysis. The purpose of this chapter is to provide an analysis of the existing sewer collection system of the Lents Trunk line and the City of Milwaukie's agreement with the City of Portland The Lents Trunk line begins near 162nd Avenue and SE Foster Road and ends in the Sellwood neighborhood of Portland at the Willamette River. The location of the Lents Trunk line can be seen in Figure 9-1.

Chapter 10, Staffing Needs. The purpose of this chapter is to provide a recommendation for staffing needs within the City of Milwaukie's Engineering and Wastewater Operations departments.

Chapter 11, Cost of Service Study. A cost of service study was prepared (an update of one prepared for the City in 2005) and is summarized in Chapter 11. The study addresses the planned capital improvements, and also provides a defensible wastewater SDC to generate funding to meet the infrastructure needs of growth without unduly burdening existing residents and business owners.

STUDY RECOMMENDATIONS

This study makes the following recommendations:

1. Implement the Capital Improvement Projects (CIP) as listed in Chapter 5. The utility's rate structure should include provisions for construction of the CIP.
2. Begin capital reserve funding for asset management by funding system replacement with a rate that recognizes and accounts for depreciation of the system. Following the recommendations of this plan, which identifies specific areas to be corrected after prioritizing the inspected system, continue to inspect the system and prioritize corrective action.
3. Obtain easements for the existing Waverly area sewer where they do not exist. Plan for option 4, from the alternatives section of Chapter 8, as the ultimate solution for this area's collection issues.
4. Conduct a study of the City boundary for interjurisdictional connections and draft new IGA's with those providers to provide a clear understanding of billing and maintenance issues.
5. Begin funding of the Capital Maintenance Program per Chapter 7.
6. Implement the new SDC and Rate recommendation of Chapter 12.