



AGENDA

MILWAUKIE PLANNING COMMISSION Tuesday March 22, 2011, 6:30 PM

MILWAUKIE CITY HALL
10722 SE MAIN STREET

- 1.0 **Call to Order - Procedural Matters**
- 2.0 **Planning Commission Minutes** – Motion Needed
- 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** – Public hearings will follow the procedure listed on reverse
 - 5.1 Summary: Natural Resource Regulations Amendments
Applicant: City of Milwaukie
File: ZA-11-01, CPA-11-01
Staff Person: Brett Kelter
- 6.0 **Worksession Items**
- 7.0 **Planning Department Other Business/Updates**
- 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:**
 - April 12, 2011 1. Worksession: Wastewater Master Plan *tentative*
 - April 26, 2011 1. TBD

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
Scott Churchill
Chris Wilson
Mark Gamba
Russ Stoll

Planning Department Staff:

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



MILWAUKIE

Dogwood City of the West

To: Planning Commission

Through: Katie Mangle, Planning Director

From: Brett Kolver, Associate Planner

Date: March 15, 2011, for March 22, 2011, Public Hearing

Subject: Natural Resource Amendments to Comply with Metro Title 13

Files: ZA-11-01 & CPA-11-01

File Types: Zoning Ordinance Amendment and Comprehensive Plan Amendment

Applicant: Katie Mangle, Planning Director, City of Milwaukie

ACTION REQUESTED

Initiate the proposed amendments and recommend that City Council adopt the proposed amendments to Milwaukie Comprehensive Plan Chapter 3 and Milwaukie Municipal Code Title 19 Zoning Ordinance with the proposed ordinance and recommended findings in support of approval (see Attachment 1 and Exhibits A - G).

BACKGROUND INFORMATION

The City of Milwaukie is proposing to adopt updated natural resource maps and new regulations to better protect the natural resources that exist throughout the community. The City already has strong protections in place to preserve the quality of water in the community's streams and wetland areas. Now the City is proposing to broaden those protections to include sensitive wildlife habitat.

The proposed amendments are designed to bring the City into compliance with Statewide Land Use Planning Goal 5 (Natural Resources, Scenic and Historic Areas, and Open Spaces) and Metro Title 13 (Nature in Neighborhoods), while maintaining the City's compliance with Goal 6 (Air, Water, and Land Resources Quality) and Title 3 (Water Quality and Flood Management). The proposed amendments designate Habitat Conservation Areas (HCAs), all of which are contiguous to existing Water Quality Resources (WQRs) that the City already regulates.

Following direction provided by the Planning Commission and City Council, staff's efforts on this code amendment project have focused on crafting a set of regulations and maps that meet state and regional requirements, but also reflect local conditions and goals. This has meant

incorporating the principles of Metro's Title 13 Model Code into the existing WQR rules (found in Milwaukie Municipal Code (MMC) Section 19.322) to create one new set of Natural Resources regulations; and modifying the regional HCA map to correct minor errors and combining it with the existing map of WQRs to create one new Natural Resources map. The resulting proposal repeals the existing Water Quality Resources chapter (MMC 19.322) and replaces it with a new Natural Resources section that addresses both WQRs and HCAs. It also removes the WQR maps from the zoning code, updates the Natural Resources map in the Comprehensive Plan, and creates a new Natural Resources Administrative Map.

The intent and effect of the proposed amendments are explained in the Commentary documents. See Attachment 2 for the Commentary on the draft Natural Resource Areas code section (proposed amendments to 19.402). See Attachment 3 for the Commentary on other policy changes that are proposed as part of this application.

A. History of Prior Planning Commission Actions and Discussions

- **January, 2011:** Worksession to prepare for adoption hearing, with a recap of Draft 4 version of the proposed amendments, including the latest list of exempt activities and other activities grouped by review type.
- **September, 2010:** Worksession focused on adjustments and variances, and the distance to be used to trigger the new regulations.
- **August, 2010:** Worksession on project progress, review of Draft 3 of the proposed amendments.
- **June, 2010:** Joint meeting with Natural Resource Advisory Group to discuss significant issues.
- **April, 2010:** Worksession on project progress, review of Draft 2 of the proposed amendments.
- **July 28, 2009:** Second of two-part worksession on the City's strategy for complying with Title 13. The Commission gave staff direction to pursue the approach that has resulted in the draft amendments.
- **July 14, 2009:** First of two-part worksession on the City's strategy for complying with Title 13..
- **October, 2008:** Staff briefed the Commission on options for the City to comply with Title 13.
- **July, 2008:** First worksession briefing on requirements of Metro Title 13 (Nature in Neighborhoods).

In addition, staff has held a total of four worksessions with City Council related to the proposed code amendments since the project began. This includes a study session on February 22, 2011, to prepare Council for the upcoming adoption hearing.

B. Code History

See Attachment 4 for a summary of the City's code history with respect to natural resource regulations.

C. Public Involvement Process

The proposed amendments will affect approximately 475 properties that include or are near designated natural resource areas. Hundreds more people in the community value the clean water and diverse habitat provided in the riparian corridors and wetland areas. With that in mind, in September 2009, City staff convened the first meeting of an advisory group to assist the Planning Commission with this project. A letter was sent to each affected property with information about the project and inviting owners and residents to participate in the advisory group. Approximately 25 people participated, including property owners who would be affected by the new rules, natural resource experts, public agency representatives, and other interested community members. The advisory group has met a total of six times to review drafts of the code and map amendments and to discuss key issues. These discussions have provided invaluable guidance to staff in refining the proposed amendments. See Attachment 5 for a list of those who participated in the Advisory Group.

A community-wide Open House was held on January 6, 2011, to present the project recommendations to the larger community. The City advertised this meeting online and in the Pilot, and by sending invitations to the owners and current residents of all properties that will be affected by the new rules (approximately 865 invitations). At the Open House, staff answered a variety of questions about the proposed amendments from the 25-30 people who attended. The event was an opportunity for affected property owners and residents who were not able to participate in the advisory group process to learn more about the City's regulation of natural resources and get additional information about land stewardship.

Staff has maintained a project page on the City's website since October 2009: <http://www.ci.milwaukie.or.us/planning/natural-resource-overlay-project>. The project website includes background information as well as the most recent drafts of the proposed code and map amendments.

D. Proposed Amendments

Note: The Milwaukie City Council voted on March 1, 2011 to adopt significant amendments to Title 19 Zoning (Land Use File #ZA-10-02). These amendments will become effective on May 14, 2011. ZA-10-02 reorganizes Title 19, moving and/or renumbering many existing chapters and sections; the existing WQR 19.322 will be renumbered to 19.402. The proposed amendments (see Attachment 1, Exhibits B and C) reflect the version of Title 19 Zoning that will become effective on May 14, 2011. *The following description of the proposed amendments assumes this new organization of the Zoning Code.*

The City is proposing amendments to its existing natural resource regulations and policies to comply with applicable State and regional rules. Based on direction from the Milwaukie Planning Commission and City Council, as well as feedback from the community, the proposed amendments are based on the following four key concepts:

1. **Continue to protect Water Quality Resource areas.** Through the existing MMC 19.402, the City already protects land within approximately 50 feet of wetlands, creeks, and rivers. The proposed amendments do not reduce the high level of protection currently in place for those resources. Where WQRs and HCAs overlap, the WQR designation takes precedence and the WQR level of protection applies.

2. **Expand the swath of protected land to include HCAs.** The City proposes to designate HCAs as resources warranting protection, which will result in a slightly larger swath of regulatory coverage than is currently provided by the WQR designation alone. The WQR protections extend a fixed distance (generally 50 feet) from primary water features; the HCA designations focus on physical attributes such as tree canopy and other substantial vegetation near those same water features.
3. **Adopt a local version of Metro’s HCA map.** Metro provided the City with a regional inventory of High-, Moderate-, and Low-value HCAs to be protected. However, the inventory was done at such a scale that there were inevitably some inaccuracies, such as the misidentification of paved or otherwise developed areas. Milwaukie’s proposed Natural Resource (NR) Administrative Map (see Attachment 1, Exhibit E) also relies on the Metro data but corrects obvious errors. In addition, the NR Administrative Map eliminates the High-, Moderate-, and Low-value HCA categories for the purposes of streamlining the new regulations.
4. **Develop new regulations, based on the Metro Title 13 Model Code, to apply to HCAs outside of the WQR areas.** Metro provided a model code for local jurisdictions to use in enacting the new Title 13 regulations. The proposed amendments draw on this model code as a resource but tailor it for Milwaukie and integrate it with the existing regulations for WQRs provided in MMC 19.402 (see Attachment 1, Exhibit B, Proposed Section 19.402 Natural Resource Areas).
5. **Develop policies that are smart, local, and flexible.** Though the City will retain the policy direction provided by the Water Quality Resource regulations, staff has also worked to improve the clarity and organization of the code language, and reflect the City’s goals that major code improvement projects result in regulations that are smart, local, and offer predictable flexibility.

The proposed amendments address these five concepts by:

- repealing the existing MMC 19.402 Water Quality Resource Regulations and replacing it with a new MMC 19.402 Natural Resource Areas;
- amending Chapter 3 Environmental and Natural Resources of the Comprehensive Plan to reflect the new Habitat Conservation Area designation and establish an updated map of natural resource areas;
- amending limited portions of several other sections of MMC Title 19 Zoning because they coordinate in some way with MMC 19.402 (see Attachment 1, Exhibit C)).

The Commentary on the amendments (see Attachments 2 and 3) describes in detail how the proposed amendments would change the policy and practice of the Zoning Code and Comprehensive Plan. The following is a summary of key aspects of the proposed policies:

- Habitat Conservation Areas (HCAs) are established as natural resource areas and protected from disturbance. HCAs are comprised of significant tree canopy or other vegetated areas that provide wildlife habitat near protected water features. Where HCAs overlap with WQR areas, the more restrictive WQR regulations prevail. WQRs are comprised of protected water features such as streams and wetlands and an accompanying 50 ft-wide vegetated corridor along or around them.

- In the past, the City's natural resource protections only applied to properties that included a designated resource. But the resources themselves do not recognize property lines, and a disturbance activity on an adjacent, non-resource property could have just as much impact on the resource as one on the resource property itself. Therefore, on lots that contain, or are within 100 ft of, WQRs or HCAs, there will be a new requirement to prepare a Construction Management Plan prior to beginning any development activity that disturbs more than 150 sq ft of a resources area to demonstrate that the resource area will be protected.
- Many types of activities proposed to take place within a resource will require a Type I (administrative) permit. Most development proposed to only affect an HCA could be permitted through the Type I process.¹
- Generally, projects with more potential for impacts are subject to Type III review.²
- The standards with which proposed development will be required to comply have been revised to be clearer about the type of mitigation that will be required when a project impacts a natural resource.
- There are new rules proposed to address removal of trees from resource areas. While the regulations generally aim to preserve and protect existing trees, there are some situations when tree removal should be allowed outright, and some situations when limited review should be required.
- A new process is proposed to encourage property owners to draft Natural Resource Management Plans, which outline restoration or enhancement projects. These plans will be approved through a streamlined process (Type I or II review, instead of Type III as required by the current code).³
- The WQR Map is removed from the Zoning Code and instead will be represented in the Comprehensive Plan and on a special Natural Resource (NR) Administrative Map. Illustrating the resources on an administrative map will make it easier for the City to update the data to reflect the best information, i.e., a wetland delineation prepared as part of a development permit. If an applicant believes the map is inaccurate, there is a process for correcting it, and the complexity of the process.
- The Comprehensive Plan Natural Resources Map will reflect the current WQR and HCA inventory. This map is intended to serve as a snapshot of the City's designated WQRs and HCAs at a moment in time, to be updated through Periodic Review process.
- Applications for land division or a lot line adjustment will be required to consider mapped resource areas, to ensure that lots are configured to minimize future development impacts.
- Properties that contain natural resources are burdened with more responsibility to avoid impacting these community assets. Therefore, the new code provides some special allowances for development that avoids or limits its disturbance to mapped

¹ The Type I permit process requires review and decision by the Planning Director, and typically takes 2-10 days.

² The Type III permit process requires review and decision by the Planning Commission following a public hearing. Notice is sent to all properties within 300 ft. The process typically takes 3-5 months.

³ The Type II permit process requires review and decision by the Planning Director. Notice is sent to all properties within 300 ft. The process typically takes 2-3 months.

resource areas. These include the option to “cluster” residential development, enabling an applicant to develop a property to its normally allowed density by concentrating the dwelling units to minimize impacts to the mapped resource area.

When staff last met with the Commission in a worksession on January 11, 2001, the discussion focused on an earlier version of the proposed natural resource rules. Although the overall structure of the draft regulations has not changed substantially, there are a few notable differences between that earlier draft (Draft 4 of proposed amendments) and the draft proposed for adoption (see Attachment 1, Exhibit B). These changes are outlined for reference in Attachment 6.

CONCLUSIONS

Staff's recommendation to the Planning Commission is as follows:

The Planning Commission has provided guidance to staff throughout the scoping of the project and drafting of the proposed amendments. Staff's recommendation is for the Planning Commission to hold a public hearing and consider comments submitted. Given the complex nature of the amendments, staff is prepared to discuss and refine the proposal based on public and commissioner comment. If refinement is needed, the Commission should advise staff of specific needed changes to the proposal. When the Commission determines the proposal to be ready, it should vote to recommend that Council adopt the amendments.

Vote to recommend that City Council adopt the draft ordinance and related exhibits as proposed.

CODE AUTHORITY AND DECISION-MAKING PROCESS

Note: On March 1, 2011, the Milwaukie City Council voted to adopt amendments to Title 19 Zoning that move and/or renumber many existing chapters and sections of the Zoning Code (Land Use File #ZA-10-02). These amendments will become effective May 14, 2011. Although the proposed amendments reflect the version of Title 19 Zoning that will be effective on May 14, 2011, the City must review the application against the City's *current* criteria for amendments to the Zoning Code. *Therefore, the following section and the draft findings in support of approval (see Attachment 1, Exhibit A) use the current numbering when referencing the applicable standards.*

The proposed amendments are subject to the following provisions of the Milwaukie Zoning Ordinance, which is Title 19 of the Milwaukie Municipal Code (MMC), and the Milwaukie Comprehensive Plan (MCP):

- MMC 19.900 Amendments
- MMC 19.1011.5 Legislative Review
- MCP Chapter 2 Plan Review and Amendment Process, Objective #1 Amending the Plan

The proposed amendments are subject to legislative review, which requires both the Planning Commission and City Council to consider whether the proposal complies with the code sections shown above. For legislative actions, the Planning Commission assesses the application

against the review criteria, evaluates testimony and evidence received at a public hearing, and makes a recommendation to City Council. City Council will hold another public hearing to consider the Commission's recommendation, evaluate any additional testimony and evidence, and make the final decision on the proposal.

The Planning Commission has the following decision-making options:

1. Forward a recommendation to City Council to approve the proposed amendments and ordinance as proposed.
2. Forward a recommendation to City Council to approve the proposed amendments and ordinance with modifications.
3. Continue the hearing to further evaluate the proposed amendments and ordinance.
4. Deny the proposed amendments and ordinance. This would have the effect of deciding to continue to implement the code in its current state and implementing Metro Title 13 directly. Because the City is required to amend its ordinances to comply with Title 13, staff would return with a proposal that the City adopt the Metro Title 13 Model Code and HCA map. The City would then implement MMC 19.402 Water Quality Resource (WQR) Regulations and the Title 13 Model Code to regulate WQRs and HCAs, respectively.

Recommendation Deadline

Because this application is a legislative proposal, there is no deadline by which the City must make a final decision on the application. However, the original deadline set by Metro for City compliance with Title 13 (beyond the interim measures enacted by the Planning Director on June 1, 2009) was November 2009. Metro granted the City a one-year extension to November 2010. Metro Council is aware that the City is close to adopting an ordinance that will bring the City into compliance. See Attachment 8 for an analysis of how the proposed amendments are consistent with the Urban Growth Management Functional Plan.

COMMENTS

Notice of the proposed changes was given to the following agencies and persons: City of Milwaukie Building, Engineering, and Public Works Departments; all seven Neighborhood District Associations (NDAs), the Southgate Community Planning Association, Metro, TriMet, Clackamas County Sewer District #1, ODOT, North Clackamas Parks & Recreation District, North Clackamas School District #12, and other Interested Persons, and participants in the Advisory Group. As required by Measure 56, public notice of the Planning Commission hearing was mailed to the owners of approximately 475 properties. Attachment 7, Public Information, presents the Measure 56 notice and some of the other materials that have been made available to inform the public about the proposed amendments.

To date, staff has received 6 phone calls, e-mails, or visits to the Planning counter. Most comments related to clarifying how the proposed amendments would impact individual properties. No specific written comments on the proposal have been submitted. Staff will continue to collect comments; those received prior to 3pm on the day of the hearing will be provided to the Commission before the hearing.

ATTACHMENTS

Attachments are provided only to the Planning Commission unless noted as being attached. All material is available for viewing upon request.

1. Draft Ordinance (all items attached)
 - Exhibit A: Recommended Findings in Support of Approval
 - Exhibit B: Proposed Section 19.402 Natural Resource Areas
 - Exhibit C: Proposed Amendments to Comprehensive Plan and Municipal Code (Underline/Strikeout Version)
 - Exhibit D: Proposed Amendments to Comprehensive Plan and Municipal Code (Clean Version)
 - Exhibit E: Proposed Natural Resource Administrative Map
 - Exhibit F: Comprehensive Plan Map 5, Natural Resource Areas
 - Exhibit G: Comprehensive Plan Appendix 2 Map, Natural Resource Sites
2. Commentary on the draft Natural Resource Areas code section (proposed amendments to Section 19.402) (attached)
3. Commentary on Proposed Amendments to Comprehensive Plan and Other Sections of the Zoning Code (attached)
4. History of Natural Resource Regulations in Milwaukie
5. Advisory Group Participant List
6. Version Control: Summary of substantive changes made to the draft Natural Resource Areas amendments between January 11 and March 14, 2011.
7. Public Information
 - a. Measure 56 Notice
 - b. Natural Resource Overlay project flyer
 - c. Applicability Flowchart, a tool for explaining which sections of the code will apply in a specific situation
 - d. Construction Management Plan Flowchart, a tool for explaining which types of projects will be required to prepare these plans
8. Analysis of compliance with the Metro Functional Plan

The proposed amendments and other project documents are available online at:
<http://www.ci.milwaukie.or.us/planning/natural-resource-overlay-project>.

ORDINANCE NO. _____**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, AMENDING THE COMPREHENSIVE PLAN CHAPTER 3 AND THE MILWAUKIE MUNICIPAL CODE TITLE 19 ZONING ORDINANCE, TO PROTECT THE CITY'S NATURAL RESOURCES NATURAL RESOURCES (FILE #s ZA-11-01 AND CPA-11-01).**

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

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

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

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

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

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

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

WHEREAS, the City Council finds that amendments to the Milwaukie Municipal Code recently adopted as part of land use file ZA-10-02 will result in renumbering and reorganization; and

WHEREAS, the City Council finds that the amendments have been prepared with the same organization and numbering as the version of Title 19 Zoning established by Council approval of Ordinance_____, which will be effective May 1, 2011.

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

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

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

Section 3. Amendments. The Comprehensive Plan Chapter 3 and other sections of Milwaukie Municipal Code Title 19 Zoning Ordinance are amended as described in Exhibit C (underline/strikeout version) and Exhibit D (clean version).

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

Read the first time on _____, and moved to second reading by _____ vote of the City Council.

Read the second time and adopted by the City Council on _____.

Signed by the Mayor on _____.

Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Schrader Ramis PC

Pat DuVal, City Recorder

City Attorney

Document6 (Last revised 2/6/2008)

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

1. The City of Milwaukie proposes to amend its regulations related to designated natural resources in Milwaukie Municipal Code (MMC) Title 19 Zoning and Milwaukie Comprehensive Plan (MCP) Chapter 3 Environmental and Natural Resources. The land use applications for these amendments are ZA-11-01 and CPA-11-01.

The Milwaukie City Council adopted significant amendments to Title 19 Zoning on March 15, 2011 (Land Use File #ZA-10-02). These amendments, which reorganized and renumbered many existing chapters and sections, will become effective on May 14, 2011 (as adopted by Ordinance #_____).

The City is proposing amendments to the version of Title 19 Zoning that will become effective on May 14, 2011. However, because the proposal is subject to the criteria in place at the time of review, the findings provided herein are based on the organization and numbering of Title 19 Zoning as of Ordinance #_____).

2. The purpose of the proposed amendments is to improve the effectiveness of the City's existing Water Quality Resource (WQR) regulations and to establish new regulations for Habitat Conservation Areas (HCAs). The current WQR regulations are compliant with Metro Title 3 (Water Quality and Flood Management) and Statewide Land Use Planning Goal 6 (Air, Water, and Land Resources Quality). The proposed amendments maintain the City's compliance with Title 3 and Goal 6. The proposed HCA regulations also bring the City into compliance with Title 13 (Nature in Neighborhoods) and update the City's efforts to comply with Goal 5 (Natural Resources, Scenic and Historic Areas, and Open Spaces).

The primary proposed amendment is the repeal of the WQR regulations in their entirety, and adoption of a new set of regulations for Natural Resource Areas. The proposal also includes minor amendments to other sections of the Municipal Code and MCP Chapter 3 Environmental and Natural Resources to coordinate with the new regulations. The complete list of amendments is as follows:

Chapter, Section, or Subsection Title	MMC Section Number Prior to May 14, 2011	New MMC Section Number After to May 14, 2011
Comprehensive Plan Chapter 3 Environmental and Natural Resources	n/a	n/a
Zone Classifications	19.202	19.107
Special Areas	n/a	19.108
Definitions	19.103	19.201
Overlay Zones and Special Areas	19.300	19.400
Water Quality Resources	19.322	19.402
Land Use Applications	19.1000	19.900
Review Procedures	19.1011	19.1000
Annexations and Boundary Changes	19.1500	19.1100

3. The City's decision to adopt the proposed amendments is subject to the following provisions of the MMC and MCP:
 - MMC 19.900 Amendments
 - MMC 19.1011.5 Legislative Actions
 - MCP Chapter 2 Plan Review and Amendment Process, Objective #1 Amending the Plan
4. Sections of the Milwaukie Municipal Code or Comprehensive Plan not addressed in these findings are found to be not applicable to the decision on this land use application.
5. Public notice was provided in accordance with MMC 19.1011.5 Legislative Actions.
6. Compliance with MMC 19.900 Amendments

A. MMC 19.901 Initiation of Amendments

MMC 19.901 requires that amendments to the Milwaukie Zoning Ordinance be initiated by the City Council, Planning Commission, or by a property owner.

The amendments are proposed by the City of Milwaukie and were initiated by the Planning Commission at a public hearing held on March 22, 2011. This criterion is met.

B. MMC 19.902 Amendment Procedure

- 1) MMC 19.902.1.A requires that proposed amendments be heard at a public hearing and follow the procedures outlined in MMC 19.1011.5 Legislative Actions.

The Planning Commission held a public hearing on the proposed amendments on March 22, 2011. The City Council held a public hearing on _____, 2011. Public notice for both public hearings was provided in accordance with MMC 19.1011.5. This criterion is met.

- 2) MMC 19.902.1.B establishes standards for providing notice to Metro of any proposed amendments to the City's Comprehensive Plan or Zoning Ordinance.

MMC 19.902.1.B does not reflect the requirement Metro adopted in January 2011 to provide notice at least 45 days in advance of the initial public hearing for proposed amendments instead of 45 days in advance of the final public hearing (Metro Code Section 3.07.820.A). The City has coordinated with Metro throughout the development of the amendments, and provided notice of the hearing schedule on February 16, 2011, well in advance of the final City Council hearing and 34 days prior to the first Planning Commission hearing. This criterion, as established in the current MMC 19.902.1.B, is met.

The City sent an analysis demonstrating compliance with all applicable titles of the Metro Urban Growth Management Functional Plan to Metro on March 10, 2011.

- 3) MMC 19.902.1.D requires that the Planning Director forward the Planning Commission's recommendation to City Council within 40 days of the final Planning Commission hearing on the proposed amendments.

This section to be completed following the recommendation by the Planning Commission.

C. MMC 19.904 Requirements for Zoning Text Amendments

MMC 19.904.1 requires that proposals for amendments to the Milwaukie Zoning Ordinance provide written evidence that the following requirements are satisfied:

- 1) Applicable requirements of MMC 19.1003, which specify the form of petitions, applications, and appeals.

City staff submitted an application on the prescribed form. Because no development is proposed, the other portions of MMC 19.1003 are not applicable. This requirement is met.

- 2) Reasons for requesting the proposed amendments.

The proposed amendments are needed to provide more effective protection of the community's natural resources. These amendments are meant to ensure that the City remains compliant with Metro Title 3 (Water Quality and Flood Management) and to establish the City's compliance with Title 13 (Nature in Neighborhoods). The proposed amendments update the City's current regulations for Water Quality Resources (WQRs) with the intent of making the rules more clear and providing more options for appropriate review of proposed activities. The amendments also establish regulations for Habitat Conservation Areas (HCAs) that are intended to balance resource protection with development rights.

The proposed amendments also remove the current WQR maps from the text of the Zoning Code, adopting instead an administrative map for natural resources. The amendments include criteria and procedures for updating the new Natural Resource (NR) Administrative Map; these procedures will result in a more accurate source of information about the location of WQRs and HCAs.

This requirement is met.

- 3) Explanation of how the proposed amendments are consistent with other provisions of this title.

The proposed amendments are designed to ensure consistency with other provisions of Title 19. All new and existing terms are clearly defined, and all affected code sections are appropriately located.

The proposed amendments include a specific provision addressing coordination with the Willamette Greenway (WG) zone, to ensure that the NR Area regulations do not unduly limit the ability to maintain view corridors as allowed in the WG zone. In general, by integrating the regulations for WQRs and HCAs, the proposed amendments present a more integrated approach to natural resource protection than if the new HCA rules were established in a separate section.

This requirement is met.

- 4) The approval criteria of MMC 19.905.

The applicable approval criteria of MMC 19.905 are addressed below in Finding 6-D.

D. MMC 19.905 Approval Criteria for All Amendments

MMC 19.905 contains the following approval criteria for amendments to the Milwaukie Zoning Ordinance.

- 1) The proposed amendments must conform to applicable MCP goals, policies, and objectives and be consistent with City ordinances, Metro Urban Growth Management Functional Plan, and other applicable regional policies.

Compliance with Milwaukie Comprehensive Plan (MCP)

Chapter 3 Environmental and Natural Resources; Open Spaces, Scenic Areas, and Natural Resources Element

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

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

Compliance with City Ordinances

These findings demonstrate compliance with all applicable City ordinances.

The proposed amendments include minor changes to ensure consistency with other coordinated part of the Milwaukie Municipal Code (MMC), including MMC Section 13.14 (Stormwater Management), MMC Section 16.28 (Erosion Control), and MMC Section 18.04 (Flood Hazard Areas).

Compliance with Functional Plan

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

This criterion is met.

- 2) The anticipated development must meet the intent of the proposed zone.

The proposed code amendments are legislative in nature and do not involve a specific development proposal in a particular zone. This criterion is not applicable.

- 3) The proposed code amendments will meet or can be determined to reasonably meet applicable regional, state, and federal regulations.

The proposed amendments comply with all applicable regional and state regulations: Metro Title 3 (Water Quality and Flood Management) and Title 13 (Nature in Neighborhoods); and Statewide Land Use Planning Goal 6 (Air, Water, and Land Resources Quality), and Goal 5 (Natural Resources, Scenic and Historic Areas, and Open Spaces).

This criterion is met.

- 4) The proposed code amendments demonstrate that existing or planned public facilities and services can accommodate anticipated development of the subject site without significantly restricting potential development within the affected service area.

The proposed code amendments are legislative in nature and do not involve a specific development proposal in a particular zone. This criterion is not applicable.

- 5) The proposed code amendments are consistent with the functional classification, capacity, and level of service of the transportation system.

The proposed code amendments are legislative in nature and do not involve a specific development proposal in a particular zone. This criterion is not applicable.

The applicable criteria and requirements of MMC 19.900 are met.

7. Compliance with MMC 19.1011.5 Legislative Actions

- A. Public Notification. The City has provided the required published notice two consecutive weeks prior to each hearing. This requirement is met.

- B. Decision. The Planning Commission shall conduct a public hearing and make a decision based on compliance with the applicable goals and policies of the MCP, and prepare a recommendation to the City Council. The City Council shall conduct a public hearing.

The Planning Commission conducted a public hearing on March 22, 2011.

This section to be completed following the Commission's recommendation.

The requirements of MMC 19.1011.5 are met.

C. Compliance with MCP Chapter 2 Plan Review and Amendment Process, Objective #1 Amending the Plan

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

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

- *Consistency with Metro Growth Management Functional Plan and applicable regional policies.*

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

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

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

These criteria are met.

- D. The proposed amendments were referred to various City departments, governmental agencies, neighborhood district associations (NDA), and stakeholders for review and comment. They were discussed at nine Planning Commission meetings and four City Council meetings. Affected property owners were contacted via mail three times during the course of the project, and a public open house on the proposal was held in January 2011. Drafts of the proposed amendments and documents explaining the changes have been continually updated on the City's web site since October 2009.

Note: The City Council has adopted amendments (File #ZA-10-02) that reorganize the Zoning Code, effective on May 14, 2011. Those amendments renumber the Water Quality Resource regulations from Section 19.322 to Section 19.402. This “PC Hearing Draft 3-22-11” document reflects this change.

TITLE 19 ZONING

CHAPTER 19.400 OVERLAY ZONES AND SPECIAL AREAS

19.402 Natural Resource Areas

19.402.1 Intent

Section 19.402 is to be interpreted consistently with the following intent:

- A. Section 19.402 provides protection for water quality resources under Statewide Land Use Planning Goal 6 and Sections 1 - 4 of Title 3 of the Metro Urban Growth Management Functional Plan (UGMFP). Section 19.402 also provides protection for 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 Section 19.402 to:
 1. Designate Water Quality Resources (WQRs) to protect the functions and values of riparian and wetland resources at the time of development.
 2. Protect and improve the functions and values that contribute to water quality and to fish and wildlife habitat in urban streamside areas. These functions and values include, but are not limited to:
 - a. Vegetated corridors to separate protected water features from development.
 - b. Microclimate and shade.
 - c. 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 natural channel dynamics.
 - g. Organic material resources.
 3. Designate Habitat Conservation Areas (HCAs) to implement the performance standards of Title 13 of the UGMFP for riparian areas and fish and wildlife habitat and to protect significant local Goal 5 resources such as wetlands.
 4. Provide nondiscretionary (clear and objective) standards as well as a discretionary review process, applicable to development in HCAs, in accordance with Goal 5.
 5. Allow and encourage habitat-friendly development while minimizing the impact on water quality and fish and wildlife habitat functions.
 6. Permit residential cluster development to encourage creative and flexible site design that is sensitive to the land’s natural features and adapts to the natural topography.

7. Provide mitigation standards for the replacement of ecological functions and values lost through development in WQRs and HCAs. This includes restoration of designated natural resource areas that are temporarily disturbed during development, as well as mitigation for permanent disturbance of those areas as a result of development.
 8. Preserve existing native vegetation against removal and replacement with lawns or gardens or other nonnative plantings.
- D. 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.
- E. It is not the intent of Section 19.402 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 unreasonable hardship against the continued maintenance of existing legal site conditions.
 3. Apply to activities that do not affect WQRs or HCAs.
 4. Prohibit normal lawn and yard landscape planting and maintenance. Normal lawn and yard planting and maintenance does not include the planting of invasive nonnative or noxious vegetation, including but not limited to plants listed as nuisance species on the Milwaukie Native Plant List.

19.402.2 Coordination with Other Regulations

- A. Implementation of Section 19.402 is in addition to and shall be coordinated with Title 19 Zoning, Title 18 Flood Hazard Regulations, and Chapter 16.28 Erosion Control.
- B. For properties along the Willamette River, nothing in Section 19.402 shall prohibit the maintenance of view windows under Section 19.401 Willamette Greenway Zone WG.
- C. Except as provided for in Subsection 19.402.2.B, when applicable provisions of Section 19.402 and Section 19.401 Willamette Greenway Zone WG are in conflict, the more restrictive provision shall be controlling.
- D. Nonconforming uses and development that were legally existing for WQRs as of January 16, 2003, the effective date of Ordinance #1912, or that were legally existing for HCAs as of DATE, the effective date of Ordinance #____, and that are nonconforming solely because of Section 19.402 shall not be subject to the provisions of Chapter 19.800 Nonconforming Uses and Development. However, any expansion of a nonconforming use or development within a WQR or HCA shall be subject to the applicable standards of Section 19.402.
- E. 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.
- F. The requirements of Section 19.402 apply in addition to all applicable local, regional, state, and federal regulations, including those for wetlands and flood management areas. Where

Section 19.402 imposes restrictions that are more stringent than regional, state, and federal regulations, the requirements of Section 19.402 shall govern.

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

19.402.3 Applicability

- A. The Milwaukie Natural Resource Administrative Map (hereafter “NR Administrative Map”), which shows WQRs and HCAs, is adopted by reference. The NR Administrative Map shall be used to determine the applicability of Section 19.402 and shall be administered in accordance with Subsection 19.402.15.
- B. Natural resource areas are designated on the NR Administrative Map as follows:
 - 1. Water Quality Resources (WQRs) include protected water features and their associated vegetated corridors, as specified in Table 19.402.15. The vegetated corridor is a buffer around each protected water feature, established to prevent damage to the water feature. The width of the vegetated corridor varies depending on the type of protected water feature, upstream drainage area served, and slope adjacent to the protected water feature. The NR Administrative Map is a general indicator of the location of vegetated corridors; the specific location of vegetated corridors must be determined in accordance with Table 19.402.15.
 - 2. Habitat Conservation Areas (HCAs) include significant Goal 5 wetlands, riparian areas, and fish and wildlife habitat. HCAs are designated based on a combination of inventory of vegetative cover and analysis of habitat value and urban development value. HCA locations on the NR Administrative Map are assumed to be correct unless demonstrated otherwise; verifications and corrections shall be processed in accordance with the procedures established in Subsection 19.402.15.
- C. The NR Administrative Map shall provide a baseline for determining the applicability of Section 19.402 to any proposed activity. The City shall use the latest available aerial photographs, a copy of the applicable section of the NR Administrative Map, and, in the case of WQRs, the parameters established in Table 19.402.15, to determine whether a proposed activity on a given property will trigger any requirements of Section 19.402. If a property owner or applicant believes that the NR Administrative Map is inaccurate, they may propose corrections according to the standards established in Subsection 19.402.15.
- D. The regulations in Section 19.402 apply to all properties containing a WQR and/or HCA (including any locally significant Goal 5 wetlands or habitat areas identified by the City of Milwaukie) as shown on the NR Administrative Map.
- E. Disturbance to a designated natural resource area can be either temporary or permanent. Temporary disturbances are those that occur during the approved development or activity but that will not persist beyond completion of the project. Temporary disturbances include, but are not limited to, accessways for construction equipment; material staging and stockpile areas; and excavation areas for building foundations, utilities, stormwater facilities, etc.

Permanent disturbances are those that remain in place after the approved development or activity is completed. Permanent disturbances include, but are not limited to, buildings, driveways, walkways, and other permanent structures.

- F. For properties that do not contain but are within 100 feet of a WQR and/or HCA, as shown on the NR Administrative Map, and where more than 150 square feet of disturbance is proposed, a construction management plan is required in accordance with Subsection 19.402.9 (see also Table 19.402.3).
- G. Proposed activities that occur more than 100 feet from a WQR or HCA, as shown on the NR Administrative Map or determined in accordance with Table 19.402.15, do not require review under the provisions of Section 19.402.
- H. Those portions of streams, creeks, and other protected water features that appear on the NR Administrative Map but are enclosed in pipes, culverts, or similar structures are not subject to the provisions of Section 19.402, except where a proposed activity will expose or directly disturb the protected water feature, such as with excavation.
- I. If more than 150 square feet of area will be disturbed in conjunction with a proposed activity listed as exempt in Subsections 19.402.4.B.1 or B.2, a construction management plan shall be submitted according to the provisions of Subsection 19.402.9. This requirement applies even when the proposed activity will not occur within a designated natural resource area but is within at least 100 feet of the resource, in accordance with Table 19.402.3.
- J. The requirements of Section 19.402 apply as shown in Table 19.402.3, both to properties that include a WQR and/or HCA, and to properties that do not include a WQR or HCA but where an activity is proposed within 100 feet of a WQR or HCA.

Table 19.402.3 Applicability of Requirements of Section 19.402		
Situations/activities that may trigger Section 19.402	Prepare Construction Management Plan per Subsection 19.402.9	Comply with remainder of Section 19.402
Activities listed as exempt per:		
• Subsection 19.402.4.A (outright exemptions for both WQRs and HCAs)	No	No
• Subsection 19.402.4.B.1 (limited exemptions for both WQRs and HCAs)	No (unless >150 sq ft of disturbance is proposed)	No
• Subsection 19.402.4.B.2 (limited exemptions for HCAs only)	No (unless activity is within 100' of WQR and > 150 sq ft of disturbance is proposed)	No
Nonexempt activities:		
• Outside of WQR and HCA	No (unless activity is within 100' of WQR or HCA and > 150 sq ft of disturbance is proposed)	No
• Within WQR or HCA	Yes	Yes

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

Table 19.402.3.K			
Types of Process Review for Various Activities			
Activity (and applicable code sections)	Type of Review Process		
	Type I (19.1004)	Type II (19.1005)	Type III * (19.1006)
Construction management plans (Subsection 19.402.9)	✓		
Agency-approved natural resource management plans (Subsections 19.402.10.A and C)	✓		
Independent natural resource management plans (Subsections 19.402.10.B and C)		✓	
Limited tree removal (Subsection 19.402.6.B)	✓		
Activities within HCA that meet nondiscretionary standards (Subsection 19.402.11.D)	✓		
Maintenance of existing utility facilities (Subsection 19.402.6.E)	✓		
Non-emergency abatement of nuisances or violations (Subsection 19.402.6.F)	✓		
Special use activities (Subsections 19.402.7.A and 19.402.11.E)		✓	
Limited disturbance to WQRs (Subsection 19.402.7.D)		✓	
Property line adjustments that balance the HCA distribution (Subsection 19.402.13.E.1 or 2)	✓		
Property line adjustments that otherwise limit HCA disparity (Subsection 19.402.13.E.3)		✓	
Low-impact partitions or replats (put designated natural resource area in separate tract) (Subsection 19.402.13.G)		✓	
Other partitions, replats, subdivisions, and development activities (Subsections 19.402.8.B, 19.402.12, and 19.402.13.F, H or I)			✓
Boundary verifications with minor corrections (Subsection 19.402.15.A.1)	✓		
Boundary verifications with substantial corrections (Subsection 19.402.15.A.2)		✓	

* Pre-application conference required (see Subsection 19.402.3.L).

- L. For any proposed development or activity that will require Type III review, a pre-application conference is required. For any proposed development that will require Type II review, a pre-application conference or meeting is recommended.

19.402.4 Exempt Activities

A. Outright Exemptions

The following activities are exempt from the provisions of Section 19.402, regardless of whether the activity occurs within a WQR or HCA:

1. A building permit for any portion of a phased development project for which the applicant has previously met the applicable requirements of Section 19.402 (or of the previous Section 19.322, for projects initiated prior to DATE, the effective date of Ordinance # _____), including the provision of a construction management plan per Subsection 19.402.9, so long as the building site for new construction was identified on the original application and no new portion of the WQR 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. The planting or propagation of plants categorized as native plants on the Milwaukie Native Plant List.
4. Emergency procedures or activities undertaken which are necessary to remove or abate hazards to person or property, provided that the timeframe for such remedial or preventative action is too short to allow for compliance with the requirements of Section 19.402. After the emergency, the person or agency undertaking the action shall repair any impacts to the 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).
5. Removal of trees under any of the following circumstances:
 - a. The tree is a “downed tree” as defined in Section 19.201, the tree has been downed by natural causes, and no earth disturbance will occur in the process of removing the tree.
 - b. The tree is categorized as a nuisance species on the Milwaukie Native Plant List, no more than three such trees will be removed from one property during any 12-month period, and no earth disturbance will occur in the process of removing the tree(s).
 - c. The tree presents an emergency situation with immediate danger to person or property as described in Subsection 19.402.4.A.3. Emergency situations may include, but are not limited to, situations in which a tree or portion of a tree has been compromised and has damaged or is damaging structures or utilities on private or public property; or where a tree or portion of a tree is prohibiting safe passage in the public right-of-way. Examples are trees that have fallen into or against a house or other occupied building, or trees downed across power lines or roadways. This exemption is limited to removal of the tree or portion of the tree as necessary to eliminate the hazard. Any damage or impacts to the designated natural resource 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 19.402.10.

6. Routine repair and maintenance and/or alteration of existing utility facilities, accesses, streets, driveways, and parking improvements, including asphalt overlays, provided there is no disturbance of the WQR or HCA, no increase in impervious area, no reduction in landscaped areas or tree cover, and no other changes that could result in increased direct stormwater discharges to the WQR.
7. Routine repair and maintenance of public and private stormwater facilities in accordance with a stormwater management plan approved by the City.
8. Lot consolidations, as defined in Chapter 17.08.

B. Limited Exemptions

The following activities are exempt from the provisions of Section 19.402, except where the activity disturbs a total of more than 150 square feet, in which case a construction management plan is required according to the provisions of Subsection 19.402.9.

1. Limited Exemptions Within All Designated Natural Resource Areas

- a. Landscaping and maintenance of existing landscaping and gardens. This exemption extends to landscaping activities that do not involve the removal of native plants or plants required as mitigation, do not involve the planting of any vegetation identified as a nuisance species on the Milwaukie Native Plant List, and do not produce an increase in impervious area or other changes that could result in increased direct stormwater discharges to the WQR. Annual or seasonal tilling of gardens is exempt from the requirement to provide a construction management plan, regardless of the amount of earth disturbance involved.
- b. Removal of plants identified on the Milwaukie Native Plant List as nuisance species. After removal, all open soil areas shall be replanted and/or protected from erosion. Removal done with handheld tools is exempt from the requirement to provide a construction management plan, regardless of the amount of earth disturbance involved.
- c. Removal of debris, as defined in Section 19.201. For removal of debris from within a protected water feature, removal that involves earth disturbance may only be done during the allowable windows for in-water work as designated by the Oregon Department of Fish and Wildlife.
- d. Existing agricultural practices or uses, excluding buildings and structures, provided that such activities or uses do not result in increased direct stormwater discharges to WQRs.
- e. Routine repair and maintenance, alteration, demolition, and/or change of use of existing legal buildings or structures, provided that the following criteria are met:
 - (1) There is no change in the location of or increase in the footprint or size of any building, impervious surface, or outdoor storage area within the WQR or HCA.
 - (2) No other site changes are proposed that could result in increased direct stormwater discharges to the WQR. If the project will result in increased direct stormwater discharges, the proposal is subject to the Type II review process and the standards for discretionary review established in Subsection 19.402.12.
- f. Activities and improvements in existing public rights-of-way.

2. Additional Exemptions within HCAs

In addition to the activities listed in Subsection 19.402.4.B.1, within an HCA the following activities are exempt from the provisions of Section 19.402, as long as activities within 100 feet of a WQR meet the requirement to complete a construction management plan per Subsection 19.402.9, regardless of the amount of disturbance:

- a. The alteration, expansion, or replacement of existing structures, provided that both of the following standards are met:
 - (1) 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 DATE, the effective date of Ordinance # ____.
 - (2) No new intrusion into the HCA shall be closer to a protected water feature than the pre-existing structure or improvement.
- b. Minor encroachments not to exceed 120 square feet of impervious surface, such as accessory buildings, patios, walkways, retaining walls, or other similar features.
- c. Temporary and minor clearing, excavation, or other disturbance not to exceed 150 square feet for the purpose of site investigations or preparation of soil profiles; installation of underground utility facilities or other infrastructure; routine repair and maintenance and/or alteration of existing utility facilities, access, streets, driveways, and parking improvements; or similar activities, provided that such disturbed areas are restored to their original condition when the activity is complete.
- d. 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:
 - (1) It contains less than 500 square feet of new impervious surface.
 - (2) Any trails shall have a maximum width of 5 feet and shall be constructed using non-hazardous, pervious materials.
- e. 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. Native or nonnative vegetation may be planted in these facilities, provided that none of the plantings are identified as nuisance species on the Milwaukie Native Plant List.

19.402.5 Prohibited Activities

The following activities are prohibited within WQRs and HCAs:

- A. New structures, development, or activity other than those allowed by Section 19.402.
- B. Uncontained areas of hazardous materials, as defined by the Oregon Department of Environmental Quality.
- C. Planting any vegetation listed as a nuisance species on the Milwaukie Native Plant List.

- D. Outside storage of materials, unless such storage began before DATE, the effective date of Ordinance #____; or, unless such storage is approved according to the applicable provisions of Section 19.402.
- E. Application of pesticides with any of the active ingredients listed on the Milwaukie Chemicals of Concern List is prohibited within WQRs and HCAs. 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.

19.402.6 Activities Requiring Type I Review

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

A. Construction Management Plans

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

B. Limited Tree Removal

1. The Planning Director may approve an application for limited tree removal or significant pruning within WQRs and HCAs, subject to Section 19.402.6.B.2, under any of the following circumstances:
 - a. The tree removal is necessary to eliminate a hazardous, non-emergency situation, as determined by the Planning Director. A situation may be deemed hazardous if a tree or portion of a tree has undergone a recent change in health or condition in a manner that may pose a danger to people, to structures on private property, to public or private utilities, or to travel on private property or in the public right-of-way. Examples of imminent hazards may include, but are not limited to, trees that are broken, split, cracked, uprooted, or otherwise in danger of collapse. Approval shall be limited to removal of the tree or portion of the tree as necessary to eliminate the hazard.
 - b. The tree meets both of the following criteria: (1) it is dead, diseased, or dying; and (2) it cannot be saved, as determined and documented in a report by a certified arborist.
 - c. The proposal would remove 4 or more trees categorized on the Milwaukie Native Plant List as nuisance species from a particular location during any 12-month period.
 - d. The tree is not exempt per Subsection 19.402.4.A.5.a because some earth disturbance is necessary to remove it.
 - e. The tree is not exempt per Subsection 19.402.4.A.5.b because some earth disturbance is necessary to remove it or because the tree is not categorized as a nuisance species on the Milwaukie Native Plant List, provided that the tree is not a native species and is located in a WQR categorized as "Degraded" according to Table 19.402.11.C.
 - f. For significant pruning, as defined in Section 19.201, the tree will survive the proposed significant pruning, as determined and documented in a report by a certified arborist.

2. The provisions of Section 19.402.6.B.1 do not apply to tree removal proposed in association with development or other activities regulated by Section 19.402, for which other approval criteria and mitigation standards may apply.
 3. The Planning Director shall require the application to comply with all of the following standards:
 - a. A construction management plan shall be prepared in accordance with Subsection 19.402.9. When earth disturbance is necessary for the approved removal or pruning, all open soil areas that result from the disturbance shall be replanted and/or protected from erosion.
 - b. All pruning and/or tree removal shall be done in accordance with the standards of the International Society of Arboriculture (ISA).
 - c. Any tree that is removed in accordance with Subsection 19.402.6.B shall be replaced with a new tree, at least 1/2 inch in caliper. An exception to this requirement may be granted if the applicant demonstrates that a replacement tree has already been planted in anticipation of tree removal or if the existing site conditions otherwise preclude tree replacement (due to existing dense canopy coverage or other ecological reasons).
 - d. The replacement tree(s) shall be located in the general vicinity of the removed tree(s), somewhere within the designated natural resource area (WQR or HCA). The replacement tree(s) does not have to be a native species, but, in accordance with Subsection 19.402.5.C, the replacement tree(s) shall not be categorized as a nuisance species on the Milwaukie Native Plant list. The property owner shall ensure that the replacement tree(s) survives at least two years beyond the date of planting.
- C. Activities within HCAs in Compliance with Nondiscretionary Standards
- Within HCAs, but outside of WQRs, non-exempt development that is not listed in Subsections 19.402.7 or 19.402.8 and that is in compliance with the nondiscretionary standards provided in Subsection 19.402.11.D is subject to Type I review.
- D. Natural Resource Management Plans
- Natural resource management plans that meet the standards outlined in Subsection 19.402.10.A are subject to Type I review. These are typically plans that have already been approved by a qualified agency.
- E. Maintenance of Existing Utility Facilities
- Routine repair and maintenance of existing utility facilities, accesses, streets, driveways, and/or parking improvements that disturbs a WQR and/or HCA is subject to Type I review, provided such activities can meet the general standards for special uses established in Subsection 19.402.11.E.1. These include, but are not limited to, the requirement to provide a mitigation plan and to restore the disturbed area.
- F. 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.

G. Boundary Verification

Boundary verifications processed in accordance with Subsection 19.402.15.A.1 are subject to Type I review.

19.402.7 Activities Requiring Type II Review

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

A. Special Uses

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

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

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

B. Natural Resource Management Plans

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

C. Partitions

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

D. Other Uses and Activities with Minimal Impacts to WQRs

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

1. Agricultural practices or uses, excluding buildings and structures, that result in increased direct stormwater discharges to WQRs.
2. Landscaping and maintenance of existing landscaping that would increase impervious area within a WQR by no more than 150 square feet and/or result in increased direct stormwater discharges to the WQR.
3. Alteration and/or replacement of existing legal buildings or structures, provided that the proposed alteration disturbs no more than 150 square feet within the WQR, regardless of the ecological quality or condition of the WQR prior to the proposed activity, and

does not encroach closer to the protected water feature than the existing buildings or structures.

4. Alteration of existing utility facilities, accesses, streets, driveways, and parking improvements that disturb no more than 150 square feet within the WQR, regardless of the ecological quality or condition of the WQR prior to the proposed activity, and that do not encroach closer to the protected water feature than the existing improvements. Activities approved under this subsection shall be subject to the following requirements:
 - a. Restore the disturbed portion of the WQR.
 - b. Within the disturbed portion of the WQR, remove any vegetation categorized as a nuisance species on the Milwaukie Native Plant List and replace it with native vegetation from the list.

E. Boundary Verifications

Boundary verifications processed in accordance with Subsection 19.402.15.A.2 are subject to Type II review.

19.402.8 Activities Requiring Type III Review

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

- A. The activities listed below shall be subject to the general discretionary review criteria provided in Subsection 19.402.12:
 1. Any activity allowed in the base zone that is not otherwise exempt or permitted as a Type I or Type II activity.
 2. Within HCAs, development that is not in compliance with the nondiscretionary standards provided in Subsection 19.402.11.D.
 3. New roads to provide access to protected water features; necessary ingress and egress across WQRs; or the widening of an existing road.
 4. Improvement of existing public utility facilities that cannot meet the applicable standards of Subsection 19.402.11.E.
 5. New stormwater pretreatment facilities that cannot meet the applicable standards of Subsection 19.402.11.E.
 6. New public or private utility facility construction that cannot meet the applicable standards of Subsection 19.402.11.E.
 7. Walkways and bike paths that cannot meet the applicable standards of Subsection 19.402.11.E.
 8. Tree removal in excess of that permitted under Subsections 19.402.4 or 19.402.6.
 9. Landscaping and maintenance of existing landscaping that would increase impervious area by more than 150 square feet.
 10. Routine repair and maintenance, alteration, and/or change of use of existing legal buildings or structures that would disturb more than 150 square feet within the WQR or would encroach closer to the protected water feature than the existing buildings or structures.

11. Routine repair and maintenance and/or alteration of existing utility facilities, accesses, streets, driveways, and parking improvements that would disturb more than 150 square feet within the WQR or would encroach closer to the protected water feature than the existing improvements.
- B. The activities listed below shall be subject to the review criteria for partitions and subdivisions provided in Subsections 19.402.13.H and 13.I, respectively:
1. The partitioning of land containing a WQR or HCA that cannot meet the standards provided in Subsection 19.402.13.G.
 2. The subdividing of land containing a WQR or HCA.

19.402.9 Construction Management Plans

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

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

19.402.10 Natural Resource Management Plans

Natural resource management plans or restoration plans that authorize limited disturbance within the WQR or HCA may be approved with Type I or 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 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, or other standards approved by the Planning Director.

C. Approval Criteria

Every plan prepared for approval under Section 19.402 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. Construction Management Plans

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

E. Ongoing Maintenance

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

F. Expiration of Plans

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

19.402.11 Development Standards

A. Protection of Natural Resources During Site Development

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

1. Work areas shall be marked to reduce potential damage to the WQR and/or HCA.
2. Trees in WQRs or HCAs shall not be used as anchors for stabilizing construction equipment.
3. Native soils disturbed during development shall be conserved on the property.
4. An erosion and sediment control plan is required and shall be prepared in compliance with requirements set forth in the City's Public Works Standards.
5. Site preparation and construction practices shall be followed that prevent drainage of hazardous materials or erosion, pollution, or sedimentation to any WQR adjacent to the project area.

6. Stormwater flows as a result of proposed development within and to natural drainage courses shall not exceed pre-development flows.
7. Prior to construction, the WQR and/or HCA that is to remain undeveloped shall be flagged, fenced, or otherwise marked and shall remain undisturbed. Such markings shall be maintained until construction is complete.
8. The construction phase of the development shall be done in such a manner to safeguard the resource portions of the site that have not been approved for development.
9. Where practicable, lights shall be placed so that they do not shine directly into any WQR and/or HCA location; and the type, size, and intensity of lighting shall be selected so that impacts to habitat functions are minimized.
10. All work on the property shall conform to a construction management plan prepared according to Subsection 19.402.9.

B. General Standards for Required Mitigation

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

1. Disturbance

- a. Designated natural resource areas that are affected by temporary disturbances shall be restored, and those affected by permanent disturbances shall be mitigated, in accordance with the standards provided in Subsection 19.402.11.C for WQRs and Subsection 19.402.11.D.2 for HCAs, as applicable.
- b. Landscape plantings are not considered to be disturbances except for those plantings that are part of a non-exempt stormwater facility (e.g., raingarden or bioswale).
- c. Within WQRs, proposed activities that would disturb existing structures and development such as patios, walkways, lawns and other non-natural landscaped areas are not exempt from the regulations of Section 19.402 except as provided in Subsection 19.402.4.

2. Required Plants

All trees, shrubs, and ground cover must be native plants as identified on the Milwaukee Native Plant List. Applicants are encouraged to choose particular native species that are appropriately suited for the specific conditions of the planting site (e.g., shade, soil type, moisture, topography, etc.).

3. Plant Size

Replacement trees 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.

4. 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.

5. 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.

6. Location of Mitigation Area

a. On-site Mitigation

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

b. Off-site Mitigation

- (1) For disturbances allowed within WQRs, off-site mitigation shall not be used to meet the mitigation requirements of Section 19.402.
- (2) For disturbance allowed within HCAs, 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.

7. Invasive Vegetation

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

8. Ground Cover

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

9. Tree and Shrub Survival

A minimum of 80% of the trees and shrubs planted shall remain alive on the third 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) Remove or control nonnative or noxious vegetation throughout the maintenance period.

b. Recommended Practices

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

- (1) Plant bare root trees between December 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.
- (3) Water new plantings 1 inch per week between June 15th and October 15th for the first three years following planting.

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 Planning Director may require a maintenance bond to cover the continued health and survival of all plantings. An annual report on the survival rate of all plantings shall be submitted for three years.

10. Light Impacts

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

C. Mitigation Requirements for Disturbance within WQRs

1. The requirements for mitigation vary depending on the existing condition of the WQR on the project site at the time of application. The existing condition of the WQR shall be assessed in accordance with the categories established in Table 19.402.11.C and by considering the entire WQR on the project site and not solely the specific location where disturbance will occur.
2. When disturbance within a WQR is approved according to the standards of Section 19.402, the disturbance shall be mitigated according to the requirements outlined in Table 19.402.11.C and the standards established in Subsection 19.402.11.B. Allowed disturbance shall be mitigated within the entire WQR on the project site and not solely in the specific location where disturbance will occur.

Table 19.402.11.C Restoration and Mitigation Requirements for WQRs	
Existing Condition of WQR Area	Requirements Applicable within Entire WQR Area on Site where Disturbance is Allowed
Good	
<p>Vegetation coverage: Combination of trees, shrubs, and groundcover are 80% present.</p> <p>Tree canopy: More than 50% tree canopy coverage in vegetated corridor.</p>	<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, nutrients, or any other condition that may have caused the protected water feature to be listed on DEQ's 303 (d) list. • Revegetate disturbed and bare areas with native species from the Milwaukie Native Plant List. • 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. • Inventory and remove debris and noxious materials.
Marginal	
<p>Vegetation coverage: Combination of trees, shrubs, and groundcover are 80% present.</p> <p>Tree canopy: 25-50% canopy coverage in vegetated corridor.</p>	<ul style="list-style-type: none"> • Revegetate disturbed and bare areas with native species from the Milwaukie Native Plant List, using a City-approved plan developed to represent the vegetative composition that would naturally occur on the site. • 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. • Inventory and remove debris and noxious materials.
Degraded	
<p>Vegetation coverage: Combination of trees, shrubs, and groundcover are less than 80% present and/or there is more than 10% surface coverage by any nonnative species.</p> <p>Tree canopy: Less than 25% canopy coverage in vegetated corridor.</p>	<ul style="list-style-type: none"> • Remove plants categorized as "required eradication" species on the Milwaukie Native Plant List. • Revegetate disturbed and bare areas with native species from the Milwaukie Native Plant List, using a City-approved plan developed to represent the vegetative composition that would naturally occur on the site. • Plant and seed to provide 100% surface coverage. • 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. • Inventory and remove debris and noxious materials.

D. Nondiscretionary Standards for HCAs

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

1. Disturbance Area Limitations in HCAs

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

a. Detached and Attached Single-Family Residential Uses

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

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

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

Y = The maximum potential disturbance area within the HCA is 50% of the total HCA, up to a maximum of 5000 square feet.

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

If (Z) is greater than (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) within the HCA.

Example 1: 8000-sq-ft lot with 3000 sq ft of HCA and 5000 sq ft outside of HCA/WQR

Y = 1500 sq ft (50% of HCA)

Z = 5000 sq ft outside of HCA/WQR

X = - 3500 sq ft (1500 sq ft – 5000 sq ft)

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

Example 2: 8000-sq-ft lot with 6000 sq ft of HCA and 2000 sq ft outside of HCA/WQR

Y = 3000 sq ft (50% of HCA)

Z = 2000 sq ft outside of HCA/WQR

X = 1000 sq ft (3000 sq ft – 2000 sq ft)

Conclusion: Z is not greater than Y; therefore, the applicant may disturb up to the value of X (1000 sq ft) within the HCA).

b. 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 19.402.11.D.2.

c. Temporary and Permanent Disturbances

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

d. Disturbance in Excess of that Allowed by Section 19.402

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

e. Disturbance Changes HCA Status

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

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

2. Mitigation Requirements for Disturbance in HCAs

To achieve the goal of reestablishing forested canopy that meets the ecological values and functions described in Subsection 19.402.1, when development intrudes into 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.

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

An applicant 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 19.402.11.D.2.a. Conifers shall be replaced with conifers. Bare ground shall be planted or seeded with native grasses or herbs. Nonnative sterile wheat grass may also be planted or seeded, in equal or lesser proportion to the native grasses or herbs.

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. Nonnative sterile wheat grass may also be planted or seeded, in equal or lesser proportion to the native grasses or herbs.

c. Adjustments to HCA Mitigation Requirements

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

E. Standards for Special Uses

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

1. General Standards for Special Uses

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

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

2. Public or Private Utility Facilities

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

- a. The disturbance area for connections to utility facilities shall be no greater than 10 feet wide.
- b. The disturbance area for the upgrade of existing utility facilities shall be no greater than 15 feet wide.
- c. The disturbance area for new underground utility facilities shall be no greater than 25 feet wide and disturb no more than 200 linear feet of WQR within any 1,000-linear-foot stretch of WQR. Such a disturbance area shall be restored with the exception of necessary access points to the utility facility.
- d. 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.

3. New Stormwater Pretreatment Facilities

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

4. Walkways and Bike Paths

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

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

5. Stormwater Management Plans

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

- a. Stormwater facilities will be designed to provide an environmentally beneficial hydrological impact on protected water features.
- b. Protected water features will be protected from erosion by implementing a stream protection strategy and quantity control strategies.
- c. Watershed health will be improved through the use of vegetated facilities to meet pollution reduction, flow control, and infiltration goals and these facilities will be maintained in a manner which ensures a continued benefit to watershed health.
- d. Proposed stormwater management facilities will correct or improve conditions caused by past management and/or disturbance events, if any are present.
- e. Where 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.

19.402.12 General Discretionary Review

Subsection 19.402.12 establishes a discretionary process by which the City shall analyze the impacts of development on WQRs and HCAs, including measures to prevent negative impacts and requirements for mitigation and enhancement. The Planning Director may consult with a professional with appropriate expertise to evaluate an application or may rely on appropriate staff expertise to properly evaluate the report's conclusions.

A. Impact Evaluation and Alternatives Analysis

An impact evaluation and alternatives analysis is required to determine compliance with the approval criteria for general discretionary review and to evaluate development alternatives for a particular property. A report presenting this evaluation and analysis must be prepared and signed by a knowledgeable and qualified natural resource professional, such as a wildlife biologist, botanist, or hydrologist.

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

1. Identification of the ecological functions of riparian habitat found on the property as described in Subsection 19.402.1.C.2.
2. An inventory of vegetation, including the percentage of ground and canopy coverage materials within the WQR, sufficient to categorize the existing condition of the WQR as outlined in Table 19.402.11.C.
3. 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.
4. An alternatives analysis, providing an explanation of the rationale behind choosing the alternative selected, including how adverse impacts to natural resource areas will be avoided and/or minimized, and demonstrating that:

- a. No practicable alternatives to the requested development exist that will not disturb the WQR or HCA.
 - b. Development in the WQR and/or HCA has been limited to the area necessary to allow for the proposed use.
 - c. If disturbed, the WQR can be restored to an equal or better condition in accordance with Table 19.402.11.C and the HCA can be restored consistent with the mitigation requirements of Subsection 19.402.11.D.2.
 - d. Road crossings will be minimized as much as possible.
5. For applications proposing an alteration, addition, rehabilitation, or replacement of existing structures located within the WQR, the applicant shall do the following:
- a. Demonstrate that no reasonably practicable alternative design or method of development exists that would have a lesser impact on the WQR 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 to the minimum extent necessary to achieve the proposed addition, alteration, restoration, replacement, or rehabilitation.
 - b. Provide mitigation to ensure that impacts to the functions and values of the WQR will be mitigated or restored to the extent practicable.
6. A mitigation plan for the designated natural resource area that contains the following information:
- a. A description of adverse impacts that will be caused as a result of development.
 - b. An explanation of how adverse impacts to designated natural resource areas will be avoided, minimized, and/or mitigated in accordance with, but not limited to, Table 19.402.11.C for WQRs and Subsection 19.402.11.D.2 for HCAs.
 - c. Sufficient description to demonstrate how the following standards will be achieved:
 - (1) Where existing vegetation has been removed, the site shall be revegetated as soon as practicable.
 - (2) Where practicable, the types, sizes, and intensities of lights shall be placed so that they do not shine directly into the WQR and/or HCA locations.
 - (3) Areas of standing trees, shrubs, and natural vegetation will remain connected or contiguous, particularly along natural drainage courses, except where mitigation is approved, so as to provide a transition between the proposed development and the natural resource area and to provide opportunity for food, water, and cover for animals located within the WQR.
 - d. A map showing where the specific mitigation activities will occur. Off-site mitigation related to WQRs shall not be used to meet the mitigation requirements of Section 19.402.
 - e. An implementation schedule, including a timeline for construction, mitigation, mitigation maintenance, monitoring, and reporting, as well as a contingency plan. All in-stream work in fish-bearing streams shall be done in accordance with the allowable windows for in-water work as designated by the Oregon Department of Fish and Wildlife.

B. Approval Criteria

1. Applications subject to the discretionary review process shall demonstrate how the proposed activity complies with the following criteria:
 - a. Avoid

The proposed activity avoids the intrusion of development into the WQR and/or HCA to the extent practicable. The proposed activity must have less detrimental impact to the designated natural resource area than other practicable alternatives, including significantly different practicable alternatives that propose less development within the resource area.
 - b. Minimize

If the applicant demonstrates that there is no practicable alternative that will not avoid disturbance of the designated natural resource area, then the proposed activity within the resource area shall minimize detrimental impacts to the extent practicable.

 - (1) The proposed activity must minimize detrimental impacts to ecological functions and loss of habitat consistent with uses allowed by right under the base zone, to the extent practicable.
 - (2) To the extent practicable within the designated natural resource area, the proposed activity shall be designed, located, and constructed to:
 - (a) Minimize grading, removal of native vegetation, and disturbance and removal of native soils by using the approaches described in Subsection 19.402.11.A, reducing building footprints, and using minimal excavation foundation systems (e.g., pier, post, or piling foundation).
 - (b) Minimize adverse hydrological impacts on water resources.
 - (c) Minimize impacts on wildlife corridors and fish passage.
 - (d) Consider using other techniques to further minimize the impacts of development in the resource area, such as using native plants throughout the site (not just in the resource area), locating landscaping required by other parts of Title 19 Zoning adjacent to the resource area, reduce light spill-off into the resource area from development, preserving and maintaining existing trees and tree canopy coverage, and/or planting trees where appropriate to maximize future tree canopy coverage.
 - c. Mitigate

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

 - (1) The mitigation plan shall demonstrate that it compensates for detrimental impacts to ecological functions provided by resource areas, after taking into consideration the applicant's efforts to minimize such detrimental impacts.
 - (2) Mitigation shall occur on the site of the disturbance, to the extent practicable. Off-site mitigation for disturbance of WQRs shall not be approved. Off-site mitigation for disturbance of HCAs shall be approved if the applicant has demonstrated that it is not practicable to complete the mitigation on-site and

that the applicant has documented that they can carry out and ensure the success of the off-site mitigation as outlined in Subsection 19.402.11.B.5.

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

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

2. Municipal Water Utility Facilities Standards

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

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

C. Limitations and Mitigation for Disturbance of HCAs

1. Discretionary Review to Approve Additional Disturbance within an HCA

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

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

An applicant seeking discretionary approval to proportionally vary the number and size of trees and shrubs required to be planted under Subsection 19.402.11.D.2 (for example, to plant fewer larger trees and shrubs or to plant more smaller trees and shrubs) but who will comply with all other applicable provisions of Subsection 19.402.13 shall be subject to the following process:

a. The applicant shall submit the following information:

- (1) A calculation of the number of trees and shrubs the applicant would be required to plant under Subsection 19.402.11.D.2.
- (2) The numbers and sizes of trees and shrubs that the applicant proposes to plant.
- (3) 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 third 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 19.402.11.D.2. 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.
- (4) A mitigation, site-monitoring, and site-reporting plan.

b. Approval of the request shall be based on consideration of the following:

- (1) Whether the proposed planting will achieve, at the end of the third year after initial planting, comparable or better mitigation results as the results that would be achieved if the applicant complied with all of the requirements of Subsection 19.402.11.D.2.
- (2) Whether the proposed mitigation adequately addresses the plant diversity, plant survival, and monitoring practices established in Subsection 19.402.11.B.

19.402.13 Land Division and Property Line Adjustments

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

A. Boundary Verification

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

B. Construction Management Plans

1. Applications for land division that will require physical site improvements (e.g., grading and/or the construction of structures, streets, or utilities) within, or within 100 feet of, a WQR or HCA shall include a construction management plan in accordance with Subsection 19.402.9.
2. Applications for land division that do not require grading or constructing structures, streets, or utilities or making other physical improvements to the site are not required to include a construction management plan.

C. Impacts from Site Improvements

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

D. Mitigation for Future Structures or Improvements

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

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

E. Property Line Adjustments

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

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

HCA from access and development. Such an adjustment shall be subject to the Type II review process.

F. Replats

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

G. Low-Impact Partitions

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

1. For properties that contain HCAs but no WQRs, 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 WQRs, the applicant shall place 100% of the WQR in a separate unbuildable tract, protected by a conservation restriction.
3. For properties that contain both WQRs and HCAs, the applicant shall comply with both of the standards listed above in Subsections 19.402.13.G.1 and G.2.

H. All Other Partitions

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

1. For properties that do not contain any WQRs but for which it is not practicable to comply with the partition standards in Subsection 19.402.13.G.1, the application shall meet the following standards and is not subject to the requirements of Subsection 19.402.12:
 - a. The partition plan shall result in the smallest practicable percentage point difference in the percentage of HCA coverage 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 WQRs but cannot comply with Subsection 19.402.13.G.2, or that contain both WQRs and HCAs but cannot comply with Subsection 19.402.13.G.3, the application shall comply with the following standards:
 - a. To the extent possible, the parcel configuration shall mitigate the potential future impacts to WQRs from access and development.
 - b. An Impact Evaluation and Alternatives Analysis shall be prepared in accordance with the relevant portions of Subsection 19.402.12.A.

I. Subdivisions

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

1. At least 90% of the property's HCA and 100% of the property's WQR shall be located in a separate tract. Applications that meet this standard are not subject to the discretionary review requirements of Subsection 19.402.12.
2. If a subdivision cannot comply with the standards in Subsection 19.402.13.1.1, the application shall comply with the following standards:
 - a. All proposed lots shall have adequate buildable area outside of the WQR and HCA.
 - b. To the extent possible, the lot and access configurations shall mitigate the potential future impacts to the WQR and HCA from access and development.
 - c. An Impact Evaluation and Alternatives Analysis shall be prepared in accordance with the relevant portions of Subsection 19.402.12.A.

J. Resource Area as a Separate Tract

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

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

19.402.14 Adjustments and Variances

To encourage applicants to avoid or minimize impacts to WQRs and/or HCAs, several types of adjustments and variances are available for use on sites subject to Section 19.402. These include adjustments to specific base zone and lot design standards, discretionary variances, and allowances for residential cluster development.

A. Adjustments

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

1. Adjustments to Base Zone Standards

a. Yard Setback (General)

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

b. Rear Yard Setback (Limited)

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

2. Adjustments to Lot Design Standards

When property boundaries are changed as provided in Title 17 Land Division, an applicant may utilize the following adjustments to avoid or minimize impacts to a WQR or HCA:

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

B. Variances

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

C. Residential Cluster Development

For residential proposals, development may be clustered, enabling the allowable density to be transferred on site so that land can be developed at allowed densities while avoiding or minimizing impacts to WQRs or HCAs. A residential cluster development may be permitted in any residential or mixed-use zoning district, subject to Type III review and approval by the Planning Commission.

1. Calculation of Permitted Number of Dwelling Units
 - a. The maximum number of dwelling units proposed for a residential cluster development shall not exceed the number of dwelling units otherwise permitted for the residential zoning district in which the parcel is located. The number of units allowed on a parent lot may be transferred to one or more newly created lots or parcels on the site. The cumulative density for all lots or parcels shall not exceed the density allowed for the parent lot.
 - b. The number of permitted dwelling units on a site shall be calculated in the following manner:
 - (1) Measure the gross area of the proposed cluster development site in acres and tenths of an acre.
 - (2) From the gross area, subtract the area of public streets, other publicly dedicated improvements, and common open space (whether or not it is conveyed pursuant to Subsection 19.402.14.C.2.c), measured in acres and tenths of an acre. The remainder shall be the net buildable area.
 - (3) Convert the net buildable area from acres to square feet, using the equivalency of 43,560 square feet = 1 acre.
 - (4) Divide the net buildable area by the smallest minimum lot size (in square feet) per unit for a dwelling unit permitted in the zoning district. This figure shall be rounded to the nearest lower number to establish the maximum number of dwelling units permitted in the cluster development.
2. Development Standards
 - a. All principal and accessory uses authorized in the underlying zoning district(s) shall be allowed in the cluster development. In addition, single-family attached dwellings, multi-family dwellings, and town houses may be permitted for a cluster development located in a residential zoning district that does not otherwise allow attached dwelling units.
 - b. Maximum lot coverage, building height, and off-street parking requirements for the applicable zoning district shall apply to the cluster development. Maximum lot coverage, floor area ratios, and off-street parking requirements shall be applied to the entire site rather than to any individual lot.
 - c. The following provisions shall apply to any residential cluster development, regardless of the general requirements of the applicable residential zoning district:
 - (1) Minimum lot width and lot depth standards shall not apply.
 - (2) A minimum separation of 10 feet shall be provided between all principal buildings and structures.
 - (3) A minimum yard or common open space shall be provided, with a minimum depth of 25 feet, as measured from all public streets and from the side and rear lot lines of the entire cluster development.
 - (4) Each lot shall provide at least 12 feet of frontage on a public street.
 - (5) More than one principal building or structure may be placed on a lot.
 - (6) Not less than 25 percent of the site shall be conveyed as common open space.

- (7) No less than 50 percent of the designated natural resources on the site shall be included in calculating the common open space.

3. Site Plan Requirements

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

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

4. Approval Criteria

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

19.402.15 Boundary Verification and Map Administration

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

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

¹ Primary Protected Water Features include: all perennial streams and streams draining greater than 100 acres, Title 3 wetlands, and natural lakes and springs. See Section 19.201 for the full definition.

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

³ Vegetated corridors in excess of 50 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.

⁴ Where the Protected Water Feature is confined by a ravine or gully, the top of ravine is the break in the > 25% slope.

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

⁶ Secondary Protected Water Features include intermittent streams draining 50 to 100 acres. See Section 19.201 for the full definition.

A. Boundary Verification

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

Agreement with the accuracy of the NR Administrative Map does not constitute or require a land use decision. However, for activities proposed within 100 feet of a wetland or its associated vegetated corridor, the boundary verification process outlined in Subsection 19.402.15.A.2.a(1)(b) must be followed to identify the specific location of wetlands on the subject property. The Planning Director may waive the requirement for official wetland delineation, depending on the specific circumstances of the site and the proposed activity. Such circumstances may include, but are not limited to, the scale and potential impacts of the proposed activity, the proximity of the proposed activity to the mapped resource, and

the Director's confidence in the accuracy of the NR Administrative Map relative to the resource in question.

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

1. Type I Boundary Verification

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

a. Simple Incongruities

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

- (1) A detailed property description and site plan of the property that includes all existing conditions information listed on the site plan checklist provided by the City.
- (2) A copy of the applicable NR Administrative Map section.
- (3) The latest available aerial photograph of the property, with lot lines shown, at a scale of at least 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) A documented demonstration of the misalignment between the NR Administrative Map and the property's tax lot boundary lines and/or the location of existing legally established development.
- (5) Any other factual information that the applicant wishes to provide to support boundary verification.

b. Legal Development Prior to Adoption Date

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

- (1) The information described in Subsection 19.402.15.A.1.a.
- (2) A summer 2002 aerial photograph of the property, with lot lines shown, at a scale of at least 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.
- (3) Any approved building permits or other development plans and drawings related to the development of the property that took place between summer 2002 and DATE, the effective date of Ordinance #____.
- (4) A clear explanation and documentation, such as supporting maps or drawings or a more recent aerial photograph, indicating the new development that has occurred and where previously identified habitat no longer exists because it is now part of a developed area.

2. Type II Boundary Verification

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

a. Corrections to WQRs

(1) Submittal Requirements

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

(a) Drainages

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

(b) Wetlands

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

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

(2) Approval Criteria for Corrections to WQRs

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

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

b. Detailed Verification of HCAs

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

(1) Submittal Requirements

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

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

(2) Approval Criteria for Corrections to HCAs

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

(a) Verify Boundaries of Inventoried Riparian Habitat

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

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

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

Table 19.402.15.A.2.b(2)(a)(iv) Method for Determining Classification of Riparian Areas			
Distance from Protected Water Feature	Development/Vegetation Status¹		
	Low structure vegetation or open soils²	Woody vegetation (shrub and scattered forest canopy)³	Forest Canopy (closed to open forest canopy)⁴
Surface Streams			
0'-50'	Class I ⁵	Class I	Class I
50'-100'	Class II ⁶	Class I	Class I
100'-150'	Class II ⁶ if slope>25%	Class II ⁶ if slope>25%	Class II ⁶
150'-200'	Class II ⁶ if slope>25%	Class II ⁶ if slope>25%	Class II ⁶ if slope>25%
Wetlands (Wetland feature itself is a Class I Riparian Area)			
0'-100'	Class II ⁶	Class I	Class I
100'-150'			Class II ⁵

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

Distance from Protected Water Feature	Development/Vegetation Status ¹		
	Low structure vegetation or open soils ²	Woody vegetation (shrub and scattered forest canopy) ³	Forest Canopy (closed to open forest canopy) ⁴
Flood Areas			
Within 300' of river or surface stream	Class I	Class I	Class I
More than 300' from river or surface stream	Class II ⁶	Class II ⁶	Class I
0'-100' from edge of flood area		Class II ^{6, 7}	Class II ⁶

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

² "Low structure vegetation or open soils" means areas that are part of a contiguous area 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.

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.

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.

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.

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

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

(b) Determine the Property's Urban Development Value

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

- (i) A property's urban development value designation shall be adjusted upward if the Metro 2040 Design Type designation for the property lot or parcel has changed from 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).

- (ii) 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.
 - (iii) 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) Cross-Reference Habitat Class with Urban Development Value

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

Table 19.402.15.A.2.b(2)(c) Method for Identifying Habitat Conservation Areas (HCAs)				
Fish & wildlife habitat classification	High Urban development value¹	Medium Urban development value²	Low Urban development value³	Other areas: Parks and Open Spaces, no design types outside UGB
Class I Riparian	HCA	HCA	HCA	HCA
Class II Riparian	HCA	HCA	HCA	HCA
Class A Upland Wildlife	No HCA	No HCA	No HCA	No HCA / HCA ⁴
Class B Upland Wildlife	No HCA	No HCA	No HCA	No HCA / HCA ⁴

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

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

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

³ Tertiary 2040 design type: Inner and outer neighborhoods, Corridors

⁴ All Class A and B upland wildlife habitat in publicly-owned parks and open spaces, 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 HCA.

(3) Notification to Metro and DLCD

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

B. Map Administration**1. Updates to the NR Administrative Map**

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

2. Mapping Implications of Allowed Disturbances**a. WQRs**

Permanent disturbances within a WQR, whether they occurred prior to the adoption of the City's zoning ordinance or are allowed according to the standards of Section 19.402, do not affect how the related WQRs are shown on the NR Administrative Map.

b. HCAs

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

3. Designation of Annexed Areas

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

Strikeout Amendments

COMPREHENSIVE PLAN

CHAPTER 3 — ENVIRONMENTAL AND NATURAL RESOURCES

OPEN SPACES, SCENIC AREAS, AND NATURAL RESOURCES ELEMENT

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

Background and Planning Concepts

The 1979 Comprehensive Plan designated several areas as “significant natural.” A comprehensive inventory of these areas had not been conducted at the time, however. ~~Part of the Periodic Review Process of the City's Comprehensive Plan requires the review of~~ In 1981, the State of Oregon adopted new Oregon Administrative Rules (OARS) regarding State Goal 5, Natural Resources, Open Space, Scenic and Historic Areas, and Open Spaces Resources, which was adopted in 1984. These rules require the City to inventory and evaluate resources, identify conflicts, prepare an Environmental, Social, Economic, and Energy (ESEE) analysis, and develop a program for resource protection.

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

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

The purpose of the natural resource section is to protect areas that are necessary to the long term health of the natural environment and community, such as fish and wildlife habitat areas, as well as ecological areas and open space. The intent of the policies is to protect these resources for their intrinsic value. The City recognizes that natural resources are limited and is committed to restricting inappropriate land uses and associated impacts such as erosion and resulting sedimentation that can irreparably damage wetland, riparian, and upland habitat areas. Therefore, in association with future development, conservation and restoration of the community's significant natural features will be encouraged for the enjoyment of City residents. The natural resource policies serve as constraints upon future development and define the parameters for determining where and how that development should occur.

Due to Milwaukie's physical setting and current level of development, few major natural resource features remain undisturbed and visible within the City. Areas along Kellogg Lake, parts of Kellogg Creek, some riparian areas along the Willamette River, the steep slopes south

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

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

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

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

OBJECTIVE #1 — OPEN SPACE

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

Within this plan, the term "open space" is intended to define and designate vacant land which will remain undeveloped in accordance with the Willamette Greenway Program, natural area designation, or other land use requirements. Open space includes those areas designated as Public will be designated on the Land Use Plan Map (Map 7) as Public Lands and as Water Quality Resource areas and Habitat Conservation Areas on the Natural Resources Areas Map (Map 5) as Natural Resources. Those areas designated Natural Resources include natural resource areas and State Recreational Trails. These areas will likely remain in private ownership, but the option remains for dedicating easements for public access in areas listed in Policy 3. Placement and methods of development will be regulated in these areas. Public open spaces include existing City-owned parks and City-owned lands in natural areas. Development in these areas would be subject to the Zoning Ordinance requirements for natural resources if in a natural area and/or the Parks and Recreation Master Plan, which guides park development

within the City. ~~Within this plan, open space is intended to define and designate vacant land which will remain undeveloped in accordance with the Willamette Greenway Program, natural area designation, or other land use requirements. In most instances, open space will remain in private ownership.~~

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

Policies

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

~~development and use of these lands so as to protect natural resource values and significant natural features in the community.~~

11. With the exception of the Kellogg Creek Sewage Treatment Plant and the land surrounding the plant, the City will designate as Public Lands those areas which are existing parks or publicly utilized areas, or City owned properties containing natural resource areas, and will assure that these areas are managed according to open space policies, natural resource policies, and parks and recreation policies, as appropriate. Areas designated Public Lands shall be identified on the Land Use Plan Map, Map 7.
12. The City will participate with the appropriate agencies in implementing the Elk Rock Island Natural Area Management Plan.

OBJECTIVE #2 — NATURAL RESOURCE AREAS

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

Planning Concepts

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

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

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

Policies

1. Protect designated natural resource areas and their associated values through preservation, intergovernmental coordination, conservation, mitigation, and acquisition of resources.
 - Notify and coordinate review of development proposals and plans within natural resource areas with affected State, local, and federal regulatory agencies.

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

Note: The City Council has adopted amendments (File #ZA-10-02) that reorganize the Zoning Code, effective on May 14, 2011. Those amendments include establishing Chapter 19.100 as "Introductory Provisions" and moving the Definitions to Section 19.201 within a new "Definitions and Measurements" chapter. A new Chapter 19.400 governs "Overlay Zones and Special Areas," including the Natural Resource regulations. Section 19.1001 establishes "General Provisions" for the review of land use applications, including expiration dates for approved applications. And Chapter 19.1100 addresses "Annexations and Boundary Changes." This "PC Hearing Draft 3-22-11" document reflects these changes.

MUNICIPAL CODE TITLE 19 ZONING

CHAPTER 19.100

INTRODUCTORY PROVISIONS

19.107 ZONING

19.107.1 Zone Classifications

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

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

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

19.108 SPECIAL AREAS

19.108.1 Special Area Classifications

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

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

19.108.2 Special Area Maps

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

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

19.108.3 Classification of Annexed Areas

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

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

19.108.4 Classification of Public Rights-of-Way

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

CHAPTER 19.200

DEFINITIONS AND MEASUREMENTS

19.201 DEFINITIONS

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

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

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

“Downed Tree” means any tree that is no longer standing upright as the result of natural forces and that has come to rest, whether leaning or completely down, within a protected water feature, a Water Quality Resource, or an HCA.

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

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

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

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

“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.

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

“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. For a downed tree, the trunk diameter

is measured at a point 24 inches along the trunk from the mean point at which the base of the trunk was flush with ground level when the tree was standing.

“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 Water Quality Resource Area as defined in ~~Tables 19.322.9.A and E~~ 19.402.15-1.

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

“Water Quality Resource (WQR) Areas” means a protected water feature(s) and the adjacent vegetated corridors and the adjacent water feature as established in ~~Chapter~~ Section 19.402. The following definitions relate to WQRs and HCAs 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; (2) minimizing impacts by limiting the degree or magnitude of the action and its implementation; (3) rectifying the impact by repairing, rehabilitating, or restoring the affected environment; (4) reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action by monitoring and taking appropriate measures; and/or (5) compensating for the impact by replacing or providing comparable substitute WQRs ~~Water Quality Resource Areas~~ or HCAs.

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

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

“Wetlands” means those areas inundated or saturated by surface or ground water at a frequency and duration sufficient to support and 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.

CHAPTER 19.400

OVERLAY ZONES AND SPECIAL AREAS

SECTIONS:

19.401 Willamette Greenway Zone WG

19.402 ~~Water Quality Regulations~~ Natural Resource Areas

19.402 Historic Preservation Overlay Zone HP

19.404 Mixed Use Overlay Zone MU

19.405 Aircraft Landing Facility L-F

19.402 ~~WATER QUALITY RESOURCE REGULATIONS~~ NATURAL RESOURCE AREAS

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

19.404 MIXED USE OVERLAY ZONE MU**19.404.10 Consistency with Underlying Zones**

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

C. ~~NR Zone~~ Natural Resource Areas

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

CHAPTER 19.900**LAND USE APPLICATIONS****19.901 INTRODUCTION**

**Table 19.901
Land Use Applications**

Application Type	Municipal Code Location	Review Types
Water quality <u>Natural Resource Review</u>	Section 19.402	I, II, III, IV

19.905 CONDITIONAL USES**19.905.4 Approval Criteria**

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

19.905.9 Standards Governing Conditional Uses

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

19.906 DEVELOPMENT REVIEW**19.906.4 Approval Criteria**

The criteria in this subsection are the approval criteria for Type I and Type II development review applications. The criteria are based on a review of development standards throughout Title 19 Zoning. Not all of the standards within the chapters listed below are applicable to a proposal, and the City will identify the applicable standards through the development review process. Though the criteria are the same for Type I and Type II development review, the standards evaluated in a Type I review will be clear and objective or require limited professional judgment, while the Type II review will involve discretionary standards and/or criteria.

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

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

19.908 EXTENSIONS TO EXPIRING APPROVALS**19.908.4 Approval Criteria**

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

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

CHAPTER 19.1000**REVIEW PROCEDURES****19.1001 GENERAL PROVISIONS****19.1001.7 Decisions****E. Expiration of Approved Decisions**

- 3. The following land use approvals are exempt from expiration:
 - a. Amendments to Comprehensive Plan maps or text; amendments to Titles 14, 17, or 19; or any other amendment to a land use regulation per Section 19.902.
 - b. Code interpretations and Director determinations per Section 19.903.
 - c. Annexations per Chapter 19.1100.
 - d. Boundary verification of designated natural resource areas per Subsection 19.402.

CHAPTER 19.1100**ANNEXATIONS AND BOUNDARY CHANGES****19.1104 EXPEDITED PROCESS****19.1104.1 Administration and Approval Process**

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

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

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

MUNICIPAL CODE (non-Planning titles)

REFERENCE UPDATES

The following amendments are also proposed to update references:

13.14.025.B:

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

16.28.020.C:

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

16.28.020:

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

18.04.150.F.2.d:

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

Clean Amendments

COMPREHENSIVE PLAN

CHAPTER 3 — ENVIRONMENTAL AND NATURAL RESOURCES

OPEN SPACES, SCENIC AREAS, AND NATURAL RESOURCES ELEMENT

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

Background and Planning Concepts

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

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

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

The purpose of the natural resource section is to protect areas that are necessary to the long term health of the natural environment and community, such as fish and wildlife habitat areas, as well as ecological areas and open space. The intent of the policies is to protect these resources for their intrinsic value. The City recognizes that natural resources are limited and is committed to restricting inappropriate land uses and associated impacts such as erosion and resulting sedimentation that can irreparably damage wetland, riparian, and upland habitat areas. Therefore, in association with future development, conservation and restoration of the community's significant natural features will be encouraged for the enjoyment of City residents. The natural resource policies serve as constraints upon future development and define the parameters for determining where and how that development should occur.

Due to Milwaukie's physical setting and current level of development, few major natural resource features remain undisturbed and visible within the City. Areas along Kellogg Lake, parts of Kellogg Creek, some riparian areas along the Willamette River, the steep slopes south of Lake Road, small bands of riparian vegetation along Johnson Creek, parts of Spring Creek, and other scattered wetland and upland resources have sufficient natural vegetation to allow the natural processes of habitat development and vegetative successional stages to occur. In

addition, Elk Rock Island, although not within Milwaukie, but owned by the City of Portland, offers good wildlife habitat due to its sufficient ground cover and its proximity to the Willamette River. Active fish habitat exists within the City in the Willamette River, Kellogg Creek, and Johnson Creek. These waterways contain anadromous fish species.

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

OBJECTIVE #1 — OPEN SPACE

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

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

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

Policies

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

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

OBJECTIVE #2 — NATURAL RESOURCE AREAS

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

Planning Concepts

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

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

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

Policies

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

NOTE: The City Council has adopted amendments (File #ZA-10-02) that reorganize the Zoning Code, effective on May 14, 2011. Those amendments include establishing Chapter 19.100 as "Introductory Provisions" and moving the Definitions to Section 19.201 within a new "Definitions and Measurements" chapter. A new Chapter 19.400 governs "Overlay Zones and Special Areas," including the Natural Resource regulations. Section 19.1001 establishes "General Provisions" for the review of land use applications, including expiration dates for approved applications. And Chapter 19.1100 addresses "Annexations and Boundary Changes." This "PC Hearing Draft 3-22-11" document reflects these changes.

MUNICIPAL CODE TITLE 19 ZONING

CHAPTER 19.100

INTRODUCTORY PROVISIONS

19.107 ZONING

19.107.1 Zone Classifications

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

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

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

19.108 SPECIAL AREAS

19.108.1 Special Area Classifications

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

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

19.108.2 Special Area Maps

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

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

19.108.3 Classification of Annexed Areas

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

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

19.108.4 Classification of Public Rights-of-Way

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

CHAPTER 19.200

DEFINITIONS AND MEASUREMENTS

19.201 DEFINITIONS

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

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

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

“Downed Tree” means any tree that is no longer standing upright as the result of natural forces and that has come to rest, whether leaning or completely down, within a protected water feature, a Water Quality Resource, or an HCA.

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

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

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

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

“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.

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

“Tree” means a 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. For a downed tree, the trunk diameter

is measured at a point 24 inches along the trunk from the mean point at which the base of the trunk was flush with ground level when the tree was standing.

“Vegetated corridor” means the area of setback between the top of the bank of a protected water feature or the edge of a delineated wetland and the edge of the Water Quality Resource as defined in Table 19.402.15-1.

“Water quality and floodplain management area” means the area that identifies where the Water Quality Resource and floodplain management area overlay zone is applied.

“Water Quality Resource (WQR)” means a protected water feature(s) and the adjacent vegetated corridors as established in Section 19.402. The following definitions relate to WQRs and HCAs in particular:

“Mitigation” means the reduction of adverse effects 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; (2) minimizing impacts by limiting the degree or magnitude of the action and its implementation; (3) rectifying the impact by repairing, rehabilitating, or restoring the affected environment; (4) reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action by monitoring and taking appropriate measures; and/or (5) compensating for the impact by replacing or providing comparable substitute WQRs or HCAs.

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

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

“Wetlands” means those areas inundated or saturated by surface or ground water at a frequency and duration sufficient to support and 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.

CHAPTER 19.400

OVERLAY ZONES AND SPECIAL AREAS

SECTIONS:

19.401 Willamette Greenway Zone WG

19.402 Natural Resource Areas

19.402 Historic Preservation Overlay Zone HP

19.404 Mixed Use Overlay Zone MU

19.405 Aircraft Landing Facility L-F

19.402 NATURAL RESOURCE AREAS

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

19.404 MIXED USE OVERLAY ZONE MU**19.404.10 Consistency with Underlying Zones**

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

C. Natural Resource Areas

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

CHAPTER 19.900**LAND USE APPLICATIONS****19.901 INTRODUCTION**

**Table 19.901
Land Use Applications**

Application Type	Municipal Code Location	Review Types
Natural Resource Review	Section 19.402	I, II, III, IV

19.905 CONDITIONAL USES**19.905.4 Approval Criteria**

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

19.905.9 Standards Governing Conditional Uses

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

19.906 DEVELOPMENT REVIEW**19.906.4 Approval Criteria**

The criteria in this subsection are the approval criteria for Type I and Type II development review applications. The criteria are based on a review of development standards throughout Title 19 Zoning. Not all of the standards within the chapters listed below are applicable to a proposal, and the City will identify the applicable standards through the development review process. Though the criteria are the same for Type I and Type II development review, the standards evaluated in a Type I review will be clear and objective or require limited professional judgment, while the Type II review will involve discretionary standards and/or criteria.

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

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

19.908 EXTENSIONS TO EXPIRING APPROVALS**19.908.4 Approval Criteria**

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

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

CHAPTER 19.1000**REVIEW PROCEDURES****19.1001 GENERAL PROVISIONS****19.1001.7 Decisions****E. Expiration of Approved Decisions**

- 3. The following land use approvals are exempt from expiration:
 - a. Amendments to Comprehensive Plan maps or text; amendments to Titles 14, 17, or 19; or any other amendment to a land use regulation per Section 19.902.
 - b. Code interpretations and Director determinations per Section 19.903.
 - c. Annexations per Chapter 19.1100.
 - d. Boundary verification of designated natural resource areas per Subsection 19.402.

CHAPTER 19.1100**ANNEXATIONS AND BOUNDARY CHANGES****19.1104 EXPEDITED PROCESS****19.1104.1 Administration and Approval Process**

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

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

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

MUNICIPAL CODE (non-Planning titles)

REFERENCE UPDATES

The following amendments are also proposed to update references:

13.14.025.B:

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

16.28.020.C:

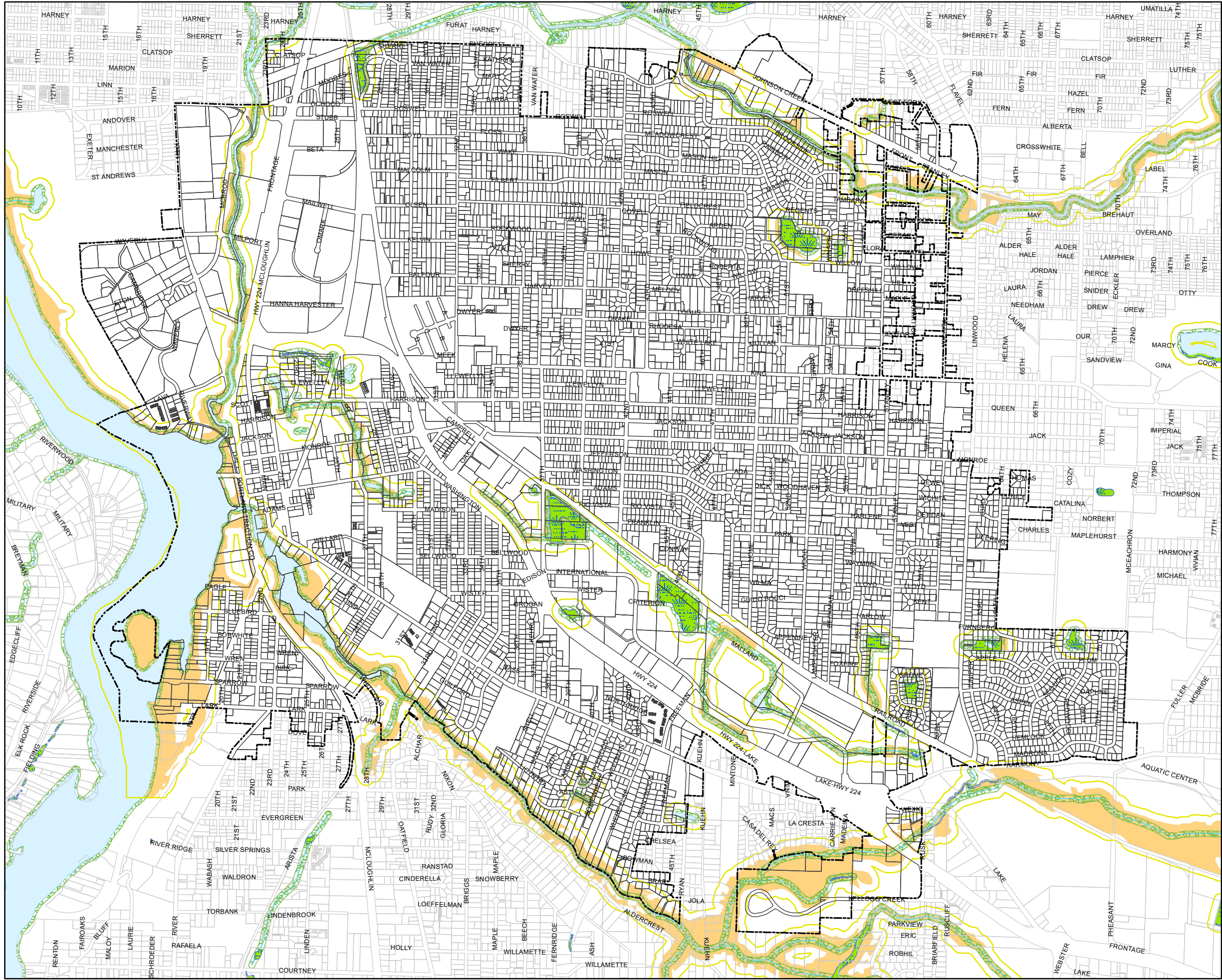
3. For any lot including natural resources regulated by Milwaukie Zoning Ordinance Section 19.402 Natural Resource Areas, an erosion control permit shall be required prior to placement of fill, site clearing, or land disturbances, including but not limited to grubbing, clearing or removal of ground vegetation,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

16.28.020:

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

18.04.150.F.2.d:

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



City of Milwaukie Natural Resource (NR) Map

Administrative Map

(Last updated Month Day, Year)

Legend

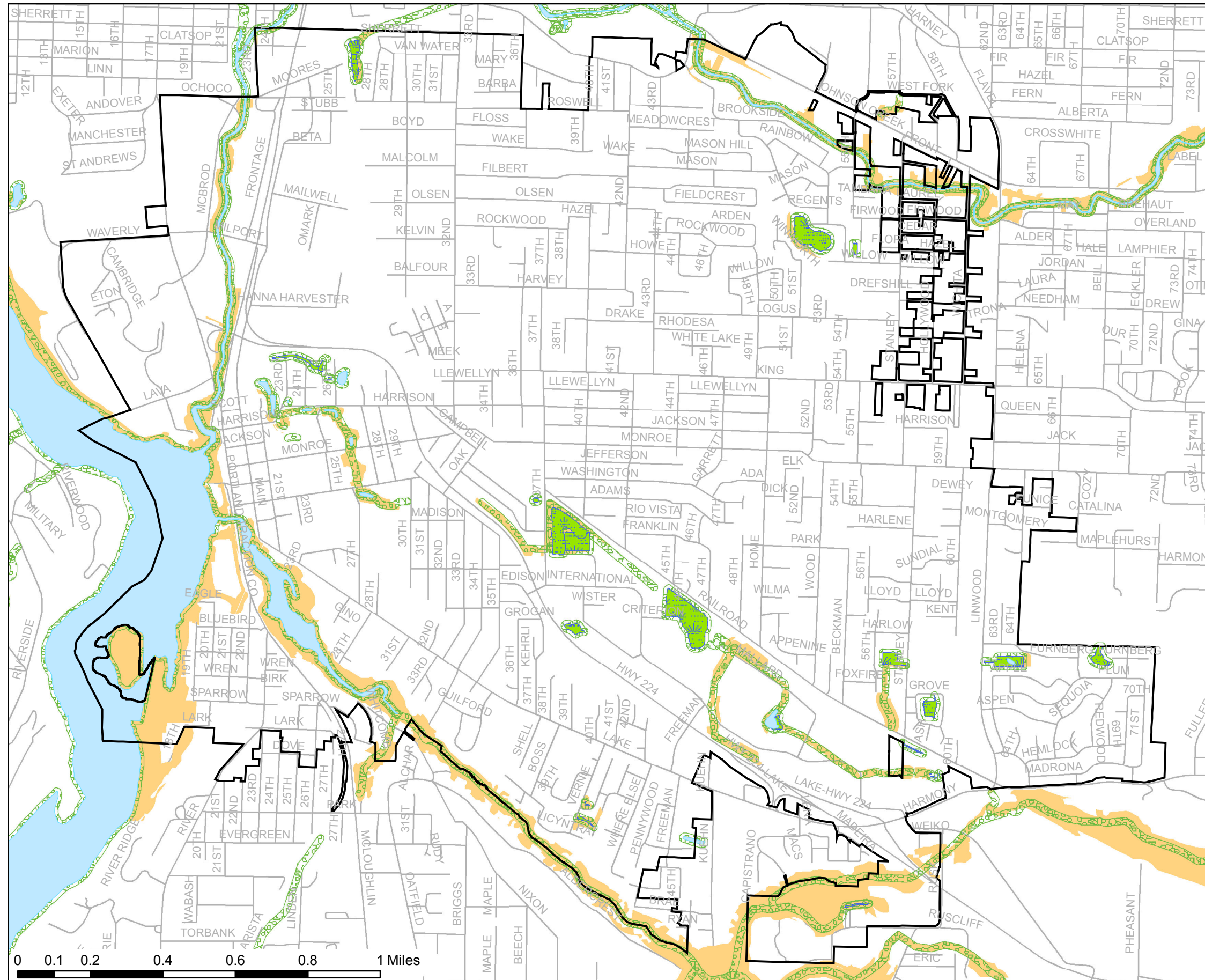
-  City Boundary
-  100-ft Compliance Line
-  Habitat Conservation Areas
- Water Quality Resource Areas**
-  Rivers, Streams, and Ponds
-  Wetlands
-  Vegetated Corridor



Adopted by reference with Ord. XXXX
Month Day, Year

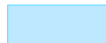
Data Sources: City of Milwaukie GIS
Clackamas County GIS
Metro Data Resource Center





NATURAL RESOURCE AREAS

Milwaukie Comprehensive Plan
Map 5

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



Adopted Ord. XXXX Month Day, Year

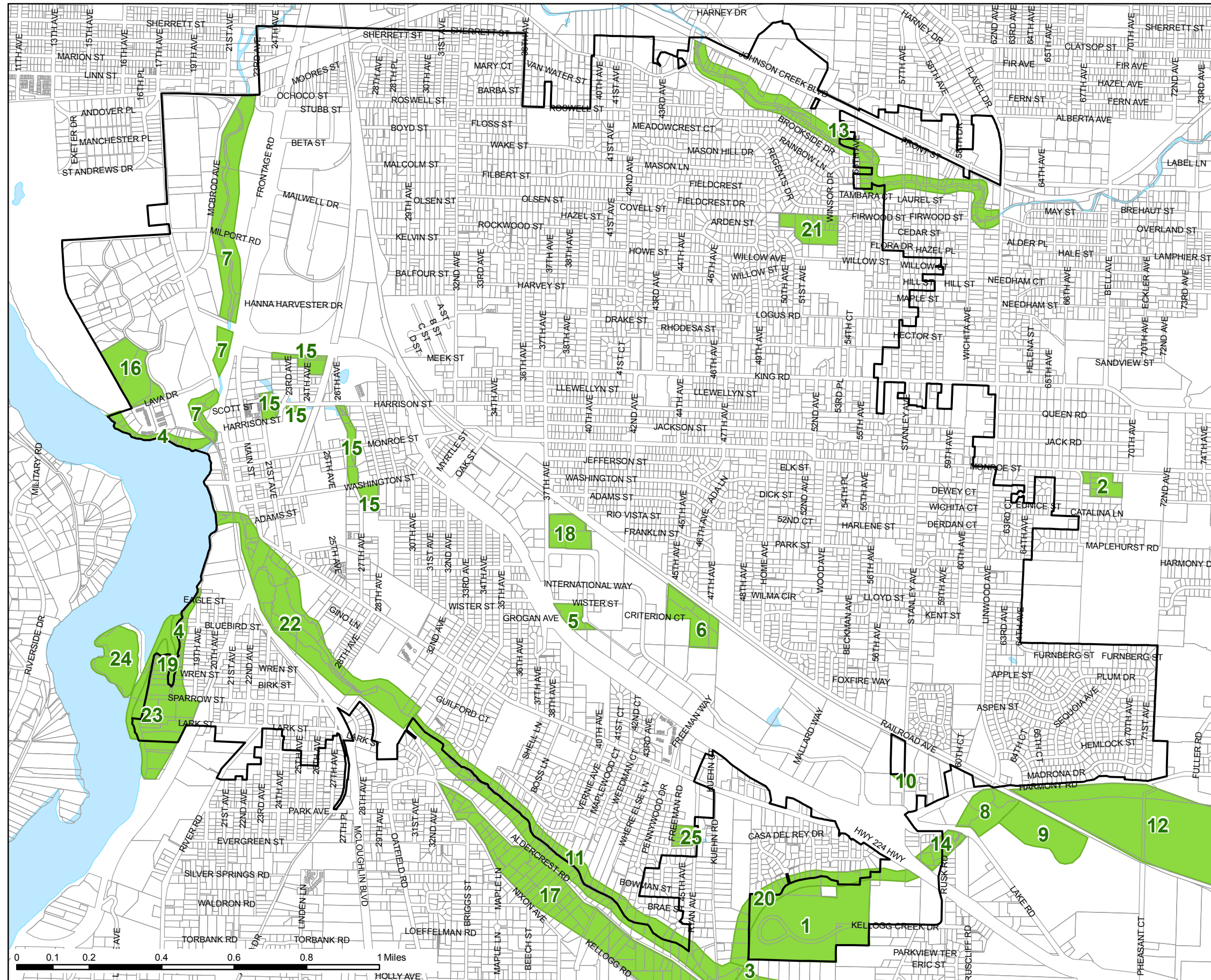
Data Sources: City of Milwaukie GIS
Clackamas County GIS
Metro Data Resource Center



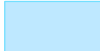


0 0.1 0.2 0.4 0.6 0.8 1 Miles

NATURAL RESOURCE SITES

Appendix 2 Map



-  Natural Resource Site
-  City Boundary
-  Water Body



Adopted Ord. 1666 November 7, 1989
Revised Ord. XXXX Monday Day, Year
(Moved to Appendix 2)

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



Note: The City Council has adopted amendments (File #ZA-10-02) that reorganize the Zoning Code, effective on May 14, 2011. Those amendments renumber the Water Quality Resource regulations from Section 19.322 to Section 19.402. This "PC Hearing Draft 3-22-11" document reflects this change.

Commentary

19.402 NATURAL RESOURCE REGULATIONS

The City is proposing to repeal the current Milwaukie Municipal Code (MMC) Section 19.402 ("Water Quality Resource Regulations") and replace it with a new, expanded section that regulates water quality resources as well as other natural resource areas. This would ensure that the City's municipal code is compliant with Statewide Land Use Planning Goals 5 and 6 and Titles 3 and 13 of the Metro Urban Growth Management Functional Plan (UGMFP).

Statewide Goal 6 ("Air, Water, and Land Resources Quality") and Metro Title 3 ("Water Quality, Flood Management, and Fish and Wildlife Conservation") focus on protecting water quality resources such as streams, wetlands, and adjacent buffer areas by regulating activities that take place in or near those resources.

Statewide Goal 5 ("Natural Resources, Scenic and Historic Areas, and Open Spaces") and Metro Title 13 ("Nature in Neighborhoods") are concerned with protecting and enhancing fish and wildlife habitat along stream corridors and improving connections with upland habitat areas.

19.402.1 Intent

- A-D. The purpose of the Natural Resource (NR) regulations is to protect designated natural resources and encourage their restoration. Section 19.402 makes the City's code compliant with applicable state and regional rules governing natural resources.
- E. This subsection explains that, as long as no new development is proposed, the regulations do not require property owners to restore designated natural resource areas or prevent them from maintaining existing conditions such as landscaping. However, new activity that impacts the resource area may trigger the requirements of this subsection.
- F. Situations that become nonconforming as a result of the code amendment will not be required to come into conformance by any particular date, though they will be subject to the nonconforming standards of Chapter 19.800 if any expansion of the nonconformity is proposed.
- G. This subsection introduces the Natural Resource (NR) Administrative Map as a tool incorporated into the code by reference rather than something that is part of the official zoning map. This distinction is intended to make it possible to correct or adjust the map over time without needing a formal Zoning Map Amendment or "zone change."
- H. This subsection introduces the "Milwaukie Native Plant List" as a document maintained by the Planning Director. At present, the Planning Director is using the City of

Portland's native plant list (updated in July 2010) as the Milwaukie Native Plant List (<http://www.portlandonline.com/bps/index.cfm?c=45131>). The Portland list includes native plants that are recommended for use in this region as well as non-native plants that should be removed according to the degree of nuisance they present. The plant list is referenced in the code but can be updated without requiring a formal code amendment.

- I. The "Milwaukie Chemicals of Concern" list is referenced in the code as a tool for tracking chemicals that are known to be harmful to water quality and habitat health. As noted in the Prohibitions section (19.402.5), chemicals on this list may not be applied within designated natural resource areas.

19.402.2 Coordination with Other Regulations

This subsection lists other regulations and agencies that may apply or have jurisdiction over projects near water bodies and wetlands.

The Willamette Greenway overlay (Section 19.401) establishes a 25-ft vegetation buffer along the river but also provides protection for existing views and view corridors between the river and downtown Milwaukie. Because Section 19.402 generally aims to preserve vegetation, there is some inherent conflict in these two code sections. The language in this subsection makes it clear that the NR code's protections of vegetation supersede all of the Willamette Greenway regulations except where view corridors are concerned.

19.402.3 Applicability

- A-B. Water Quality Resources (WQRs) and Habitat Conservation Areas (HCAs) are shown on the NR Administrative Map. The NR Administrative Map provides the basis for determining whether or not Section 19.402 applies to a particular property. Subsection 19.402.15 provides mechanisms for verifying the resource boundary and for correcting the map if someone believes it is inaccurate. Agreement with the resource boundaries shown on the NR Administrative Map does not constitute or require a land use application.

WQRs are determined according to Table 19.402.15, which establishes vegetated corridors alongside or around protected water features such as streams and wetlands. The NR Administrative Map is intended to be a general indicator of the location of these WQRs; field measurements that cross reference the table are what will determine specific locations. For HCAs, the NR Administrative Map is intended to show the actual location of the resource, based on the most recent aerial photographs and the data available from Metro's original resource inventory.

- C. The NR code applies to properties that contain a designated natural resource area, particularly to certain activities proposed to take place within the resource area. If a particular activity is proposed within 100 ft of a resource area, a construction management plan may be required.

D-E. Activities on properties that do not contain a designated natural resource area but that are adjacent to one can still have an impact on the resource. The requirement to provide a construction management plan applies to activities within 100 ft of a resource area that will disturb more than 150 sq ft.

Activities that occur more than 100 ft from a resource area are not subject to Section 19.402.

G. Table 19.402.3 summarizes when the NR regulations apply, including when a construction management plan is required. For properties that do not contain a designated natural resource area, providing a construction management plan is the most that will be required.

H-I. Table 19.402.3.K indicates what levels of review are needed for various activities. Projects that require Type III review (public hearing with the Planning Commission) are required to have a pre-application conference with staff.

19.402.4 Exempt Activities

This subsection lists the activities that are not subject to Section 19.402, even if some of those activities may require another type of development permit. Some activities are completely exempt within both WQRs and HCAs (Subsection A). Other activities may require only a Construction Management Plan if they disturb more than 150 sq ft—these limited exemptions are grouped by whether they apply within both WQRs and HCAs (Subsection B-1) or only within HCAs (Subsection B-2).

Key exemptions include:

A.3 The NR code encourages the planting of native species and restoration of natural areas.

A.5 Tree removal is allowed under specific circumstances, including emergency situations and removal of a limited number of "nuisance" or "prohibited" trees. Trees that are already downed can be removed without further review, as long as no earth disturbance will be involved in the removal.

B.1.a In general, normal landscaping activities and the maintenance of existing landscaping features are allowed outright within designated resource areas. However, any landscaping activity that involves more than 150 sq ft of disturbance will require a Construction Management Plan.

B.1.b The NR code encourages the removal of plants listed as "nuisance" or "required eradication" species on the City's Native Plant List. However, this exemption does not allow existing native vegetation to be removed and replaced by conventional landscaping. Removal of vegetation with handheld tools is exempt from the requirement to submit a Construction Management Plan.

- B.1.e Existing structures can be maintained, repaired, and replaced as long as there is no change in the area of disturbance within the resource area.

19.402.5 Prohibited Activities

The revised list of prohibited activities remains short and very similar to the existing list, with the following exceptions:

- C. The planting of vegetation listed as “nuisance” or “required eradication” species on the Milwaukie Native Plant List is not allowed within designated resource areas. Property owners are allowed to maintain existing landscaping arrangements; new plantings within WQRs or HCAs are not required to be native species but must not be nuisance species.
- E. Application of chemicals that are known to be harmful to water quality and habitat health is not allowed within WQRs and HCAs. This prohibition echoes a 2004 federal court ruling about the application of certain chemicals within 60 ft of fish-bearing streams. The “Chemicals of Concern” List will be updated on an ongoing basis to reflect the latest understanding of the pesticides and other chemical-based products that can damage the resource areas that Section 19.402 aims to protect.

19.402.6 Activities Permitted Under Type I Review

Type I review is the most basic level of review for land use applications. Proposals are evaluated by staff against clear and objective criteria—either a proposal meets the standards or it does not (see Subsection 19.1004). Type I applications do not require a public hearing or public notice.

- A. Review of construction management plans and the boundary verification process will be handled with Type I review.
- B. Most proposals for tree removal that do not qualify as exempt will be processed with Type I review. These scenarios include trees that present an eventual hazard to people or property (but not an immediate emergency), trees that can be shown to be diseased or dying, and “nuisance” or “required eradication” trees (4 or more). Significant pruning, defined as removal of more than 20% of the tree canopy or more than 10% of the root system, also requires Type I review. Trees that are approved for removal through the Type I process must be replaced on a one-to-one basis.
- C. Projects that can meet the standards established in Subsection 19.402.11.D for HCAs can be handled with the Type I process. This allowance does not extend to disturbance of WQRs, which usually requires more extensive analysis of impacts and Type III review by the Planning Commission.
- D. Activities in accordance with an approved natural resource management plan are exempt from the NR code. However, natural resource management plans themselves need some level of review for approval. Natural resource management plans can be approved with Type I review if they have been prepared by a qualified agency. This is a change from existing policy, which requires Planning Commission review to approve a

management plan. The proposed rules recognize that a plan prepared in accordance with a qualified agency's standards should be presumed to be adequate to protect the resource.

19.402.7 Activities Permitted Under Type II Review

Type II applications are evaluated by staff against clear criteria with limited discretion, and an approval may be accompanied by conditions. In the Type II process, the City mails a "tentative decision" to property owners and residents within 300 ft of the site (see Subsection 19.1005). No public hearing is required, but those receiving notice have two weeks to comment on the decision before it becomes final.

- A. Several "special uses" can be reviewed through a Type II process if they meet the standards in Subsection 19.402.11.E. These special uses include new public or private utility facilities (sewer, water, electricity, gas, etc.), improvement of existing utility facilities, new stormwater pre-treatment facilities, stormwater management plans, and pedestrian and bike paths. The current policy requires that many of these activities go through Type III review, which is excessive for approving what are often basic infrastructure items. In the proposed code, if the use cannot meet the standards of Subsection 19.402.11.E it will require Type III review by the Planning Commission.
- B. Natural resource management plans that do not meet the standards for Type I review will be processed as Type II applications.
- C. Current WQR policy requires all partitions involving WQRs to undergo Type III review. However, partitions usually require only Type II review. The proposed code acknowledges that if a partition can be done in such a way that most or all of the resource area (WQR area and/or HCA) is placed in a separate, unbuildable tract, the resulting protection is sufficient to allow such a "low-impact" partition to undergo Type II review.
- D. Certain activities that result in very limited disturbance to WQRs can be reviewed through the Type II process. These activities include farming practices or landscaping activities that result in some direct stormwater discharge, or alteration or expansion of existing buildings that disturbs a limited portion of the WQR area. These activities must meet the discretionary criteria of Subsection 19.402.12 (including the requirement to provide an evaluation of potential impacts and analysis of alternatives).

19.402.8 Activities Permitted Under Type III Review

Type III review (sometimes referred to as "minor quasi-judicial" review) is a higher level of review that involves a public hearing and decision by the Planning Commission (see Subsection 19.1006).

Unless an activity is prohibited or otherwise classified for Type I or Type II review, it is most likely subject to Type III review. This includes new development that will disturb

HCAAs and cannot meet the non-discretionary standards provided in Subsection 19.402.11.D. It includes subdivisions as well as partitions that do not qualify as "low-impact" partitions as outlined in Subsection 19.402.13.G.

19.402.9 Construction Management Plans

Construction management plans are an important tool for ensuring that resource areas are adequately protected from impacts that might result from development and other activities. Construction management plans are subject to Type I review.

- B. Construction management plans should provide specific details about how work will be conducted on the site, including much of the same information required on a standard erosion control plan. The threshold for requiring a construction management plan (150 sq ft of disturbance) is less than that for requiring an erosion control plan (500 sq ft), so the construction management plan will ensure that adequate erosion control measures are in place for any significant activity near a resource area. For larger-scale projects, the standard erosion control plan can be modified to serve as an approvable construction management plan.

19.402.10 Natural Resource Management Plans

The City wants to encourage property owners and land managers who are interested in restoring and enhancing WQRs and HCAAs to develop natural resource management plans as a guide for their activities. An approved management plan will provide a blanket approval for what would otherwise be processed as separate activities for tree removal, earth disturbance, etc. The revised code will make it easier to do a natural resource management plan by amending the current policy, which requires Planning Commission review to approve the plan.

- A. The City will approve natural resource plans through Type I review if they have already been approved by any one of several agencies acknowledged to have the necessary expertise.
- B. Management plans that have not already been approved by an acknowledged agency but that have otherwise been prepared in accordance with the standards set by the Oregon Watershed Enhancement Board, Oregon Department of Fish and Wildlife, or Oregon Division of State Lands can be processed with Type II review.
- E-F. To ensure that restoration and enhancement activities are genuinely based on a long-term effort, management plans must demonstrate that ongoing maintenance is part of the project. And to ensure that the plans are updated and adapt to changing conditions, they must be renewed after five years unless otherwise specified.

19.402.11 Development Standards

The development standards provided in the current WQR code are narrowly focused on protecting habitat during construction. The revised code re-organizes and expands this subsection to include mitigation requirements for WQRs and HCAAs. It also provides the

non-discretionary standards for HCA disturbance that are an integral part of the Nature in Neighborhoods program.

- A. This subsection is home to what are listed in the current WQR code as “development standards,” practices aimed at protecting resource areas throughout the development process.
- B. This subsection provides general requirements for mitigating disturbances to resource areas. The revised code makes a distinction between temporary and permanent disturbances, though both must be mitigated and both must be counted when calculating the maximum disturbance area for HCAs.
- C. In the revised code, Table 19.402.11.C in the revised code is a modified version of Table 19.402.9.E in the current WQR code, which includes several redundancies and could be clearer. One significant change is that the mitigation requirements now clearly apply to the entire WQR area on the project site and not just the area disturbed by development. The reasoning is that areas that are temporarily disturbed will obviously need to be replanted and restored, while areas that are permanently disturbed (e.g., removed to accommodate a new structure) cannot be restored but instead must be mitigated for elsewhere on the site. The current table does not make this requirement clear.
- D. One difference between the protections for WQRs and those for HCAs is that the revised code allows for some limited disturbance of the HCA. This subsection provides a method for calculating allowable HCA disturbance and establishes requirements for mitigation that can be approved with Type I review.
 - D.1. For single-family residential projects, the allowed disturbance area is 50% of the HCA or 5000 sq ft, whichever is less. For all other uses (multi-family residential, commercial, industrial, etc.), the limit is 10% of the HCA. Projects that cannot meet these standards must go through the Type III review process by the Planning Commission and must provide an evaluation of impacts and analysis of alternatives to make the case for disturbing more of the HCA.
 - D.2. Mitigation for disturbance to an HCA is required, with two options that involve planting trees and shrubs: (1) replace trees in proportion to the diameters of those that are removed, or 2) plant trees in proportion to the total area of disturbance. The developer must choose whichever formula results in more new trees.

The mitigation standards apply only to trees removed in development scenarios. They do not apply to the tree removal that is exempt from review (Subsection 19.402.4.A), to tree removal that meets the Type I criteria outlined in Subsection 19.402.6.B, or to tree removal involved with an approved natural resource management plan. Exempt tree removal does not require any tree replacement, Type I tree removal requires replacement on a one-to-one basis, and natural

resource management plans outline a regimen of removal and replacement that is unique to each particular situation.

E. Standards for Special Uses

This subsection provides specific review standards for the "special uses" outlined in Subsection 19.402.7.A. If they can meet the standards provided in Subsection 19.402.11.E, those special uses can be approved with Type II review; otherwise, they require Type III review and are subject to the general discretionary review criteria provided in Subsection 19.402.12.

19.402.12 General Discretionary Review

When a proposed activity requires Type III review, or when there are no specific review standards provided elsewhere in the code (such as for the activities listed in Subsection 19.402.7.D), the activity is subject to the discretionary development standards of this subsection.

- A. The primary item for consideration is a professionally prepared report that evaluates impacts and analyzes alternatives. This subsection provides a detailed outline of the information that should be in that report.
- B. In determining whether the proposed disturbance is allowable, an applicant must demonstrate how the project follows three fundamental principles: (1) avoid disturbing the resource area, (2) when disturbance is unavoidable, minimize the impacts, and (3) mitigate for any disturbance by replanting and restoring the resource area. These three principles are the criteria by which each project is judged when discretionary review is required.
- C. When a project proposes to disturb an HCA and cannot meet the non-discretionary standards for allowable disturbance and/or for mitigation as provided in Subsection 19.402.11.D, it may request permission to increase the disturbed area and/or to vary the number and/or size of required plantings.

19.402.13 Land Division and Property Line Adjustments

When new lots are created or property lines are moved on sites that include designated natural resource areas, it is important to consider how the resource areas are distributed among the properties and whether it is possible to put all or most of the resource in a separate tract to minimize the potential for disturbance. Lot consolidation, which combines separate properties into a single unit of land, does not present the same potential for redistribution of the resource.

- C. Platting new parcels or lots is more a matter of paperwork than actual earth-disturbing activity, but the act of drawing new boundary lines on a property can impact designated resource areas by determining how future development could occur. Since public improvements (streets, curb and gutter, sidewalks) are usually required to be constructed as part of the final plat process, it is important to ensure that any

designated resources will be adequately protected and any disturbance will be mitigated during the land division process.

- D. Applicants have the option of mitigating for future impacts from development either at the time of land division or when the future development happens.
- E. Property line adjustments (PLAs) are normally processed with Type I review. PLAs do not create new lots and do not usually offer an opportunity to establish a separate tract for the resource area. But shifting the boundary between two adjacent properties can affect the distribution of a designated resource area and therefore could increase the potential for disturbance of the resource.

The current WQR code does not set an allowable amount of disturbance for WQRs like the revised code does for HCAs. When a partition or subdivision involves a WQR area, either the entire resource is placed in a separate, unbuildable tract or the required impact evaluation report must explain how the proposed lot configuration represents the best alternative. When a PLA involves the redistribution of a WQR area, the revised code requires some level of additional review.

PLAs involving the redistribution of HCAs can be processed with Type I review if they maintain no more than a 30-point difference in the percentage of HCA on each property. If a previous land division allowed a difference greater than 30 percentage points and the proposed PLA will not increase that difference, the PLA can proceed with Type I review. Otherwise, the PLA is subject to Type II review.

- F. Replats are a type of land division that reconfigures parcels or lots that were created by partition or subdivision in the past. Depending on the number of lots that will result from a proposed replat, it will be similar in scale to either a partition or a subdivision and will be treated as such by the revised code.
- G. Under the existing WQR code, all partitions involving WQRs require Type III review. The revised code establishes a category of "low-impact" partitions, in which most or all of the resource area is placed in a separate, unbuildable tract. Low impact partitions can be reviewed with the Type II process, which is the level of review partitions normally receive.
- H. Partitions that do not meet the "low-impact" standards will be reviewed through the Type III process and encouraged to produce the smallest practicable difference in the percentage of HCA distributed across the new parcels. When WQRs are involved, an impact evaluation and alternatives analysis must also be conducted to demonstrate the least possible impact on the resource.
- I. Subdivisions involving WQRs or HCAs will be required to place most or all of the resource in a separate, unbuildable tract. If a proposal cannot meet that standard, then the applicant must demonstrate that there will be adequate buildable areas outside the resource areas and must conduct an impact evaluation and alternatives analysis to demonstrate the least possible impact on the resource.

- J. When new lots are created, it is preferable to place any affected natural resource area within an unbuildable tract, to separate the resource from potential future development areas. To ensure the best possible management over the long term, the revised code discourages common ownership of the tract because experience has shown that ownership by a private individual or public or private agency or organization results in more attentive and hands-on stewardship of the resource. Furthermore, the boundaries of the tract must be flagged or otherwise marked to clearly distinguish it from adjacent properties.

19.402.14 Adjustments and Variances

The current WQR code provides a platform for requesting a variance from the WQR rules. The revised code expands this subsection to include adjustments and outlines a specific allowance for cluster development.

- A. The revised code allows adjustments to certain standards as an incentive for applicants to avoid or at least minimize a project's impacts on a designated natural resource area. There are adjustments to particular base zone standards as well as to specific lot design standards. These adjustments are available by right, without needing any special approval. No adjustment may be used by an applicant to avoid the requirements to verify the resource boundary and provide a construction management plan.

The two adjustments allowed to base zone standards are a 10% reduction in required yard setbacks and a reduction of the rear yard setback to 10 feet. These allowances do not extend to the additional setbacks required for community service uses or conditional uses. Nor do they extend to the additional setbacks required along certain major streets or to front yard setbacks that may have already been adjusted because of adjacent nonconforming yard situations.

When new lots are created or property boundaries change, the required lot dimensions (width and/or depth) may be adjusted by up to 10% of the original standard. The lot frontage on a public street may also be reduced by up to 10%.

- B. Requests to deviate from particular standards require a standard variance request (Section 19.911). The revised code will allow an applicant to use economic hardship as a justification for the variance request, an argument that is not usually admissible in a standard variance application.
- C. In residential development scenarios, "clustering" enables an applicant to develop a property to its normal density while concentrating the dwelling units in such a way that avoids or minimizes impacts to the designated resource. At least 50% of the resource area must be set aside in a common open space, but the whole resource area may be factored into the calculation of the maximum number of dwelling units allowed.

This clustering allowance requires Type III review and the submittal of an impact evaluation and alternatives analysis and gives the Planning Commission an opportunity

to consider creative design options without requiring the applicant to meet the less flexible variance criteria. At the Planning Commission's discretion, cluster developments may be allowed to incorporate housing types that would not otherwise be permitted in the base zone.

19.402.15 Boundary Verification and Map Administration

The Natural Resource (NR) Administrative Map serves as a baseline indicator of the location of designated natural resource areas. The NR Administrative Map will be used as the first step to determining whether the standards of Section 19.402 apply to a particular property.

- A. The methods for establishing WQRs and HCAs are different, so the means of verifying the boundaries of each are different.

The NR Administrative Map shows the approximate location of WQRs, which can be more accurately measured in the field as needed. In the case of streams and creeks, the 50-ft vegetated corridor that comprises the bulk of the WQR area can be measured fairly simply from the top of the bank. In the case of wetlands, an official delineation may be required. The degree of detail necessary will depend largely on the specifics of the site and the proposed activity.

The NR Administrative Map shows the actual location of HCAs, based on the best information available. However, the scale of the original, region-wide inventory of resources is such that property owners may wish to propose small corrections to remove existing structures or paved areas. Such corrections can be handled through the Type I review process (Subsection A-1). For more detailed verification of the location of wetlands or other WQRs, or if a property owner wishes to challenge the validity of a particular HCA designation, a more thorough assessment and Type II review will be necessary (Subsection A-2).

- B. The revised code will change how the City administers and maintains the NR Administrative Map, allowing it to be updated and corrected more easily than is currently possible. The existing WQR policy requires a zoning map amendment and major quasi-judicial review by both Planning Commission and the City Council, even for simple corrections. In practice, this onerous review process has resulted in the City not keeping the map current, even when, for example, an application provides a wetland delineation approved by DSL. The revised code establishes the NR Administrative Map as an administrative tool that can be updated by staff as specific proposals are presented and particular boundaries are verified.

Subsection 19.402.14.B.3 notes that, when land with a Clackamas County designation of WQR or HCA annexes to the City, the same designation is carried over to the City's NR Administrative Map. More specific verification of resource boundaries will occur in accordance with Subsection 19.402.14.A in conjunction with new proposed activities.

Commentary

City of Milwaukie Comprehensive Plan

Chapter 3 — Environmental and Natural Resources

The proposed amendments to the Comprehensive Plan affect limited sections of the Plan and are intended to refine the City's existing policies for protecting shared natural resources and water. Many existing goals and policies directly support the proposed code amendments; others are proposed to be modified or deleted to better coordinate the language of the policies and increase clarity.

New text incorporates elements of the proposed "purpose" statement in the draft code, which relates not only to the value of open space but also to more specific values related to habitat preservation.

Some existing text, which was written in 1989, is deleted to reduce repetition and improve clarity. Existing references to the "Natural Resources Overlay," the City's regulations that were in effect from 1989 to 2002, are proposed to be deleted.

The Natural Resource Sites map, previously labeled as Milwaukie Comprehensive Plan Map 5, was originally adopted in 1989. A more current map of Natural Resource Areas is proposed to replace the Natural Resource Sites map as the new Map 5. For historic and informational purposes, the Natural Resource Sites map is proposed to be moved into Appendix 2 - Natural Resources Property List, where it will join the list of numbered properties shown on that original map.

Note: The City Council has adopted amendments (File #ZA-10-02) that reorganize the Zoning Code, effective on May 14, 2011. Those amendments include establishing Chapter 19.100 as "Introductory Provisions" and moving the Definitions to Section 19.201 within a new "Definitions and Measurements" chapter. A new Chapter 19.400 governs "Overlay Zones and Special Areas," including the Natural Resource regulations. Section 19.1001 establishes "General Provisions" for the review of land use applications, including expiration dates for approved applications. And Chapter 19.1100 addresses "Annexations and Boundary Changes." This "PC Hearing Draft 3-22-11" document reflects these changes.

Municipal Code Title 19 Zoning

CHAPTER 19.100

INTRODUCTORY PROVISIONS

19.107 Zoning

Designated natural resource areas such as Water Quality Resource areas and Habitat Conservation Areas are not considered a formal overlay zone and are not part of the official Zoning Map. Therefore, the "Water Quality Resource" overlay category has been removed from Table 19.107. Natural resource areas are handled as Special Areas, addressed in the new Section 19.108.

19.108 Special Areas

The category of "Special Areas" has been established to include designated natural resource areas such as Water Quality Resource areas and Habitat Conservation Areas. This section can also accommodate any similar types of non-overlay designations established in the future.

Subsection 19.108.2 explains that such special areas are shown not on the Zoning Map but on their own specific maps, which are administered according to the rules established in the relevant sections of code. Other accompanying subsections note that newly annexed areas will be given special area designations according to the rules established in the sections of code related to those special areas, and that rights-of-way are only affected by special area designations in as much as provided by the specific rules governing those special areas.

CHAPTER 19.200

DEFINITIONS AND MEASUREMENTS

19.201 Definitions

Some new or revised definitions are proposed to ensure that terms defined in Section 19.201 are kept current and remain consistent with the proposed amendments to 19.402. Text to be removed is marked with a ~~strike through~~, while text to be added is underlined.

In particular, the following changes or additions are proposed:

- A revised definition for "bankful stage," to clarify that this term is synonymous with the phrase "top of bank."
- A new definition for "direct stormwater discharge," to distinguish between particular activities that need different levels of review.
- New definitions for "Downed tree" and "Tree," to clarify particular options for both exempt and Type I tree removal.
- A new definition for "Habitat Conservation Area (HCA)."
- A revised definition of "Native vegetation or native plant" to coordinate with the "nuisance" and "required eradication" listings of plants on the Milwaukie Native Plant List.
- A revised definition for "net acre," to clarify that designated natural resource areas do not count against a property when calculating its allowable density.
- A new definition for "Significant pruning," to enable a Type I review process for one particular option for tree maintenance.
- Revised definitions of "vegetated corridor," "Water Quality Resource (WQR) area," "Water quality and floodplain management area," and "Wetlands," for greater accuracy.

CHAPTER 19.400

OVERLAY ZONES AND SPECIAL AREAS

The title of Chapter 19.400 has been expanded to include both overlay zones and other types of special areas. The title of Section 19.402 has been changed to acknowledge that it covers more than just Water Quality Resources. And within Section 19.404 Mixed Use Overlay Zone MU, language in Section 19.404.10.C has been updated to ensure consistency with Section 19.402.

CHAPTER 19.900

LAND USE APPLICATIONS

Language in Sections 19.901 Introduction, Section 19.905 Conditional Uses, Section 19.906 Development Review, and 19.908 Extensions to Expiring Approvals has been updated to be consistent with the addition of the term "special areas" to the title of Chapter 19.400 Overlay Zones and Special Areas.

CHAPTER 19.1000**REVIEW PROCEDURES****19.1001.7 Decisions**

Most land use decisions expire 2 to 4 years after approval, with a few exceptions. Natural resource management plans are valid for 5 years or longer, depending on the plan timeframe—Subsection 19.1001.7.E.2.c notes that some land use approvals are exempt from the standard expiration schedule when specified in other sections of the code. Since boundary verification results in the NR map being directly updated for ongoing use, Type I and Type II decisions for boundary verification are also exempt from expiration. Wetland boundaries are prone to some physical change over time, so when proposed activities involve wetlands, an official delineation of the wetland is required unless the Planning Director determines that the situation does not warrant that degree of accuracy. This requirement makes expiration of a boundary verification involving a wetland unnecessary.

CHAPTER 19.1100**ANNEXATIONS AND BOUNDARY CHANGES****19.1104.1 Administration and Approval Process**

When properties that include WQRs and/or HCAs annex to the City, those natural resource designations should appear on the City's NR Administrative Map. This subsection points to Section 19.402.15 for direction about how to apply the WQR and HCA designations. Essentially, the same designation previously applied to the property by Clackamas County will be shown on the City's NR Administrative Map.