



AGENDA

MILWAUKIE PLANNING COMMISSION Tuesday April 12, 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
 - 2.1 January 25, 2011
- 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 *cont'd from 3/22/11*
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**
 - 7.1 Draft Wastewater Master Plan (for discussion on 4/26)
 - 7.2 April 16th Volunteer Brunch and Fair at the Masonic Lodge 10am to noon
Request for PC representative & group photo!
 - 7.3 Library Taskforce Assignment
 - 7.4 PC Letter for Kanso Case
- 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 26, 2011
 - 1. Public Hearing: WQR-11-01 Johnson Creek Confluence Project
 - 2. Worksession: Sign Code Draft Amendments
 - 3. Worksession: Wastewater Master Plan
 - May 10, 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:

Lisa Batey, Chair
Nick Harris, Vice Chair
Scott Churchill
Chris Wilson
Mark Gamba
Russ Stoll

Planning Department Staff:

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

**CITY OF MILWAUKIE
PLANNING COMMISSION
MINUTES
Milwaukie City Hall
10722 SE Main Street
TUESDAY, January 25, 2011
6:30 PM**

COMMISSIONERS PRESENT

Jeff Klein, Chair
Nick Harris, Vice Chair
Lisa Batey
Mark Gamba
Chris Wilson (Arrived during the 5.1 staff report)

STAFF PRESENT

Katie Mangle, Planning Director
Susan Shanks, Senior Planner
Ryan Marquardt, Associate Planner
Damien Hall, City Attorney

COMMISSIONERS ABSENT

Scott Churchill

1.0 Call to Order – Procedural Matters

Chair Klein called the meeting to order at 6:30 p.m. and read the conduct of meeting format into the record.

2.0 Planning Commission Minutes

2.1 November 9, 2010

Commissioner Mark Gamba noted the Commission still had not done the tour with the Public Works Department.

Vice Chair Nick Harris moved to approve the November 9, 2010, Planning Commission minutes as presented. **Commissioner Gamba** seconded the motion, which passed unanimously.

2.2 December 14, 2010

Vice Chair Harris moved to approve the November 9, 2010, Planning Commission minutes as presented. **Commissioner Lisa Batey** seconded the motion, which passed unanimously.

3.0 Information Items

There were no information items.

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

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5.0 Public Hearings

5.1 Summary: Land Use and Development Review Tune-Up Code Amendments

Applicant: City of Milwaukie

File: ZA-10-02, CPA-10-03

Staff Person: Susan Shanks

Vice Chair Harris moved to initiate the public hearing on ZA-10-02 and CPA-10-03.

Commissioner Gamba seconded the motion, which passed unanimously.

Chair Klein called the hearing to order and read the conduct of legislative hearing format into the record. No Commissioners abstained from the hearing.

Katie Mangle, Planning Director, announced that Ryan Marquardt, Associate Planner, was just outside of the Council Chambers with maps and materials and available to answer questions about how the Code amendments might affect one's property.

Susan Shanks, Senior Planner, presented the staff report via PowerPoint, noting most of the Code amendments were to the Milwaukie Municipal Code (MMC) Title 19 Zoning.

- The Planning Commission had held many worksessions and this was the first public hearing on the project. If the Commission recommended adoption of the Code amendments to City Council, it would go onto the Council for a public hearing.
- Some amendments were being proposed to other Code sections to make sure that the proposed changes would be consistent with Title 19. The goal was to streamline and modernize the Code which had suffered from incremental changes over the past 60 years. It was outdated in that it did not reflect current Oregon State land use law or advancements in planning and technology.
- She reviewed the attachments and provided examples of the four types of changes being proposed: organizational changes, major changes to the review procedures chapter, the creation of a new land use application chapter, as well as some changes to the Comprehensive Plan (Comp Plan). The amendments did not address any land use standards, but how applications are processed and the approval criteria against which they are evaluated.

- 74 • More project information was available, including a project website that included a project
75 overview, the project's schedule, links to all the draft documents, including the two public
76 drafts, all the draft amendments, materials and meeting minutes, and reviewed the types of
77 changes being made to each Code section. The website also included a project tour link that
78 walked visitors through the project and the main changes to the Code. Copies of that
79 presentation were available in the hallway.
- 80 • Staff recommended that the Commission recommend adoption of the proposed findings and
81 amendments to Council with modifications. Two modifications were proposed in the staff
82 report. Since the packets were distributed last week, three additional changes had been
83 proposed based on comments from Commissioners and the public. Colored handouts were
84 distributed to the Commission that noted the additional proposed changes, which she
85 reviewed as follows:
- 86 • Chapter 19.800 Nonconforming Uses and Development (goldenrod) – Add Provision
87 19.802.2.E to clearly indicate that this chapter does not apply to signs, which are
88 addressed in a different title that applies to signs.
 - 89 • Chapter 19.900 Land Use Application (dark tan) – The majority of changes were on
90 Page 2, where 19.902.4 Comprehensive Plan Map Amendments was added.
91 Essentially, if a Comp Plan map amendment was small in nature, a quasi-judicial
92 process was required and ultimately decided by Council. Quasi-judicial processes were
93 subject to specific state law processing requirements and need to be processed within
94 the 120-day clock.
 - 95 • The change was that for larger Comp Plan map amendments, the City Attorney
96 would have the ability to determine whether it was legislative in nature and not
97 subject to the clock. Some Comp Plan map amendments should be legislative,
98 because the City was obligated to approve these amendments in the quasi-judicial
99 process if the approval criteria was met, which might not be appropriate for large
100 Comp Plan map changes.
 - 101 • Chapter 19.1000 Review Procedures (yellow) – Add 19.1001.6.C Notice Requirements,
102 which clarified the consequences if the applicant did not post signage or post signage
103 correctly, such as a delay in the hearing or decision, possibly requiring an extension of
104 the 120-day clock and reposting the sign. Expectations about staff providing notice were
105 also laid out, clarifying that if staff can demonstrate by affidavit that notice was mailed,

106 someone at a meeting claiming not to have received notice would not invalidate the
107 proceedings.

- 108 • Chapter 19.1000 (blue) – Amend 19.1003.2.C to state that the applicant may be required to
109 actually submit photographs of temporary onsite story poles when an application is being
110 evaluated against subjective criteria pertaining to height and/or mass. The Commissioners
111 were emailed about the complexity of requiring story poles as part of the process, and not
112 necessarily just photographs of the story poles. Further discussion was expected on this
113 proposal.
- 114 • Chapter 19.1000 Review Procedures (green) – Reintroduced the major quasi-judicial
115 process, now called Type IV. Type V reviews would be legislative reviews involving zoning
116 and Comp Plan map changes that required going to Council. Some zone changes would still
117 be Type III and come before the Commission.
- 118 • Staff had believed that review processes could be limited to four procedures, but
119 realized that many types of applications and proposals utilize the major quasi-judicial
120 process. The proposal was not a change per se, but separating and renumbering what
121 had been combined into the legislative process.

122

123 Commissioner Wilson arrived during the review of the handouts and was updated by Chair Klein.

124

125 **Ms. Shanks** responded to additional comments and questions from the Commission as follows:

- 126 • Community Service Uses (CSUs) and Conditional Uses (CUs) were in the Conditional Uses
127 chapter because they were actually not overlays, which changed the zoning map and
128 applied a zone, either a base zone or overlay zone, to a specific property. CSUs and CUs
129 did not change the underlying zoning of the property but just allowed certain kinds of uses.
130 CSUs are really a type of conditional use. In the base zones, certain uses are allowed
131 outright and certain uses are allowed conditionally, but they just require review. So the
132 process they go through was similar to CSUs, which used to be in the base zones.
- 133 • Staff currently posted notice signs for public hearings. The proposal put the onus on the
134 applicant because the recommendation was to also require more and bigger signs. The City
135 would provide the language for the sign, but the applicant would produce the sign and locate
136 it on the site per staff's instructions. The applicant would be required to provide an affidavit
137 stating that the sign was actually posted per the instructions. If discovered the sign was not

138 posted, either for the required length of time or if the affidavit was not received, the
139 proceedings could be delayed.

- 140 • This Code project did not make any substantive changes regarding Accessory Dwelling
141 Units (ADUs), which would involve discussing housing typologies, what the community
142 wanted to see as far as attached or detached ADUs, etc. She confirmed this would be the
143 next Code project, the Residential Development Standards project.

144

145 **Chair Klein** noted there was a lot of information and he wanted everyone to understand how
146 often this project had been before the Commission, how long they had been working on this,
147 and what had been done to this point.

- 148 • **Ms. Shanks** replied that these Code amendments have been discussed since March of
149 2010. Since that time, staff had met with the Commission seven times. Three subcommittee
150 meetings were held as well, of which Commissioners Gamba and Batey were a part. Staff
151 also presented all the Code amendment projects to Council, including this project in
152 particular, on three occasions. Many public meetings were held on the Code amendments
153 and staff has been working closely with the subcommittee members.

154

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

156

157 **Dan Dhruva, Clear Channel Outdoor, 715 NE Everett St, Portland**, came prepared to give a
158 statement regarding a concern with the proposed amendments, specifically the definition of high
159 impact commercial businesses; however, the revisions in the latest version addressed their
160 concerns. He read a statement, which was entered into the record as Exhibit 6C. He reiterated
161 the latest revisions of the proposed adoptions addressed their concern and thanked staff for the
162 quick turnaround.

163

164 **Christopher Burkett, 4512 SE Ryan Ct, Milwaukie**, stated he had been working with the
165 Planning Department staff on the Natural Resource Overlay project. His main concern was
166 MMC 19.806, the amortization section, which he considered a slippery slope.

- 167 • Currently, once a property was approved, one was good to go. An amortization process,
168 even though very specified and limited currently, could open the door for any number of
169 changes down the road and needed to be very carefully considered.

- 170 • He liked to live on his property undisturbed without having to worry about what the next
171 year's changes would be to the Code, what the City wanted to do to his property, or what
172 the changes would be to the use of his property.
- 173 • For example, if the amortization process were applied to an existing landscaped garden,
174 down the road, one would be required to plant native species within a certain distance
175 from a stream.
- 176 • He stated he was opposed in principle to allowing the amortization process to be integrated
177 into the development review process as a regular option. Currently, if the City wanted to
178 make a change, presumably there was some other way to do so.
- 179 • He clarified he was speaking from both a residential and commercial standpoint. He has a
180 commercial building which was non-conforming but permitted; the City's old police station
181 building on Harrison St.
- 182 • He confirmed that a commercial use existed on his building and explained that they had
183 gone through a whole process of getting approval. Part of the issue was that the parking
184 area was nonconforming, but it was less nonconforming than the previous use which was
185 the police department, so it was allowed.
- 186 • He was a photographer and the building was not open to the public, but it was still
187 considered commercial.

188

189 **Ms. Shanks** believed his use could actually be conforming if it was in the R-1B zone which
190 allowed businesses like professional offices. She offered to review the matter further with Mr.
191 Burkett.

192

193 **Chair Klein** believed there could be more concerns about that section of the Code.

194

195 **Mr. Burkett** stated it was like the idea of photo radar where first it was introduced to protect
196 children in school zones, and then before long there was a van parked down on McLoughlin
197 Blvd.

198

199 **Jean Baker**, stated she was a 47-year resident of Milwaukie and was a planning process
200 veteran. She had been part of city, county, state and federal planning boards that did everything
201 from comprehensive plans to the Portland Airport. Her name was on a common document with
202 Milwaukie, Baker V.

- 203 • She stated that a lot of work had been done, and some was wonderful. She noted that the
204 Tune-Up project was bigger than the original Comp Plan and Zoning Ordinance combined.
- 205 • She was concerned for citizens about the direction this was taking. Much was said about the
206 intent for fairness and citizen involvement; however, the timeline for a citizen to get into it
207 was shortened.
- 208 • Some state regulations allowed 180 days for an applicant and 120 days for the City to
209 get through their material; whereas a regular citizen or neighborhood group could get as
210 little as 5 days. This could get cheated on and it would take a lot of process to prove that
211 was the case.
- 212 • The notice posting was wonderful, but it was absurd to give it to the proponent to do. If she
213 was to bet on who would get it done right and on time, she would bet on the City. A
214 proponent might have some concerns about whether it was in their best interest to post. It
215 was much better done in the City's hands and would provide a transparent process.
216 Someone should also be around to keep an eye on the sign.
- 217 • The 10- or 14-day notice was silly. The information could not be absorbed in such a short
218 time. Not many people would do it, but for those who were really concerned, more time was
219 needed. A citizen should be given at least as much consideration as DLCD or Metro. A
220 citizen should be given all the material they needed and not just on a loose timeline of 5 to
221 20 days.
- 222 • There were names of documents she had never heard of before. Metro had gotten into the
223 planning process. Measure 56 was an example of one thing the public needed to be brought
224 up to speed on.
- 225 • Short notices were an injury to the public interest. The public could not have something
226 thrown at them and be expected to return with something intelligent in a few days, especially
227 if there was going to be a hearing or an appeal where information could not be added. If one
228 was limited in time to evaluate, one was limited in the facts they could find and present.
- 229 • The change in who one could appeal to was uncomfortable. Voluntary citizens should be
230 utilized as much as possible. Appeals to citizen boards and citizen councils was reasonable.
231 Neighborhood associations could join in the process.
- 232 • The review and appeal process injured the public interest in that it was abbreviated.
- 233 • The public notice was a problem. The loss of the newspaper was a great loss, and the
234 newsletter would soon be gone as well. Not everyone had a computer or the Internet. It was
235 difficult to raise citizen interest now.

- 236 • Notice of a hearing should not go to a Neighborhood District Association (NDA) with no
237 standards for what to do with it. Nothing required that they take any action, consider it, or let
238 anybody know. There was no process to work with the NDAs. The City would be wise to go
239 out to those organizations, ask how they wanted to work together, and develop a process to
240 make something happen for the community.
- 241 • So much had changed in the culture; it was time to invent a new wheel. Merely saying
242 “we have it, it is fair, we have notice, we intend to get everybody involved” was not good
243 enough. There needed to be a real actual process in place.
- 244 • The Comp Plan looked like the ugly little sister in the planning process. .
- 245 • The Code should be overhauled once every couple of years, not in little chips. The Comp
246 Plan could not be revised like zoning. This was not a reasonable approach. She could not
247 imagine the City having a legitimate need to put Comp Plan material in the Zoning
248 Ordinance.
- 249 • The proposal leans almost entirely on professionals. By taking the Council and Commission
250 out of so much of it, it really hands it over to professional planners who may not work or live
251 in the area.
- 252 • She knows what happens when citizens turn the planning process loose to the extent
253 proposed. She did not want to see the City continue to grow in the number of planners
254 while decreasing in citizen participation. When she first began, there were three planners
255 who always answered the telephone which was completely different than what was
256 currently happening.
- 257 • She appreciated the work on the proposal and knew that things needed to be cleaned up
258 and made more workable. At the same time, the direction away from citizen participation
259 and input, and the involvement and assistance of NDAs, was concerning.

260

261 **Chair Klein** stated that staff would provide some direction regarding her concerns. He
262 understood that many of Ms. Baker’s questions related to the land use clock.

263

264 **Ms. Baker** said that shortening the notification distance from 400 to 300 ft and the time from 30
265 days to 20 days did not seem to be a legitimate change. The other changes that were an issue
266 involved the 14, 10, or 5 day notice to put up the sign and a hearing takes place even if a sign
267 was not put up.

268 • She assured these points were in the proposal. She used to write legislation and she
269 seldom made mistakes. She hoped some single standard would emerge and a real effort
270 made to give citizens time to get things together to be intelligent in public hearings.

271
272 **Chair Klein** asked if the concern was about having public input on this particular document
273 presently before the Commission or future applications coming before the Commission.

274
275 **Ms. Baker** replied the concern was about the language for the proposed changes. If the
276 proposal was adopted as presented, it would block citizens who want to participate. The core
277 value in the proposed changes stated that fairness and participation was one of the goals. How
278 that fairness would be implemented would need to be considered.

279 • **Ms. Shanks** clarified that the time frame for giving the public or NDAs opportunity to
280 respond was not shortened or reduced from currently in the Code. Staff was only clarifying
281 one inconsistency where one document or section stated to notify people within 10 days of a
282 hearing and another said within 30 days. Staff chose 20 days as most other notices required
283 20 days. For NDA notices, the proposed Code amendments were written to provide as
284 much time as the clock would probably allow. She offered to review the language with Ms.
285 Baker to ensure against a typo.

286
287 **Ms. Baker** said that perhaps the timeline was not shortened or reduced; it might have always
288 been that way, but it should not have been. The clock would probably allow exactly what DLCD
289 currently allowed. It was reasonable to give the citizens more. If 180 days were given to a
290 developer and 120 days for the City, why not give more days to the citizens; 45 days would be
291 reasonable.

292 • **Ms. Shanks** replied that the ORS gave certain parameters, especially for quasi-judicial or
293 administrative matters. For legislative matters, it was wide open. More language was being
294 added in the current document requiring the City to broadly advertise all legislative matters,
295 which staff had been doing, while also giving notice to DLCD. She clarified that the City did
296 have working relations with the NDAs.

297
298 **Ms. Baker** replied that “broadly” needed to be defined. She asked why no working mechanism
299 was in the Code project about the City’s relationship with the NDAs.

- 300 • **Ms. Shanks** responded there were meant to be procedures in the Comp Plan and Zoning
301 Code, but all sorts of relationships and City practices exist outside of that. For example, an
302 NDA leadership meeting occurred monthly, but that has changed over time. The City had to
303 be careful not to codify things that vary over time, because the requirement could not be
304 met.
- 305 • She understood the concern about noticing for legislative amendments, because it was very
306 broad. For all the other administrative, quasi-judicial types of applications, it was very
307 specific, such as how the City communicates with the NDAs. Staff tried to do an annual NDA
308 training about the land use review process. When a referral was done, staff's contact
309 information was included so they could ask questions.

310

311 **Ms. Baker** replied that was not the same as saying that the City would work with the NDAs and
312 they had to respond.

313

314 **Commissioner Batey** stated as a former chair, it was hard to get people to serve on the
315 neighborhood Land Use Committees (LUCs). Even when staffed, applications that came in were
316 sometimes looked at and sometimes not; sometimes they were commented on, sometimes they
317 were not.

318

319 **Ms. Shanks** explained that on controversial projects, the City actively solicited citizen
320 involvement, but could not force it. Staff over-referred projects when adjacent to other
321 neighborhoods, even referring to the County NDAs.

322

323 **Chair Klein** clarified that *The Pilot* had not been discontinued, nor were there plans to do so. It
324 was taken online for the month of January and its effectiveness was being considered. *The Pilot*
325 was going back into print next month.

326

327 **Ms. Baker** stated that she would be in touch.

328

329 The Commission took a brief recess and reconvened at 8:06 p.m.

330

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

332

333 **Ms. Shanks** appreciated Ms. Baker's comment that not everyone was on the Internet. Staff
334 recognized this and tried to provide public information in a variety of mediums. The Code did not
335 specify Internet only. She wanted to assure the public and the Commission that staff still wanted
336 to have many ways to reach the public. No proposal was made to change the current City
337 standard to mail paper notices, which is why something was mailed to every property owner in
338 the city about this hearing, as well as the 300-ft to 400-ft notices.

- 339 • With regard to amortization, she clarified the proposed Code was specifically written for a
340 very specific kind of defined, nonconforming, high-impact use and was not intended to
341 broadly include any nonconforming use or to amortize uses in general. It was very specific
342 to a very particular kind of use that exists in the city. As discussed in worksession, it was
343 appropriate to have such a tool for those instances where a use was having a negative
344 impact on the community.

345

346 **Vice Chair Harris** said he was curious about the use of the word "amortization" for this section.
347 The heading should be "discontinuation of nonconforming use" and not "amortization," which
348 was a financial term.

- 349 • **Damien Hall, City Attorney**, explained that in financial settings, amortization was a financial
350 term. In planning settings, it was basically discontinuation or phasing out in various
351 jurisdictions across the country. The concept of amortization was usually of a nonconforming
352 use in planning in various codes. Amortization did mean different things in different contexts.
- 353 • **Commissioner Gamba** understood that it took into consideration the financial aspects of
354 that use. If one had not yet recouped their investment, it would provide time to do so.

355

356 **Chair Klein** asked staff to outline a scenario of what the actual process would be for an
357 amortization of a high impact nonconforming use.

- 358 • **Ms. Shanks** assured it would not be something staff would be able to just go do. Council
359 would need to direct the Planning Director to do an evaluation of nonconforming uses in the
360 city to first identify them. This particular Code amendment did not require identifying what
361 uses were nonconforming in the city, much less which were high impact and nonconforming.
362 The Planning Director would then return to Council at a public meeting to review the list and
363 discuss whether or not items were listed appropriately.

- 364 • There was perhaps a subjective component to the high impact part even though it was
365 defined. Because of the stakes involved, it could be argued whether something was high
366 impact or not.
- 367 • Next, the City would inform property owners determined to be high impact, nonconforming
368 uses and have a hearing wherein the City would consider the appropriate amortization
369 period.
- 370 • That period would depend upon the kind of improvements at the site and investments
371 the property owners made into the property. For some uses, the period might be 20
372 years; for others, 5 years, and would be determined on a case-by-case basis according
373 to those investments and the type of use.
- 374 • The amortization schedule would be reviewed at the Commission level at a public hearing
375 where it would be evaluated whether or not the use was appropriately listed on the inventory
376 and whether the amortization period was appropriate.
- 377 • A recommendation would then be made to Council, another public hearing would be held,
378 and then Council would adopt the amortization period by ordinance.
- 379 • It was a long process that would be very public in many ways with many opportunities for
380 discussion.

381

382 **Commissioner Batey** asked if an inventory was absolutely required or could the Council
383 request the review of a particular property that was a nuisance because of noise or odor, for
384 example.

- 385 • **Ms. Shanks** replied that could be done. As drafted, the Council would direct the Planning
386 Director to do the inventory of a particular zone, area, or site. They could be very specific
387 about where they wanted the Planning Director to do the analysis.
- 388 • **Mr. Hall** stated that situation would not result in removal of one of the hearings. Even if it
389 was in a very closely prescribed geographic area, or even an inventory of one which Council
390 would have the discretion to do, an inventory would still be put together, albeit a simple one,
391 and then it would still go back for a hearing.

392

393 **Ms. Shanks** noted that staff was still working to make sure all section references were correct
394 and still wordsmithing when grammatical errors were found and modifying for sentence clarity
395 without changing the actual intent. Commissioner Gamba noted during the break that one
396 additional word needed to be added to a sentence. If anyone wanted to know what was

397 changed word-for-word between the different drafts as opposed to summaries of changes, a
398 compare document could be done, so there could be a record of exactly what was changed.
399

400 **Commissioner Gamba:**

- 401 • Suggested that “sustainability” be added to the second paragraph of MMC Section 19.102
402 Purpose, on 5.1 Page 21 of the packet.
- 403 • **Ms. Shanks** agreed it was appropriate to add “sustainability.” The list was not intended
404 to be all inclusive, but should represent existing policies in the Comp Plan, which did
405 support sustainability in many different ways.
- 406 • **Mr. Hall** confirmed “sustainability” would be added to the last sentence.
- 407 • Recommended adding “adversely” to the second sentence of MMC Section 19.905.1 to
408 read, “**adversely** change the character of an area or adversely impact” of 5.1 Page 47.
- 409 • Suggested staff consider adding a new condition to MMC Section 19.905.5 Conditions of
410 Approval, 5.1 Page 48 stating, “**L. Require mitigation for the presumed carbon**
411 **footprint**”, “**calculated carbon footprint**” or something to that effect.

412
413 **Chair Klein** stated a clear measurement was needed for “carbon footprint,” which extended to
414 much more than just the initial use.

415
416 **Commissioner Gamba** suggested saying, “...**for the carbon footprint of the use being**
417 **conditioned.**”

418
419 **Chair Klein** replied that a carbon footprint was currently hard to quantify.

420
421 **Commissioner Gamba** said it was not something required, but a tool in the City’s box. He
422 agreed with Vice Chair Harris that it could fit under MMC Section 19.905.5 B, but would need to
423 be listed.

424
425 **Chair Klein:**

- 426 • Suggested “Require structures and site design features that minimize environmental impact
427 such as those caused by noise, vibration, air pollution, glare, odor, **carbon footprint**, and
428 dust.”
- 429 • **Mr. Hall** recommended using “carbon emissions” instead.
- 430 • Noted many studies stated the carbon footprint of a Prius was more than that of a Hummer.

431
432 **Commissioner Batey** liked the idea of amending Item B. Using “carbon footprint” would require
433 a definition and would become a much bigger change.

434
435 The Commission consented to add “carbon emissions” to MMC Section 19.905.5 B.

436
437 **Commissioner Gamba:**

- 438 • Recommended amending Section 19.1006.3.E Notice Sign, 5.1 Page 76, to state, “...and
439 **legible** to pedestrians walking by the property.”
- 440 • **Ms. Shanks** agreed. The signs were not legible if posted more than 15 ft from the
441 sidewalk, and people would have to trespass on the property to read it. The language
442 would be rewritten so that the notice sign for other review types appears throughout the
443 Code.
- 444 • She clarified the proposed Code stated that staff would provide information specifying
445 sign size, minimum language, and font size, as well as the number of signs required.
446 The applicant would then have to provide the affidavit that the instructions were satisfied;
447 otherwise, consequences would result as discussed.
- 448 • The affidavit had not yet been developed, but requiring photos would probably be
449 appropriate.

450
451 **Chair Klein** stated that he wanted consistency in the signage. He would not want someone to
452 change the color or alter the sign. Right now, people knew what was going on when they saw
453 the orange signs. He wanted to make sure that staff controlled what the sign looked like and
454 could dictate that the applicant post the sign.

- 455 • **Ms. Shanks** agreed. On larger projects, the City might require a really big sign that varied
456 from the standard. In most instances, consistency was key.
- 457 • **Ms. Mangle** noted a statement to that effect needed to be added, that staff would design the
458 sign or provide specific design requirements according to City specifications or something
459 similar.
- 460 • **Ms. Shanks** stated that right now the City only had instructions for posting. More language
461 could be added that a form would be created that outlined the operating procedure.

462
463 **Commissioner Gamba** agreed with Ms. Baker regarding MMC 19.1009.3 through 19.1009.6,
464 5.1 Pages 86 and 87. He was curious why there were two kinds of hearings and why new

465 evidence could not be introduced. The average citizen was not a lawyer or developer, and may
466 realize during a hearing that they should have brought certain evidence, but they would not be
467 able to appeal. The timeline was an additional factor. He believed new evidence should be able
468 to be introduced.

469
470 **Chair Klein** reminded that a Commission rule allowed an audience member to request a
471 continuation in order to review the information.

472
473 **Commissioner Gamba** noted that a person could get home and then remember something that
474 should have been brought up.

475
476 **Ms. Mangle** stated this was a great point for discussion because there were many different
477 sides to the issue. This project was trying to streamline the process in meaningful ways and put
478 responsibility on the Commission and Council as appropriate. There was a history of appeals
479 from Commission to Council where essentially everything was treated as a complete do over.
480 Often, new evidence had not resulted in a different decision from Council. In some cases, so
481 much new information was provided at Council that they were essentially reviewing a
482 completely different application than what was presented to the Commission. The intent was not
483 to shut down the process to people who were still trying to find better ways to make their point.

484
485 **Commissioner Batey** noted there were cases in which a continuance was granted when
486 requested, though that did not address someone remembering something when they got home.

487
488 **Commissioner Gamba** stated that until he was a Commissioner, he would not have known that
489 they needed to ask for a continuance.

490
491 **Commissioner Batey** explained that the attorney or staff had advised that continuance was an
492 option, sensing there was more that people had to say. She completely supported limited
493 hearing on appeal.

494
495 **Commissioner Gamba** said he could understand setting limits, but not restricting new evidence
496 from being introduced.

497 • **Ms. Shanks** asked Mr. Hall to explain the options available regarding limitations on appeals
498 which were built on a tiered effect; others were more extreme.

- 499 • **Mr. Hall** stated that currently this unrestricted de novo was the do over. No matter what
500 happened at Commission, any new arguments or new evidence could be presented on
501 appeal to the Council, which caused issues for the City. The Commission may or may not
502 get all the pertinent information. A smart applicant might believe they have a better chance
503 with the people on the Council and take it easy at the Commission.
- 504 • The middle ground was the de novo on the record which meant that on the appeal, new
505 arguments could be made, but the record was basically sealed; no new evidence was
506 allowed. If an applicant did not present all the evidence to the Commission, they were
507 denied the opportunity to bring in new evidence, which was a lot easier for the Council
508 as far as being decision-makers. If applicants came in with new material, pictures, etc.,
509 and Council has to review it, which takes a lot time and resources.
 - 510 • Another option was on the record, which meant one could only use the arguments made
511 and only use the evidence originally presented at Planning Commission.
 - 512 • He noted that Commissioners could the applicant if they were struggling and could not see a
513 clear route to approval, such as telling them they could ask for 7 days.
- 514
- 515 **Chair Klein** stated that the way it stood currently benefitted the applicant as well as the people
516 being impacted. The applicant must come with everything and had the opportunity to
- 517 • Applicants with less than thorough applications before the Commission were told to go back
518 and get more information, and if not, they would be denied. Some hearings had continued
519 for two or three meetings so citizens could also look at the information that came back. This
520 protected the citizens, providing them opportunity to see what was submitted.
 - 521 • On the other hand, the applicant was trying to get a project approved and completed. They
522 had a right to be able to put something through the system. They ran the risk of not being
523 approved by the Commission if certain things were presented.
 - 524 • The game could not be changed when it went to Council and circumvent months of process
525 that had occurred. Applicants have appealed applications approved by the Commission to
526 Council.
 - 527 • Applications must have the information. Once deemed complete, it had to go to the
528 Commission. When it went to Council, only that which was brought up at Commission
529 should be considered.
 - 530 • If a citizen needed more time and had a question on something, the City had to afford them
531 that opportunity to review it and then return and ask the appropriate questions and be able
532 to get the appropriate facts.

533

534 **Commissioner Gamba** agreed these were great points; however, they needed to consider that
535 the Commission could change. The group 20 years from now might not be helpful or consider
536 that citizens were not lawyers and would not coach the citizens.

537

538 **Chair Klein** noted that other things needed to be taken into consideration, such as the 120-day
539 land use clock to get the application through. At some point, people needed to step forward and
540 start paying attention.

- 541 • He agreed that during the process of one hearing, people could learn a lot and then wish
542 they had brought something in. Hopefully the Commission takes their comments seriously
543 and begins asking questions as well. The Commission could consider that information
544 further and either hold the hearing open or deem it acceptable.

545

546 **Commissioner Batey** asked if the Commission denied something that was being appealed to
547 Council, could the Council remand it back to the Planning Commission.

- 548 • **Ms. Mangle** replied that was not specifically addressed in the Code, but it would be an
549 issue with the land use clock. Typically, everything is pushed through with just enough
550 time to allow for an appeal to Council. The applicant would have to waive their rights on
551 the decision to allow for enough time to hold another hearing at the Commission.

552

553 **Commissioner Gamba** clarified he was concerned for both citizens and applicants. He was
554 concerned about other residents or property owners who disagree with a Commission decision
555 not being able to appeal because they did not raise the right issues and would not be able to
556 introduce new evidence. He was also concerned about a homeowner who did not know what
557 needed to be presented to convince the Commission that their request was doing was a good
558 idea, but had learned what needed to be shown through the process.

559

560 **Chair Klein:**

- 561 • Cited the conduct of hearing format comments which are read at the beginning of each
562 hearing, adding everything needed to be brought to the table upfront.
- 563 • **Ms. Shanks** clarified that the de novo on the record appeal to Council required a reason
564 for the appeal request. At the appeal, the whole of the record could be considered and
565 argued on any one point, whether or not it was their point.

- 566 • She confirmed new evidence could not be introduced. A neighbor could not show up
567 with new information about a tree removal, for example.
- 568 • **Commissioner Gamba** believed not allowing new evidence made the appeal process
569 completely toothless.
- 570 • Asked if an application was appealed to the Land Use Board of Appeals (LUBA), and a
571 neighbor, who did not testify at any of the preceding hearings, did not agree with the project,
572 at that point what would LUBA tell them?
- 573 • **Mr. Hall** explained the neighbor would have no standing at LUBA. Prior participation was
574 needed to have standing to appeal to LUBA. On the record limitation provides a strong
575 incentive for applicants to give the Commission all the information available, so the
576 Commission could make the full decision with everything disclosed up front.
- 577 • He explained that if a neighbor did not prepare for a hearing, but opposed an application
578 approval they could request a continuation. Neighbors usually did not have serious
579 evidence, but rather only arguments regarding impact, etc.
- 580 • **Ms. Mangle** stated they could argue and focus on the lack of evidence in the record
581 regarding the tree, as an example, resulting in the criteria not being met.
- 582 • **Ms. Shanks** added that typically the problem was an applicant doing an end-run at the
583 Commission, either by not being prepared or doing so purposely. Although the concern
584 was valid, it did not really happen as portrayed. She noted that Type I and Type II
585 applications decided by the Planning Director and appealed to Commission would not be
586 restricted. Type III applications have their day in court with the Commission and then in a
587 more limited way with Council as proposed.
- 588 • Noted that did not mean the process could not be taken advantage of in the future. While
589 sympathetic to the concern, a process was in place and the evidence had to come forward.
- 590 • Understood that if someone came forward and raised the issue that an applicant did not
591 consider X, Y, and Z, they would be allowed to bring in photographs of the issue to Council.
- 592 • **Mr. Hall** clarified that photographs would be considered evidence. How to draw the line
593 or restrict it was would be up to City Council.
- 594 • Posited if it was noted that a tree removal was not addressed in the application and the
595 Commission decided to disregard the concern and move forward with approval or denial,
596 nothing prevented Council from making sure that was being addressed in the next phase of
597 the appeal process because they would have the same responsibilities as the Commission.
- 598 • **Ms. Mangle** stated one way to think about it philosophically was if it was a limited appeal
599 to the record, which included the papers, photos, public comments, and the applicant's

600 material, the Commission's job was to review it and make a decision. If it was limited to
601 the record, the same assemblage would be given to Council to see if the Commission
602 made the right decision.

603 • This was different philosophically than allowing for additional information to be added to
604 the assemblage of the record. The City wanted the best projects and the best decisions
605 where everybody was considering the totality of the material. The approaches were
606 different, and the Commission needed to decide which one to put in the Code.

607

608 **Commissioner Gamba** stated if they were just re-judging the same information and that
609 information was incomplete, justice was not being served, only serving the process.

610 • **Mr. Hall** stated the proposed approach mirrored the U.S. justice system more than what
611 currently existed in the Code.

612

613 **Commissioner Batey** stated she was not concerned about it from the justice angle. When
614 people really struggled and had an issue, it caused the Commission to struggle and have an
615 issue and they received a continuance. She was fine with the language as presented, but it was
616 really Council's decision. This approach was consistent with other things in the package, such
617 as moving some of the land use to Type III, in that it took some of the burden off Council and
618 concentrated it more at the Commission level.

619 • **Ms. Shanks** shared that at the last worksession, Council was fine with a limited appeal
620 to them on decisions already made by the Commission, but had questions about
621 whether Type I and Type II applications appealed to the Commission should stop there.
622 They were considering that they go on to Council.

623

624 **Chair Klein** commented that the Commission had to come prepared, along with the applicant
625 and those providing public testimony.

626

627 **Ms. Baker** suggested instructions be given at the first hearing, so that if one believed that
628 important evidence was missing, a continuance could be granted and the decision made at a
629 subsequent hearing.

630

631 **Chair Klein** responded that those instructions were already on the back of the agenda, Item 11
632 Meeting Continuance, and also referenced at the beginning of meetings as well. He read from
633 the script, "Prior to the close of the first public hearing, any person may request an opportunity

634 to present additional information at another time. If there is such a request, Planning
635 Commission will either continue the public hearing to a date certain or leave the record open for
636 at least 7 days for additional written evidence, argument or testimony. The Planning
637 Commission may ask the applicant to consider granting the extension of the 120-day time
638 period for making a decision if a delay making a decision could impact the ability of the City to
639 take final action on applications including the resolution of all local appeals.”

640

641 **Commissioner Batey** suggested addressing the concern by improving the script, rather than
642 allowing new evidence submission on appeal.

643

644 **Chair Klein** cited what was read at the beginning of meetings, “Agendas and additional copies
645 of the staff report are available on the table in the hall. If you have not picked up an agenda,
646 please do so. It contains important information about the process.”

647

648 **Ms. Mangle** suggested adding, “including the fact that a continuation can be requested.”

649

650 **Commissioner Gamba** suggested the statement “if a continuation was not requested, any new
651 evidence would not be admissible on appeal,” which was an important key phrase.

652

653 **Chair Klein** summarized that instead of adding language in the Code, the wording could be
654 added to the back of the agenda.

655

656 **Commissioner Gamba:**

657 • Asked if anything in the Code specified what was put on the agenda. Nothing in the Code
658 would prevent a future Commission from removing that language from the agenda.

659 • **Mr. Hall** responded that this was more a spectrum of how many times people got a new
660 shot at something. Regarding “good” versus “bad” people regarded a spectrum too. If
661 the City were run by bad people in the future, they could also change the Code without
662 telling anyone. The call was whether the Commission wanted to give people two
663 opportunities at the local level to present new evidence, or give them one chance to
664 present evidence and then another chance to make their best argument. Once done at
665 the local level, they could not present more evidence to LUBA or other further appeals
666 available.

667 • Believed people should have two opportunities to present evidence locally.

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Chair Klein called for a straw poll: should new evidence be allowed to be brought forth as an application moves forward to City Council after a Planning Commission decision?

Commissioners Wilson and Gamba voted Yes; Commissioners Klein, Harris, and Batey voted No.

Ms. Mangle stated she would present the issue to Council with a minority report as was done when decisions were not unanimous.

Commissioner Gamba believed “private interest” should be defined as stated in MMC 19.1010.5 Participation by Interested Officers or Employees, 5.1 Page 90, “The officer or employee of the City who has financial or other private interest in...”. “Private interest” appeared several times in the proposal and was very vague.

- **Mr. Hall** agreed it was vague. He explained it was meant to mirror the ethics of government officials in state law. Basically, the standard was that one could not participate if one had any financial interest in the outcome of a development or proposal, whether personally or that of a family member or a business associate.
- Staff clarified that “officers” referred to appointed committees, the Commission, Council and possibly NDAs; “employees” referred to staff. The next section, MMC 19.1010.6, involved committee members and was specific to the Design & Landmarks Committee (DLC).
- **Mr. Hall** stated the actual issue was for the Commission to determine what the standard should be. The standard in MMC 19.1010.5 as proposed was stricter and broader than the state standard in who had to recuse themselves. If the Commission wanted to extend beyond the financial interest of self, business partners and immediate family members, the City had the authority to do so; it could not be made less strict than the State standard.

Chair Klein understood the decision to recuse was placed on the individual Commissioner. It could be pursued with the State ethics board if there was a question about a Commissioner’s participation. The Commission made sure that a private interest was not being taken advantage of.

702 **Commissioner Gamba:**

- 703 • Noted the language did not specify “financial interest.” He clarified he did not want “private
704 interest” removed; only made less vague.
- 705 • **Mr. Hall** explained that if a separate standard from the State existed, someone could
706 challenge to LUBA that this section was violated because of a private interest, because it
707 was not clear what “private interest” meant.
- 708 • **Commissioner Batey** believed City attorneys that had advised the Commission in the
709 past about conflict of interest were considering the State standard, not the City’s Code
710 language.
- 711 • Suggested copying the State’s language or at the very least make the proposed language
712 specific.
- 713 • **Ms. Mangle** agreed. Staff would address the issue.

714

715 **Commissioner Batey** stated that she had some wordsmithing things she would work on with
716 Ms. Shanks. She liked staff’s language regarding story poles on the blue handout. She agreed
717 with the point that the photos counted as opposed to the poles themselves. Though photos
718 could make poles look drastically different, the City could specify where the photo was taken
719 from.

720

721 **Commissioner Gamba** stated the lens would still be an issue. He suggested that the poles be
722 up for a sufficient length of time to allow for the Commission to go look at them. Another option
723 would be coming up with a standard for staff to go out to take photographs.

724

725 **Chair Klein** asked if there was a way to require story poles when a project came within a
726 percentage of some sort of impact.

727

728 **Commissioner Gamba** did not believe story poles should always be required, but they should
729 be a tool that could be required.

730

731 Staff noted that Mr. Hall was apprised of the situation and staff had inquired how story poles
732 would work with the process and parameters required by State law, and how the story pole
733 results could be included into the record. Because the poles would not be part of the material,
734 photos would be substituted, but discussion of them could be in the record as well. What was

735 the best way to get an actual feel for what the project looked like and translate that into the
736 record should the Commission not be able to look at the project or story poles themselves?
737

738 **Mr. Hall** stated there were a few ways to do it. The applicant and Commissioners could take
739 pictures, and anyone at the hearing who took pictures could submit them into the record. The
740 Commissioners could go look at the project and describe it in the open hearing.

741 • The timing regarding when the poles had to go up was not really legally constrained. The
742 issue was what the Commission wanted the requirement to be. The submission
743 requirements list to get the application deemed complete was not approval criteria but
744 completeness criteria. The Commission needed to decide if they wanted to be able to deny
745 the application based on just a lack of story poles. They should look at the standards for
746 each type of application they wanted story poles applied to. A lot of the time, an applicant
747 did not necessarily have to immediately commit to a certain massing or to what exactly the
748 structure would be.

749

750 **Ms. Mangle** agreed that it was very dependent on the zone and type of application required.
751 Each application would be different. The Commission needed to decide what was needed to be
752 satisfied to meet the criteria. Sometimes that would mean directing the applicant to return with
753 better information or to build story poles.

754

755 **Commissioner Gamba** asked if the Commission could require something not mentioned in the
756 Code.

757 • **Ms. Mangle** replied that if the criteria were such that the Commission needed to
758 understand the height and massing, for example, and the Commission did not know
759 based on what was submitted, they could request a massing study. There were definitely
760 certain applications where that information was needed to determine whether or not it
761 met the criteria.

762

763 **Commissioner Batey** noted there had been applications where the Commission wished they
764 had the ability to ask for that. Although it was implied that the Commission had the ability to ask
765 for such information, the Commission had not ever felt like they could. While she agreed
766 extensive detail did not need to be included, it was important to include the concept somewhere
767 in the Code to curtail dispute by the applicant.

768 • **Ms. Mangle** stated applicants would still push back and complain. She noted staff was
769 hesitant to put too much in the Code when the logistics of how it would work were not
770 understood.

771
772 **Commissioner Gamba** stated it would make sense to put the story poles up at the same time
773 the public notice signs were posted. The public would then be able to see what the project
774 looked like when they received notice of the project. The poles could then come down the day
775 after the hearing.

776 • **Chair Klein** was concerned about public safety issues with a 45-foot pole on the site for
777 20 days.

778 • **Ms. Mangle** added they also needed to decide on which applications the story poles
779 would be required.

780 • Believed staff would have to use discretion about when to require the story poles.

781 • **Ms. Mangle** noted the proposed language stated the City could require the story poles
782 when deemed necessary.

783 • Added that he would include the logistics to prevent someone from putting up story poles,
784 taking a quick picture, and pulling the story poles down.

785
786 **Commissioner Batey** suggested amending the last sentence of MMC 19.1003.2.C, as noted
787 on the blue handout, to state, "For applications where the subjective aspects of the height and
788 mass of the proposed development will be evaluated, ~~photographs~~ of temporary on-site "story
789 pole" installations that simulate the proposed development, **and photographic documentation**
790 **thereof**, may be required."

791 • **Ms. Shanks** noted staff was always pushing the applicant and this would be more of a
792 struggle because it was not just something on a piece of paper. She agreed something
793 like this was needed to really understand some projects.

794 • Staff was trying to update the submission requirements form and have this language
795 mirror that to state what the City needed to have adequate public review of a proposal.
796 The decision makers and public need to understand what was being done to ensure the
797 approval criteria were being met, otherwise the proposal would be denied.

798
799 **Chair Klein** said he never felt like the Commission had the power to require an applicant to do
800 story poles, even though they could request more information. He suggested that if something
801 did not look right when first reviewing the packet, the issue should be raised at that time. If

802 height was an issue, for example, a Commissioner could request a photo and to put up the story
803 poles. Four Commissioners viewing the site at the same time would break ORS meeting laws.
804 He added that there were buildings where he would not have felt comfortable leaving story
805 poles out on site.

806
807 **Commissioner Gamba** reiterated that the poles should be put up when public notice is sent,
808 and removed the day after the hearing. He noted that Colorado had bigger storms than Oregon,
809 and they put story poles up at every project. It was not just a pole sticking out of the ground but
810 more similar to the framework of a house using 2x4s.

811
812 **Chair Klein** stated that with the knowledge that the Commission could ask for more information,
813 if height was a potential issue that could be noted as a potential red flag in the packets.

- 814 • **Ms. Shanks** noted that since the applicant's materials were sent to the Commission
815 earlier now, the Commission could notify staff if they came across certain issues.

816
817 **Commissioner Gamba** believed Commissioner Batey's slight change in the wording would
818 solve the problem.

819
820 **Commissioner Batey** stated her other issue was the lapsing of nonconforming uses. In the
821 current Code, if a nonconforming use was not used for 6 months, it lapsed, and the Code
822 proposed to extend that to 1 year. She had concern the City might lose some flexibility to get rid
823 of some unwanted nonconforming uses.

- 824 • **Ms. Mangle** stated this was something staff proposed to make it consistent with what
825 the Commission had discussed about conditional uses.
- 826 • **Ms. Shanks** reminded the Commission had a big discussion about conditional uses and
827 had settled on 2 years. Staff proposed changing it from 6 to 12 months for
828 nonconforming uses because the nonconforming structure rebuilding rights were for 1
829 year. So if a nonconforming use in a nonconforming structure burned down accidentally,
830 they had a year to rebuild their nonconforming structure, but they would not be allowed
831 to reestablish the nonconforming use after 6 months, which did not seem right. The other
832 reason staff believed it would be good to extend the time was because of downtown
833 nonconforming uses and what it took to get a new tenants. The two sides to the issue
834 involved wanting to get rid of some nonconforming uses and the economic issues
835 regarding vacancies.

- 836 • Some nonconforming uses outside of downtown included Wichita Feed & Hardware,
837 which was a commercial use in the manufacturing zone. There were many residential
838 uses in the manufacturing zone along Johnson Creek Blvd that were nonconforming.
839 Milwaukie Florist on Lake Rd was a nonconforming business in a residential zone. There
840 are some duplexes and multifamily housing scattered throughout the city that were
841 nonconforming uses. The majority of businesses were downtown or in the North
842 Industrial Manufacturing Zone. Amadeus Manor Restaurant was also nonconforming.
843 • **Ms. Mangle** clarified that most churches were not nonconforming uses.
844 • **Ms. Shanks** added churches spanned the whole continuum, but only a few would be
845 nonconforming, because they predated the Zoning Code and had no improvements.
846 Otherwise they become a conditional use or CSU, and therefore no longer
847 nonconforming.
848 • Agreed with the 1-year timeframe after the clarification.

849

850 **Chair Klein:**

- 851 • Asked if the changes could be summarized and a motion made or if the issue should be
852 carried over and have staff make the changes and return.
- 853 • **Ms. Shanks** stated it depended on the Commission's comfort level in terms of latitude.
854 She recorded all the specific wordsmithing discussed and it sounded like the
855 Commission agreed with everything other than some specific wording suggested by
856 Commissioner Gamba, which were specific and small enough to be easily captured. She
857 believed she had gotten complete direction from the Commission. However, if the
858 Commission wanted to see the final, that was fine as well.
- 859 • **Ms. Mangle** said she wanted to hear more from Ms. Baker. There were a lot of issues
860 raised, and she was not sure she understood a lot of the specificities. She deferred to
861 the Commission about whether they wanted to hear the results of that discussion or if
862 they wanted staff to work with Ms. Baker as they refined the proposal going to Council.
- 863 • Did not have a problem continuing it for 2 weeks and then having a quick vote on it.
864 Commissioner Churchill would be present at that time, and they needed to decide what
865 would be appropriate for his dialogue to be included.
- 866 • **Ms. Mangle** responded that the digital recording of the meeting could be provided to
867 him.

- 868 • **Mr. Hall** added that unless a decision or tentative decision was made in deliberations,
869 the discussion could continue when the matter was reopened and Commissioner
870 Churchill could provide input.
- 871 • Noted that the public testimony portion was not yet closed.
- 872 • **Mr. Hall** reminded it was legislative. If the Commission wanted to hear from people who
873 attended next week, that was on the table. It could also be closed to public testimony.
- 874 • **Ms. Shanks** noted that returning in 2 weeks only allowed one week to prepare the
875 packet materials. Staff could bring the final document and note just the changes rather
876 than presenting a full packet, if the Commission agreed. This would also allow staff more
877 time to work with Ms. Baker.

878

879 Following a brief discussion, the Commission consented to staff posting the material online the
880 Friday before the meeting and then bringing material to the hearing.

881

882 **Ms. Baker** asked for a continuation.

883

884 **Vice Chair Harris** moved to continue the public hearing on ZA-10-02 and CPA-10-03 to
885 date certain February 8, 2011. Commissioner Batey seconded the motion, which passed
886 unanimously.

887

888 **6.0 Worksession Items**

889 6.1 Summary: Discussion of annual work plan preparation & review of bylaws
890 Staff Person: Katie Mangle

891 **Ms. Mangle** stated that last year the annual Planning Commission/City Council meeting did not
892 occur due to the City Manager and City Councilor turnover. This year's joint meeting was
893 scheduled for March 1, 2011. To prepare for that meeting, the Commission needed to discuss
894 the annual work plan and review the bylaws, which would be addressed another time.

- 895 • She distributed a copy of the 2009 work plan, noting most of the plan had been completed.
896 Reviewing the operating Planning Department work plan, which was different than the
897 Planning Commission work plan, might also be helpful. The Commissioners could see if they
898 wanted to add or change anything. She encouraged the Commissioners to consider what
899 work, if any, they might want to do as individuals to help the City address any specific issues
900 that concerned them.
- 901 • She explained that the Urban Renewal Plan was noted in light gray which indicated no

902 funding was involved. Council had asked staff to consider urban renewal, but offered no
903 clear direction about actually pursuing it yet.

- 904 • Conducting public hearings would remain the Commission's first priority as that was the
905 Commission's charge. The Residential Development Standards project would be the next
906 project and then hopefully review of the commercial areas. These projects should not be
907 characterized as just Code projects, but are new and long-range planning projects that
908 would lead to Code changes.

909

910 **Commissioner Gamba** confirmed the Code change would involve zone changes for the
911 commercial zones. He asked if the concept of 20-minute neighborhoods could be discussed,
912 being able to put commercial entities into areas currently zoned nothing but residential. For
913 example, a small grocery could be allowed along Lake Rd, which is an artery, but it had no
914 commercial zoning.

- 915 • **Ms. Mangle** believed all that needed to be done was to make sure the existing
916 commercially-zoned areas were empowered to be of better service to the
917 neighborhoods. There was already a lot of commercial infrastructure well within the 20-
918 minute radius. Also existing commercial areas had many unnecessary limitations. The
919 question was how to utilize the commercial areas.

- 920 • She asked the Commission to consider broader projects. She would begin drafting the
921 2011 work plan and asked for input from the Commission about the work plan and
922 bylaws, which would be discussed at the next meeting.

923

924 **7.0 Planning Department Other Business/Updates**

925 **Ms. Mangle** announced that all the microphones in the chambers were being updated.

926

927 **8.0 Planning Commission Discussion Items**

928 **Commissioner Batey** stated she wanted to include the Sign Code in the work plan. She
929 encouraged people to look at the gas station sign at the new Fred Meyer on McLoughlin Blvd.
930 Most gas stations along McLoughlin Blvd actually had monument signs rather than pole signs.

- 931 • She noted the new electronic billboard sign that was installed in the North Industrial Zone.
932 She would like to have a wider discussion about the Sign Code with Council at the joint
933 meeting in March.

934

935 **Commissioner Gamba** added that a lot of people were talking about that billboard sign.

936

937 **Chair Klein** noted the Sign Code lacked teeth last time, but perhaps with a new Council that
938 would change.

939

940 **Ms. Mangle** provided background on the billboard sign, noting it was expected to be illuminated.

941

942 **9.0 Forecast for Future Meetings:**

943 February 8, 2011 1. Worksession: Residential Development Standards project

944 February 22, 2011 1. Worksession: North Clackamas Park North Side Master Plan *tentative*

945 March 1, 2011 1. Meeting with City Council 5:30 pm

946 **Ms. Mangle** reviewed the forecast for future meetings with these comments:

947 • Staff was ready for a worksession on the illuminated signs on McLoughlin Blvd for February
948 8. Staff received draft Code from the '76 Station owner for consideration. More issues would
949 probably be raised than resolved.

950 • The Commission would not be addressing the Residential Development Standards on
951 February 8. Steering committee meetings would begin in late February and she invited
952 anyone's participation.

953 • North Clackamas Parks and Recreation District would be discussing the North Side Master
954 Plan on February 22; that was no longer tentative.

955

956 **Chair Klein** noted that the recent article in *The Clackamas Review* about him saying holes
957 could be driven in the Code did not accurately represent his comments. His goal was that as
958 Code was rewritten, it would make it easier for all users involved, whether an applicant or the
959 neighbors or anyone in the public, that the Code be simplified so it did not necessarily contradict
960 itself. He emphasized his comments were in no way meant to have the tone portrayed in the
961 article. The interview was initially about one topic, but was turned to an entirely different
962 subject. He apologized for the manner in which the article was written.

963

964 Meeting adjourned at 9:50 p.m.

965

966

967

Respectfully submitted,

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970

971

972

Paula Pinyerd, ABC Transcription Services, Inc. for

973

Alicia Stoutenburg, Administrative Specialist II

974

975

976

977

978 Jeff Klein, Chair



MILWAUKIE

Dogwood City of the West

To: Planning Commission

Through: Katie Mangle, Planning Director *KM*

From: Brett Kolver, Associate Planner

Date: April 5, 2011, for April 12, 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

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.

BACKGROUND INFORMATION

The Planning Commission continued the March 22, 2011 hearing on the proposed amendments described above to April 12, 2011. Please refer to the March 22 staff report for additional background information.

A. History of Prior Planning Commission Actions and Discussions

- **March 2011:** Planning Commission held the first public hearing on the proposed code amendments.
- **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's 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.

COMMENTS ON THE PROPOSAL

The Planning Commission held the first public hearing on the proposal on March 22, 2011. Seven people contacted staff in advance of this hearing with questions about the proposal and/or the hearing. Seven people testified at the hearing, with four of them submitting written testimony. Staff presented four specific modifications to the proposal. During the hearing, four testifiers and one commissioner raised questions and suggested changes to the proposal, and one testifier specifically requested that the hearing be continued to allow more time for public comment. The Commission continued the hearing to allow for additional public comment and to give staff time to respond to the questions and suggestions raised at the hearing.

As of the writing of this report, staff has revised the proposal to address the questions and suggestions raised at the hearing, met with one testifier to answer questions about the proposed amendments and followed up on additional questions from that testifier via e-mail, prepared property-specific maps showing proposed natural resource areas for another testifier, corresponded with two commissioners via phone and e-mail to answer specific questions about the proposed amendments, and met with one commissioner and one testifier to tour the testifier's property and discuss specific aspects of the proposed amendments.

No additional written comments have been received. Any comments received prior to 3pm on the day of the April 12 hearing will be provided to the Commission before the hearing. Comments received after 3pm will be presented at the hearing.

Responses to Issues raised at March 22 Hearing

Staff has prepared responses to questions raised during the March 22 hearing, as well as issues raised outside of the hearing.

Many of the questions raised and suggestions offered at the March 22 hearing can be effectively addressed with minor revisions to the draft code amendment documents. Revisions to the proposed Natural Resource Areas code presented at the March 22 hearing are reflected in ~~strikeout~~/underline format in Attachment 1 (Proposed Section 19.402 Natural Resource Areas – revised for April 12, 2011 hearing). Likewise, revisions to the proposed amendments to the Comprehensive Plan and other parts of the code are reflected in ~~double-strikeout~~/double-underline format in Attachment 2 (Proposed Amendments to Comprehensive Plan and Municipal Code (Underline/Strikeout Version) – revised for April 12, 2011 hearing).

1. **What is "disturbance"?** – The code includes a definition of "disturb,"¹ which also relates to the definition of "development."² The Applicability section (Subsection 19.402.3.E) attempts to clarify the difference between temporary and permanent disturbances. Staff will revise the Commentary documents prior to the City Council hearing to provide added clarification.
2. **Tree replacement** – One testifier questioned the ratios for tree replacement included in Table 19.402.11.D.2.a and wondered if it was possible to include some language that would only require those ratios "where practical." In response, it is important to note that Table 19.402.11.D.2.a only applies when calculating the mitigation requirements for development in HCAs. It does not apply to the removal of trees allowed outright³ or by Type I review.⁴ When tree removal is allowed outright, there is no requirement to replace the tree; when allowed through the Type I review process, tree replacement is required on a one-to-one basis and with a minimum replacement size of 1.5 inches in caliper. Mitigation for tree removal in WQRs is subject to the mitigation requirements of Table 19.402.11.C, which usually involves discretionary review.

For HCAs, Table 19.402.11.D.2.a bases the proportions of required plantings to tree diameter on an average consideration of how much canopy coverage was provided by the tree removed. The ratios are based on general principles of restoration ecology and are widely used by other jurisdictions across the region. In addition, the general standards for required mitigation established in Subsection 19.402.11.B provide guidance about plant spacing (B-4), location of the mitigation area (B-6), and required survival rate (B-9), all of which allow for some limited flexibility in how the mitigation plantings are done.

The table is one of two mitigation options available to applicants who would like to use the expedited Type I (nondiscretionary) review process for HCA disturbance. If neither of those mitigation options (outlined in Subsections 19.402.11.D.2.a and 2.b) should prove to be workable for an applicant, there is always the option of using the Type III review process to make the case for an alternative mitigation scheme. Attempting to incorporate a "where practical" element into the calculation of required plantings would inject an element of subjectivity into a process that is specifically designed to be clear and objective. The ratios are intended to be appropriate in most situations, and those specific cases where they are not will have to use a different review process.

3. **Common ownership of resource tracts** – There is no intended or actual conflict between the discouragement of common ownership of separate resource tracts in Subsection 19.402.13.J.2 (an element that was suggested by Advisory Group members because of

¹ "Disturb" means to make changes 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 Water Quality Resource Area and planting native cover identified in the Milwaukie Native Plant List.

² "Development" means all improvements on a site, including, but not limited to: buildings, accessory structures, parking and loading areas, paved or graveled areas, improved open areas (such as plazas or walkways), above-ground utilities, landscaping, and areas devoted to exterior display, storage, or activities. Development also includes actions that result in physical change to a site, including, but not limited to: mining, dredging, filling, or grading in amounts greater than 10 cubic yards. Some types of development may require issuance of a development permit and/or land use approval prior to construction or placement. Development does not include the following: (1) stream enhancement or restoration projects approved by cities and counties; (2) farming practices as defined in ORS 30.930 and farm use as defined in ORS 215.203, except that buildings associated with farm practices and farm uses are subject to the requirements of Title 3; (3) construction on lots in subdivisions meeting the criteria of ORS 92.040(2); or (4) natural geologic forms or unimproved land.

³ Subsection 19.402.4.A.5

⁴ Subsection 19.402.6.B

concerns for accountable long-term management of resource tracts) and the notes on "common open space" related to cluster development standards (Subsection 19.402.14.C.2).

For cluster development situations, natural resource areas are not required to be put into separate tracts as common open space, though that is one option. The reference to "common open space" is to space without structures that is accessible to the site as a whole (versus to being considered the exclusive "back yard" of one particular dwelling unit, for example). Someone doing cluster development could create a separate tract and decide to create a homeowners association as owner or otherwise make it commonly owned—the code only discourages that form of ownership, it does not prohibit it. The cluster development section seems better served by not attempting to specifically address the many possible scenarios for dealing with common open space.

4. **Adjustments for cluster development** – The same adjustments that are allowed outright for other properties with WQRs or HCAs in Subsection 19.402.14.A would be available for cluster development situations. The language has been revised to clarify this intent. However, if a cluster development proposal cannot meet the development standards outlined in Subsection 19.402.C.2, then a formal variance request will be necessary.
5. **Disturbing landscaped areas** – Some have suggested that a distinction be made between "manicured" and "natural" resource areas, in terms of considering where to allow more disturbance without review. Staff does not believe that such a distinction is useful, especially in the context of WQRs, where the issue is as much or more about the potential impacts of disturbance to water quality than the impacts to manicured areas designated as habitat. The code already allows for maintenance of existing landscaping features. Although this allowance does not extend to planting nuisance plants or increasing impervious area with new patios or walkways, it does allow one to preserve existing lawns and other plantings and even to replace a lawn with a garden. The central idea is that while one is not required to restore the natural resource area to "natural" conditions, it should not be too easy to do things that further entrench the existing "non-natural" features without some review and likely mitigation.

With that said, the Planning Commission may wish to consider increasing the threshold for allowable disturbance, which staff has proposed as 150 square feet. This threshold establishes the amount of disturbance that would trigger the requirement for a construction management plan and in some cases would determine the level of review that a particular activity requires. The City already requires an erosion control plan when an activity generates more than 500 square feet of disturbance (Section 16.28.020) and in fact can require an erosion control permit on any property that includes a designated natural resource if there is a potential for "visible and measureable erosion, regardless of the area of disturbance."⁵

Within a certain distance of a natural resource area (100 feet), the proposed code establishes a specific square footage of disturbance as a threshold of concern. Adjusting this threshold to 200 or 250 or even 300 square feet would reduce the likelihood that a property owner would be pulled into a review process when there is little reason for concern. Staff recommends that the threshold not be higher than 300 square feet, to ensure that natural resource areas are adequately protected more often than with the standard 500-square-foot threshold and to acknowledge that some activities that would not otherwise warrant City review might in fact impact natural resource areas.

⁵ Subsection 16.28.020.C.3

Alternately, or in addition, the Planning Commission could establish an outright exemption specifically for landscaping and landscaping maintenance activities that are done with handheld tools, regardless of the amount of disturbance.

6. **Mitigation requirements for Good/Marginal/Degraded WQRs** – In response to the question about why a vegetative inventory would be required for "Good" WQRs but not for "Marginal" or "Degraded" WQRs, staff has made a few specific revisions to clarify the intent and function of Table 19.402.11.C. Essentially, an inventory of vegetation will be required as part of the basic submittal for all applications that require discretionary review, regardless of the WQR condition, so there is no need to reference such an inventory in the table.

Although the code does not require restoration of the resource area when there is no development or other disturbance activity, the intent of these protections is to improve resource health. For WQRs in particular, the emphasis is on moving the condition of resource areas closer toward the "Good" category whenever some disturbance is proposed. Once WQRs are in "Good" condition, any future allowed disturbance should be adequately mitigated, with a specific plan to ensure that the water quality functions of the resource area are protected. For "Marginal" and "Degraded" WQRs, the requirements include providing a plan for establishing the vegetation that would be there under ideal natural habitat conditions.

It is worth noting that these categorizations of "Good," "Marginal," and "Degraded" are technical terms that relate specifically to the conditions that are scientifically understood to be most beneficial for water quality. These terms are not intended to judge the character or ethics of property owners but rather to categorize WQRs with respect to their physical conditions. Manicured landscapes with grass lawns and exotic plantings can certainly limit erosion and provide shade over the creek much as a more natural setting with native plants does, but their upkeep requires more human effort and intention than do undisturbed natural areas that are free of invasive nuisance species. In this regard, it is perhaps accurate to say that the intent of the policy is to value natural landscapes over manicured landscapes, though these values are limited to WQRs and HCAs and do not extend to private-property landscaping in general.

7. **Concern about the fragmentation of large WQR/HCA parcels through land division** – Staff is not aware of many large parcels in Milwaukie that are 90% or more covered by HCA that could be partitioned or subdivided and so result in the loss of significant, intact habitat corridors. Even if there were, it is worth noting the larger context of Milwaukie being in an urban area, where development and some level of population is expected and in fact preferred, in order to minimize loss of habitat and open space outside of the urban growth boundary. That context is part of the framework of Metro's Title 13 (Nature in Neighborhoods), which attempts to balance habitat preservation and development and so allows some disturbance of HCAs.

Where WQRs are concerned, the automatic disturbance allowance afforded to HCAs is not an option. Of the two types of natural resource areas, WQRs are of higher value because they are the areas immediately adjacent to protected water features. For both WQRs and HCAs, any allowed development is required to provide mitigation that will improve habitat in the remaining undisturbed area.

As proposed, it is true that the code could potentially allow significant HCA disturbance in situations where a site is mostly covered by HCA. For example, "low-impact" partitions that qualify for Type II review⁶ would enable a property owner to divide a large HCA area. However, given the stated intention of Title 13 to allow some disturbance of HCAs and the

⁶ Subsection 19.402.13.G

seemingly low number of properties of concern, the Planning Commission should consider whether the potential for harm warrants taking more time now to develop alternative language.

Some applications for subdivision⁷ would be subject to the discretionary standards and would be required to demonstrate that all lots would have adequate buildable area *outside* the HCA. On a parent lot that includes a high percentage of HCA coverage, if an applicant could not meet this criterion (or show that a cluster development might work) then a variance request would be necessary. The discretionary process of evaluating the variance would enable the Planning Commission to limit disturbance to the HCA (by reducing the number of lots, for example). If the discretion afforded to the Planning Commission by the variance process is not sufficient to address the concern raised about keeping large HCAs intact, then it may be necessary for staff to take more time to develop an alternative solution.

8. **Mitigation requirements** – As noted in response to Issue #2 above, the general mitigation standards of Subsection 19.402.11.B specify that mitigation plantings must be installed within the disturbed area. Where plantings cannot be included within the designated resource area on the site, they can be contiguous to the area but must include a restrictive covenant that protects the new mitigation area. Off-site mitigation is an option where HCA disturbance is involved, but not for WQR disturbance.
9. **Use of the term "practicable"** – The term "practicable" is not sufficiently clear. It has been replaced throughout Section 19.402 with "feasible" and "reasonable," as appropriate, to provide clarity.

Other Issues Addressed by Staff since March 22 hearing

- A. **Connections to existing utilities** – When a property owner needs to make a connection to an existing utility but must disturb a WQR or HCA to do so, there are often few feasible alternatives. And if the usual remedy would be to simply revegetate the area that was disturbed (usually a trench for underground connections), it seems unnecessary to require an expensive and time-consuming review process. With this in mind, staff has established a Type I process for approving connections to existing utilities,⁸ provided that the connection does not disturb a protected water feature itself and can meet the general standards for special uses (i.e., mitigate/restore disturbance).
- B. **Definition of "natural resource area"** – Since the term "designated natural resource area" was used throughout Section 19.402, staff decided it would be useful to define it in Section 19.201. And since the word "designated" seemed to be somewhat unnecessary, the term has been defined as "natural resource area" and Section 19.402 has been revised to use that term consistently.

⁷ Subdivisions create at least four lots.

⁸ Subsection 19.402.6.F, newly renumbered

Summary of Revisions to Proposal

Attachment 1, Proposed Section 19.402 Natural Resource Areas – revised for April 12, 2011 hearing

Revisions to the earlier "PC Hearing Draft 3-22-11" are shown in ~~strikeout~~/underline format.

- 19.402.1 – Deleted "water quality and" from the phrase "natural resource area regulations."
- Table 19.402.3.K – Added a row for Type I utility connections; changed nuisance abatement reference from 6-F to 6-G.
- 19.402.3.E – Made small changes in language to clarify "disturbance" in the context of natural resource areas.
- 19.402.4.B – In the opening paragraph of B, small changes for syntax. In B-1, made small changes (from "the WQR or HCA" to "a WQR or HCA") for syntax.
- 19.402.6.F – Added "Utility Connections" to list of Type I activities and bumped the last two items down the list (Nuisance Abatement and Boundary Verification, respectively).
- 19.402.11.B.6.a – Added the word "area" after "resource" in fourth line of paragraph.
- Table 19.402.11.C – Removed the word "Area" from "WQR Area" and deleted the "Requirements Applicable within . . ." column heading to allow for the intended flexibility in the discretionary review process to determine what mitigation is appropriate. Deleted the specific reference to a vegetation inventory for "Good" areas because a similar inventory is required as part of the basic submittal for all projects requiring discretionary review for WQR disturbance. Clarified the requirements for "Marginal" and "Degraded" areas to emphasize that disturbances must be restored/mitigated and not necessarily just revegetated.
- 19.402.11.E – Revised some of the language in E-1-c regarding removal of nuisance plants—the "may be removed at any time" language seemed unnecessary, and the specific requirement to replace nuisance species with native species limits the ability to allow replacement of lawn with lawn in some cases where that might be the most appropriate action. In E-2, deleted language related to "private connections to existing or new utility lines" because of the proposal to provide a Type I review option for that activity.
- 19.402.12.C.2 – Corrected erroneous reference in fifth line of paragraph—should be "all other applicable provisions of Subsection 19.402.11" (Development Standards) and not ". . . 19.402.13" (Land Division).
- 19.402.14 – Added language in initial paragraph to clarify that the adjustments are only available on properties that include a WQR or HCA, and not to properties that are close but do not include a natural resource area. In 14-C-2-c, added a new Point #1 to specify that the adjustments in 14-A are available to cluster development proposals.
- (Various parts of 19.402) – Replaced word "practicable" with "feasible" or "reasonable." Also made some replacements of the word "possible" throughout the code.

Attachment 2, Proposed Amendments to Comprehensive Plan and Municipal Code (Underline/Strikeout Version) – revised for April 12, 2011 hearing

Revisions to the earlier "PC Hearing Draft 3-22-11" are shown in ~~double-strikeout~~/double-underline format.

- 19.201 – Added definition for "natural resource area." Spelled out acronyms for WQR and HCA throughout the definitions. Deleted "MMC" in conjunction with specific chapter/section references.

- 19.202 – Added new subsection (19.202.3) specifically for tree measurements, as presented to Planning Commission at March 22 hearing.

Attachment 3, Proposed Natural Resource Administrative Map – revised for April 12, 2011 hearing

- Revised legend to list "Water Quality Resources" instead of "Water Quality Resource Areas."
- As presented to Planning Commission at March 22 hearing, removed swimming pool formerly shown as WQR at northeast corner of 23rd Ave and Harrison St.

RECOMMENDATION

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

Approve a motion to recommend that City Council adopt the draft ordinance and related exhibits as proposed, with the modifications presented in Attachments 1, 2, and 3.

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 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. A continuance of at least one month may be necessary to allow adequate time for staff to respond to new issues.
4. Deny the proposed amendments and ordinance. This would have the effect of deciding to continue to implement the Water Quality Resource (WQR) code in its current state and implementing Metro's Title 13 model code and maps 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 Metro's Title 13 Model Code and HCA map. The City would then implement MMC 19.402 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.

ATTACHMENTS

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

1. Proposed Section 19.402 Natural Resource Areas – revised for April 12, 2011 hearing (attached)
2. Proposed Amendments to Comprehensive Plan and Municipal Code (Underline/Strikeout Version) – revised for April 12, 2011 hearing (attached)
3. Proposed Natural Resource Administrative Map – revised for April 12, 2011 hearing

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

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 4-12-11” document reflects this change.

PC Hearing Draft 4-12-11

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 n~~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. In the context of designated natural resource areas, "Disturbance" to a designated natural resource area can be either temporary or permanent as noted below:
 - 1. Temporary disturbances are those that occur during ~~the~~ an allowed or 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.

2. Permanent disturbances are those that remain in place after ~~the~~ an allowed or 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

- 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)	✓		
Utility connections (Subsection 19.402.6.F)	✓		
Non-emergency abatement of nuisances or violations (Subsection 19.402.6.FG)	✓		
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)		✓	
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* 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 that 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~~ a 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~~ a WQR or HCA.
 - (2) No other site changes are proposed that could result in increased direct stormwater discharges to ~~the~~ a 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 1/2 inches 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. Utility Connections

Unless they are exempt per Subsection 19.402.4, connections to existing or new utility lines that involve disturbance to a WQR and/or HCA are subject to Type I review against the following standards:

1. The activities required to establish the connection shall not disturb a protected water feature. Utility connections that will disturb a protected water feature are subject to the review procedures for special uses established in Subsection 19.402.11.E.
2. The activities required to establish the connection shall not disturb an area greater than 10 feet wide.
3. The connection can meet the general standards for special uses established in Subsection 19.402.11.E.1.

GF. 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.

HG. 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~~ feasible 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~~ feasible 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~~feasible, 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 Milwaukie 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 area 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~~ feasible, 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 Restore and mitigate 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 Restore and mitigate 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.

Table 19.402.11.D.2.a Tree Replacement	
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/feasible. ~~Nuisance plants, as categorized on the Milwaukee 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 as well as to~~ 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.~~
- ab. The disturbance area for the upgrade of existing utility facilities shall be no greater than 15 feet wide.
- be. 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.
- c. Disturbance areas shall be revegetated.
- 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~~feasible, 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~~feasible 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 designated natural resource areas will be avoided and/or minimized, and demonstrating that:
 - a. No ~~practicable~~reasonable 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~~reasonable 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~~reasonable 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~~feasible.
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~~feasible.
 - (2) Where ~~practicable~~feasible, 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 designated 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~~feasible. The proposed activity must have less detrimental impact to the designated natural resource area than other ~~practicable~~reasonable alternatives, including significantly different ~~practicable~~reasonable alternatives that propose less development within the resource area.

- b. Minimize

If the applicant demonstrates that there is no ~~practicable~~reasonable 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~~feasible.

- (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~~feasible.
- (2) To the extent ~~practicable~~feasible 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-reasonable~~ 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~~feasible. 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~~feasible 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~~feasible 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~~feasible, 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~~feasible.
- 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 19.402.11 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~~-feasible difference in the percentage of HCA coverage on each property. Furthermore, the new boundary configuration will mitigate, to the extent ~~possible~~-feasible, 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~~-feasible 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~~-feasible percentage point difference in the percentage of HCA coverage on the parcels created by the partition.

- b. To the extent ~~possible~~feasible, 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~~feasible, 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.I.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~~feasible, 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~~ any property that includes a WQR or HCA ~~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) The adjustments allowed by Subsection 19.402.14.A shall be available for cluster development proposals.
 - (~~2~~) Minimum lot width and lot depth standards shall not apply.

- (~~32~~) A minimum separation of 10 feet shall be provided between all principal buildings and structures.
- (~~43~~) 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.
- (~~54~~) Each lot shall provide at least 12 feet of frontage on a public street.
- (~~65~~) More than one principal building or structure may be placed on a lot.
- (~~76~~) Not less than 25 percent of the site shall be conveyed as common open space.
- (~~87~~) 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~~feasible, 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~~feasible.
 - (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
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~~ feasible. 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.

*PC Hearing Draft 4-12-11***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 1981.~~ 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 or 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 4-12-11" document reflects these changes.

PC Hearing Draft 4-12-11

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:

<u>Table 19.108.1 Classification of Special Areas</u>	
<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 Habitat Conservation Area.

"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.

"Natural resource area" means any Water Quality Resource or Habitat Conservation Area as defined in Section 19.201 and established in Section 19.402.

"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 that measures at least 4 inches in diameter according to the measurement

~~standards established in Subsection 19.202.3 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 Habitat Conservation Areas in particular:

“Mitigation” means the reduction of adverse effects of a proposed project on the natural environment by considering, in this order: (1) avoiding the impact altogether by not taking a certain action or parts of an action; ~~(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 Habitat Conservation Areas.

“Significant negative impact” means an impact the affects the natural environment, considered individually or cumulatively with other impacts on the WQR Water Quality Resource Area and/or Habitat Conservation Area, 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.

19.202 MEASUREMENTS

19.202.3 Measuring Tree Diameter

A. Existing Trees

Existing trees are measured at a height 4.5 feet above the mean ground level at the base of the tree. Trees on slopes are measured from the ground level on the lower side of the tree. If a tree splits into multiple trunks below 4.5 feet above ground level, the diameter is measured at its most narrow point below the split.

B. New Trees

New trees are measured in caliper inches, which is the diameter of the trunk 6 inches above the mean ground level at the base of the tree.

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



MILWAUKIE

Dogwood City of the West

To: Planning Commission

Through: Katie Mangle, Planning Director *KM*

From: Ryan Marquardt, Associate Planner
Jason Rice, Civil Engineer

Date: April 5, 2011, for inclusion in the April 12, 2011 Planning Commission Packet and discussion at April 26, 2011 Worksession

Subject: Wastewater Master Plan – Comprehensive Plan Amendment

ACTION REQUESTED

None. The Wastewater Master Plan and staff report are provided in the Planning Commission packet for the April 12th meeting to allow more time for the Planning Commission to review the documents. The Commission will discuss the draft plan during a work session on April 26, 2011. Staff anticipates that the first public hearing on the Wastewater Master Plan (WWMP) (Attachment 1) will be on May 24, 2011.

BACKGROUND INFORMATION

A. History of Prior Actions and Discussions

- **August 2010:** Staff briefed the Commission about the project to update the WWMP, and shared preliminary findings.
- City Council authorized the scope of work for the project and has held several worksessions to discuss the project's progress.

B. Wastewater Master Plan Background

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

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

In 2008, the Engineering Department picked up the project again and significantly updated the information in the 2003 draft plan to prepare a new plan for adoption. Milwaukie's Citizen's Advisory Board (CUAB) participated in the master plan process and helped in its review. An Open House for the plan was held on February 25, 2009 at the Public Service Building.

In the last two years, the adoption process has been delayed pending resolution of items related to the wastewater system. These included city and county discussions about the Kellogg Treatment Plant, discussions of the city's utility billing rates, and completion of the Northeast Sewer Extension project. Engineering staff has edited the WWMP in response to the outcomes of these discussions to ensure that it is consistent with current information, and is ready to proceed with getting the plan adopted. It is a priority for the City to adopt the WWMP soon to have an official document for the operation and upkeep of the City's wastewater system, and to make use of the modeling and other work done from 2003 to 2005.

C. Master Plan Adoption Process

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

The amendments will include adopting the WWMP itself as an ancillary document to the Comprehensive Plan, and amending text of goals and policies within the Comprehensive Plan to be consistent with the WWMP.

The City endeavors to adopt all long range plans like the WWMP as ancillary documents to the Comprehensive Plan. These plans establish goals and policies for how the City will manage its resources to provide basic services to its residents, businesses, and institutions. It is important that such plans be incorporated into the document that guides how the City will manage future growth and development.

D. Worksession Objectives

Engineering staff will present the draft plan to the Commission during a worksession on April 24th. There will be two objectives for having this worksession. The first is to familiarize the Planning Commission with the basic contents of the plan prior to holding an adoption hearing. The second objective is to allow Commissioners to raise questions they may have about the plan or wastewater issues.

G. Key Topics of the Wastewater Master Plan

The WWMP contains a large volume of technical information about existing conditions and projections about future demands on the system. Planning Commissioners are welcome to review these portions of the plan, though staff is not specifically seeking input from the Planning Commission on these portions of the document.

The basic contents and information in the WWMP are complete. Some portions of the document, however, are still in progress. Not all of the figures and references that will be in the document presented for adoption are present in the current draft.

The items listed below are topics within the WWMP that are more suitably within the Planning Commission's purview for making a recommendation on adoption of a master plan.

- 1) CCSD#1 Agreements (Chapter 6, Pages 6-1 – 6-6): Milwaukie has multiple intergovernmental agreements related to wastewater. The agreements with Clackamas County Service District #1 are the most critical as it governs the treatment of the majority of Milwaukie's wastewater. The chapter details past agreements and provides recommendations for future agreements.
- 2) Financial Analysis (Chapter 11, Pages 11-1 – 11-12): This chapter describes future fees and rates that are necessary to maintain Milwaukie's wastewater infrastructure and cover the rates charged by other agencies that provide wastewater services to Milwaukie.
- 3) Kellogg Treatment Plant (Chapter 5, Pages 5-1 – 5-2): The Kellogg Treatment Plant is a significant issue for the future of downtown Milwaukie, and has been a contentious subject between the Clackamas County/CCSD #1 and the City. The most in-depth discussion in the WWMP of the Kellogg Treatment Plant is in Chapter 5. The treatment plant is also addressed in the Chapter 6 and noted as an issue that is in flux. The proposed WWMP does not take any official stance with regard to the ultimate disposition of the treatment plant, and instead summarizes the Clearwater Plan and Regional Wastewater Treatment Options Study.

At this point, staff does not have open questions seeking direction on how these topics should be addressed. While preparing the plan, staff has discussed these issues with the City Council and/or the Citizen Utility Advisory Board. Staff is seeking the Planning Commission's concurrence on these policy issues.

ATTACHMENTS

1. 2010 Wastewater Master Plan



March 21, 2011

Lisa M. Batey
Planning Commission Chair
11912 SE 19th Avenue
Milwaukie, OR 97222

Re: Library Expansion Task Force

On March 15, the City Council approved Resolution No. 35-2011 creating the Library Expansion Task Force. The Task Force is needed because the Ledding Library is insufficient to house all facilities needed to serve the City of Milwaukie as well as the service area assigned to Milwaukie through a Cooperative Intergovernmental Agreement with the Clackamas County Library District.

The Task Force is charged with the assignment of identifying options for expanding or relocating some facilities of the Ledding Library. One fact has been established: the Ledding Library will continue to be operated as a library serving our residents. The Task Force will be asked to consider whether some or all of the expansion will occur on the Ledding Library site. If the site cannot accommodate all of the needed expansion, other sites within the City need to be identified and evaluated. The Task Force may, for instance, recommend that certain facilities of the library be housed at the Ledding Library and some at one or more additional sites.

The Task Force will be made up of eleven members appointed by Mayor Jeremy Ferguson and approved by the City Council. The attached staff report and resolution identify the various groups that will be represented on the Task Force. Please review the resolution with your commission between now and April 8, 2011 and submit the name of your nominee to me. I will present the names of the nominees to Mayor Ferguson so that he can assemble his list of appointees for consideration by Council at the April 19 City Council meeting.

If you have any questions about the Task Force, Please contact me or Library Director Joe Sandfort (503-786-7584).

Sincerely,

A handwritten signature in blue ink that reads "Bill".

Bill Monahan
City Manager

MILWAUKIE CITY HALL
10722 SE Main Street
Milwaukie, Oregon 97222
P) 503 786 7555 / F) 503 652 4433
www.cityofmilwaukie.org



To: Mayor and City Council

**From: Bill Monahan, City Manager
Joe Sandfort, Library Director**

Subject: Creation of Library Expansion Task Force

Date: March 8, 2011

Action Requested

Approve the attached resolution creating the Library Expansion Task Force.

Background

At its January 18, 2011 Work Session meeting, City Council met with the Ledding Library Board and discussed the space needs of the library as well as the process that is necessary in order to evaluate options for enlarging the library. The availability of one million dollars of capital funds from the Library District of Clackamas County in 2012 requires that the city undertake an analysis of how to use the funds and develop a plan to address space needs. The Council and Board discussion focused on the benefits of creating a new task force to assist the staff and Board to stimulate a broad based discussion of the community need for library facilities, the options available, and the process needed to pursue locations and funding.

On February 18, 2011, the Ledding Library Board discussed the expansion project. The Board discussed five tasks involved in the expansion or relocation of the Library. It refined the tasks associated with the goal and assigned completion dates.

The first goal identified was the evaluation of the creation of a Library Expansion Task Force to assist the Board and Director to evaluate options. The Board determined that a task force should be created by May 1.

Composition of the task force could include:

- Two Citizens at large
- Two Neighborhood District Association representatives

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Two Ledding Library board members
A member of the City Council
A local business person
A Library Foundation member
A Planning Commissioner
A Budget Committee member

The Library Director should be ex officio and serve as the primary staff representative to assist the Task Force. It should also have available to it resources from various city departments including designated staff resources from the Planning Department and Finance Department as ex officio members. Once the task force is in place, it will address the other four tasks identified by the Board at its February 18 meeting. Those tasks are:

- Develop a scope of work to evaluate options to either expand the Ledding Library or to pursue additional library facilities within the city that deliver services in association with the Ledding library (to be completed by July 1, 2011).
- Evaluate the impact of assuming responsibility for delivering services to the unincorporated areas of Clackamas County (to be completed by July 1, 2011).
- Cost out the options and present preliminary estimates to the City Council for direction (to be completed by September 1, 2011).
- Follow Council direction and obtain necessary consultant services to develop detailed plans to present to Council of the alternative funding options (to be completed by January 1, 2012).

Attached is a resolution that outlines the details of the purpose and function of the task force.

Concurrence

The Ledding Library Board supports creation of the task force,

Fiscal Impact

None at this time.

Work Load Impacts

Workload impacts will be moderate at the beginning of the task force but are expected to increase as task force activities and the evaluation of options take shape. Library Director Joe Sandfort has been identified as the staff liaison to this new task force and will provide basic assistance and guidance.

Alternatives

1. Accept the attached resolution as written to create the Library Expansion task Force.

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2. Direct staff to modify the attached resolution.
3. Deny approval of the attached resolution and direct staff on further action.
4. Take no action.

Attachments

1. Adopting Resolution

RESOLUTION NO. 35-2011**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON,
CREATING THE LIBRARY EXPANSION TASK FORCE.**

WHEREAS, the Ledding Library (Library) has served the Milwaukie community for many years at its present location; and

WHEREAS, in 2010 the City entered into a Cooperative Intergovernmental Agreement between the Library District of Clackamas County and Library Cities; and

WHEREAS, the Library has been found to have insufficient size to house all facilities needed to serve the City of Milwaukie and the service area assigned to the City through the Cooperative Intergovernmental Agreement; and

WHEREAS, under the Cooperative Intergovernmental Agreement the City will receive \$1 million in 2012 to be used for capital facilities associated with the library, and

WHEREAS, the City lacks a long term facility plan that identifies options for expanding or relocating some facilities of the Ledding Library; and

WHEREAS, the Ledding Library Board (Board) and the City Council met in January, 2011 and discussed the need for undertaking an analysis of the needs and opportunities for expanding the library

WHEREAS, the Board has recommended the formation of a Library Expansion task Force to assist the Board and Council to assist in evaluation and development of alternatives; and

WHEREAS, the Board has recommended that the Task Force be comprised of representatives from the citizens at large, the neighborhood district associations, the Library Board, the Council, the Planning Commission, the Budget Committee and the local business community, with the assistance of the Library Director and staff from the Planning Department and Finance department as ex officio members,

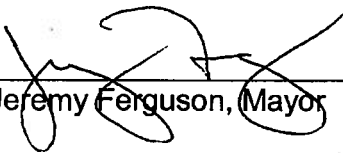
NOW, THEREFORE, BE IT RESOLVED that the City Council:

1. Creates the Library Expansion Task Force.
2. Authorizes the Mayor to bring forth names of representatives for approval by Council to fill the positions on the Task Force from the following:
 - a. Two Citizens at large
 - b. Two Neighborhood District Association representatives
 - c. Two Ledding Library board members

- d. A member of the City Council
 - e. A local business person
 - f. A Library Foundation member
 - g. A Planning Commissioner
 - h. A Budget Committee member
3. Designates that the Task Force will cease to function upon the completion of the following tasks:
- a. Develop a scope of work to evaluate options to either expand the Ledding Library or to pursue additional library facilities within the city that deliver services in association with the Ledding library (to be completed by July 1, 2011).
 - b. Evaluate the impact of assuming responsibility for delivering services to the unincorporated areas of Clackamas County (to be completed by July 1, 2011).
 - c. Cost out the options and present preliminary estimates to the City Council for direction (to be completed by September 1, 2011).
 - d. Follow Council direction and obtain necessary consultant services to develop detailed plans to present to Council of the alternative funding options (to be completed by January 1, 2012).

Introduced and adopted by the City Council on 3/15/11.

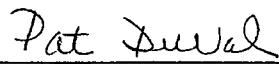
This resolution is effective on 3/15/11.



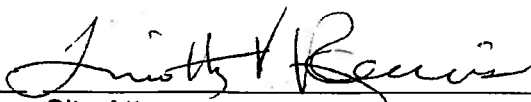
Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Schrader Ramis PC



Pat DuVal, City Recorder



City Attorney



March __, 2011

The Honorable Ronald L. Gray
Municipal Judge
City of Milwaukie
10722 SE Main Street
Milwaukie, OR 97222

Subject: Citation of Sign Violation at 10966 SE McLoughlin Blvd.

Judge Gray,

The Planning Commission wishes to submit this letter in follow-up to our previous letter of October 26, 2010, relating to the citation issued to Nabil Kanso for a signage violation at his gas station on McLoughlin Boulevard.

Since our October 12 decision upholding the Planning Director's interpretation that the LED sign is not permitted in the downtown zones, Mr. Kanso and his counsel have submitted for consideration proposed code revisions that would render his sign conforming. The Planning Department and Planning Commission have also identified a few other needed sign code amendments, and anticipate considering these sign code revisions in the months ahead.

Due to other code amendment packages currently being prepared for adoption by the City Council, and other City priorities, however, this process has not moved as quickly as we had anticipated. But we currently believe that the requisite public hearings on the sign code amendments could take place this summer and the issues resolved by October.

Respectfully,

Lisa Batey
Planning Commission Chair
On behalf of the Milwaukie Planning Commission