



## AGENDA

### MILWAUKIE PLANNING COMMISSION Tuesday June 14, 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 April 12, 2011 (*mailed on 6/07/11*)
- 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 Regulation Amendments (*cont'd from 4/26/11*)  
Applicant/Owner: City of Milwaukie  
File: ZA-11-01, CPA-11-01  
Staff Person: Brett Kolver
- 6.0 **Worksession Items**
- 7.0 **Planning Department Other Business/Updates**
- 8.0 **Planning Commission Discussion Items** – This is an opportunity for comment or discussion for items not on the agenda.
- 9.0 **Forecast for Future Meetings:**
  - June 28, 2011
    - 1. Joint session with City Council to discuss progress on projects, including the Residential Development Standards
    - 2. Worksession: Electronic Sign Code amendments draft review
  - July 12, 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](mailto: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](http://www.cityofmilwaukie.org)
3. **CITY COUNCIL MINUTES** City Council Minutes can be found on the City website at [www.cityofmilwaukie.org](http://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, April 12, 2011**  
**6:30 PM**

**COMMISSIONERS PRESENT**

Lisa Batey, Chair  
 Chris Wilson  
 Mark Gamba  
 Russ Stoll

**STAFF PRESENT**

Katie Mangle, Planning Director  
 Brett Kelper, Associate Planner  
 Li Alligood, Assistant Planner  
 Damien Hall, City Attorney

**COMMISSIONERS ABSENT**

Nick Harris, Vice Chair  
 Scott Churchill

**1.0 Call to Order – Procedural Matters**

**Chair Batey** called the meeting to order at 6:32 p.m. and read the conduct of meeting format into the record.

**2.0 Planning Commission Minutes**

2.1 January 25, 2011

**Commissioner Stoll** moved to approve the **January 25, 2011 Planning Commission minutes as presented. Commissioner Wilson** seconded the motion, which passed **3 to 0 to 1 with Commissioner Stoll** abstaining.

**3.0 Information Items**

**Commissioner Stoll** welcomed Chair Batey as the new Planning Commission Chair.

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

**5.0 Public Hearings**

5.1 Summary: Natural Resource Regulations Amendments *cont'd from 3/22/11*

Applicant: City of Milwaukie

File: ZA-11-01, CPA-11-01

Staff Person: Brett Kelper

**Chair Batey** called the public hearing to order and read the conduct of public hearings into the record, noting this issue was continued from March 22, 2011.

42 **Chair Batey** stated that while she was not present for the opening hearing on March 22, she  
43 had listened to all the audio of that hearing and had read everything in the packet, so she  
44 intended to participate. She declared a potential conflict of interest in that she owned 2/3 acres  
45 of property in the city that was not in a Habitat Conservation Area (HCA) but was largely within  
46 the 100-ft HCA buffer area. The Natural Resource (NR) Regulations Code and map  
47 amendments under consideration could result in some increase or decrease in the value of her  
48 property; however, because any potential impact might not be significant, she did not have an  
49 actual conflict of interest and was not disqualified from participation.

50

51 **Katie Mangle, Planning Director**, announced that Commissioner Churchill had decided to  
52 recuse himself from the hearing, because his property would be affected by the project in a way  
53 he believed might present an actual conflict of interest.

54

55 **Commissioner Gamba** declared a potential conflict of interest in that he owned 1.2 acres in the  
56 city currently zoned residential and fell entirely within the Water Quality Resource (WQR) area.  
57 The NR regulation amendments under consideration could result in some increase or decrease  
58 in the value of his property; however, because any potential impact might not be significant, he  
59 did not have an actual conflict of interest and was not disqualified from participation

60

61 **Commissioner Stoll** stated he had been involved in habitat restoration along Johnson Creek  
62 with Friends of Tideman Johnson Natural Area and was a volunteer with the Johnson Creek  
63 Watershed Council. His own personal interests were in favor of preserving and protecting the  
64 watersheds. In a partnership with his father and brother, he owned four properties in Milwaukie,  
65 but none were affected by the regulation. They might purchase additional properties in the  
66 future, possibly along a watershed. He was a licensed residential contractor and hoped to  
67 specialize in landscape and hardscape. He preferred laying pervious surfaces, so the more  
68 draconian the regulation was along the watershed, the more possible business might be coming  
69 his way. He believed he could give a fair consideration to all concerns.

70

71 **Ms. Mangle** stated Vice Chair Harris had intended to participate but was out sick. If the hearing  
72 was continued, he intended to catch up and participate in the next hearing. He had expressed  
73 no conflicts.

74

75 **Brett Kelder, Associate Planner**, reminded that this project stemmed from a requirement for

76 the City to come into compliance with state and regional goals and regulations. He presented  
77 the staff report via PowerPoint with these additional comments:

- 78 • He announced that Li Alligood, Assistant Planner, was available in the hallway to address  
79 questions about specific properties.
- 80 • This particular section of the Code was just a regulatory tool. The City was actively involved  
81 in protecting and enhancing the resources in the community. In most cases, determining if a  
82 project was allowed involved first looking at what type of review was necessary.
- 83 • He had many helpful conversations with people since the first hearing, including a  
84 discussion regarding Commissioner Gamba's concern about how to address the partitioning  
85 of large parcels with a high percentage of resource designation to keep the resource areas  
86 more intact.
- 87 • He distributed a sheet with some sample language to address the issue, which  
88 warranted further discussion. Staff was not recommending the adoption of this language,  
89 but offered it as a starting point to discuss how to make it as difficult as possible to break  
90 up large habitat areas; however, the ramifications were not yet fully understood. The  
91 sample language would essentially try to prohibit subdivision or partition of properties  
92 that were 90% or more HCA or WQR.

93

94 **Commissioner Batey** asked if the goal was to push people more toward cluster development  
95 and away from actually subdividing the property.

96

97 **Commissioner Gamba** explained that his concern was the calculation that if a property owner  
98 had x amount of HCA or WQR on a property, they would be allowed to disturb a certain  
99 percentage of the property up to a maximum 50% of the HCA area or 5,000 sq ft whichever was  
100 less. If a 50,000 sq ft lot that was all HCA or WQR was subdivided into 10,000 sq ft lots, they  
101 could disturb 50% of every lot. He wanted to avoid disturbing half of the 50,000 sq ft.

102

103 **Commissioner Stoll:**

- 104 • Confirmed that when larger properties were subdivided, the idea was to promote habitat  
105 continuity in the entire parcel.
- 106 • Asked if the consultant, Cathy Corliss of Angelo Planning Group, was principally responsible  
107 for writing the regulation.

- 108 • **Mr. Kelper** replied staff started with the existing WQR Code and considered merging the  
109 existing Code with the model code, which was discussed when the consultant came on  
110 board.
- 111 • **Ms. Mangle** stated the first draft was written by the consultant. The consultant was hired  
112 to give an outline and help as a policy advisor who more intimately understood the Goal  
113 5 and Goal 6 State regulations.
- 114 • Asked if the regulations as currently proposed were the absolute minimum required for  
115 compliance with Metro and the State.
- 116 • **Mr. Kelper** responded that some rules in the proposed Code amendments were a bit  
117 more restrictive and prescriptive than the model Code, at least with respect to the HCAs.
- 118 • **Ms. Mangle** added that some areas were much less restrictive. The mantra has been  
119 smart, flexible, and local. Staff tried to focus efforts on the kinds of issues that came up  
120 in Milwaukie, and the concerns heard from the community.
- 121 • Noting the site visits done by staff and some Commissioners, he asked Mr. Kelper's general  
122 impression of what the citizens were feeling about the proposed regulation.
- 123 • **Mr. Kelper** replied every situation was different. In light of the amount of public  
124 involvement early on, it seemed it was going to be impossible to make everyone happy  
125 and 100% satisfied with the rules. A gauge of how successful the proposal was might be  
126 that people were equally dissatisfied, in that no one got everything they wanted, but that  
127 they had some role in the process. There continued to be areas in the Code where not  
128 everyone was satisfied. Everyone believed their caretaking methods were best.
- 129 • Asked if there was agreement that everyone spoken to during the site visits had a lot of  
130 complaints and were good stewards of the land.
- 131 • **Chair Batey** remarked it was not fair to ask staff to make that determination.
- 132 • **Mr. Kelper** stated if he was to speak about Dave Greene's property and the Milwaukie  
133 Presbyterian Church, both of those parcels were in good hands, and he had seen  
134 evidence of good stewardship.
- 135
- 136 **Chair Batey** asked how the 150 sq ft was determined as the trigger threshold and how that  
137 compared with other jurisdictions in the area.
- 138 • **Mr. Kelper** responded the 150 sq ft threshold trigger for requiring a construction  
139 management plan, whether a resource existed on a property or not, appeared fairly  
140 consistently as a distinguisher to go through one type of review versus another type. This  
141 number came from the understanding of the rules the City had in place already in terms of

142 when an erosion control permit was required. Regardless of whether any designated  
143 resource area was around, if a project disturbed at least 500 sq ft, an erosion control permit  
144 from the City was required. Title 16 related to erosion control permits and had a provision  
145 that said any activity that might potentially disturb a protected natural resource area was  
146 also subject to an erosion control permit. This language could pertain to very little square  
147 footage. The 150 sq ft was chosen because it was less than 500 sq ft and even less than  
148 half of the 500 sq ft. If more than that area were to be disturbed, a construction management  
149 plan and a Type I review was required. Consideration was being given to waiving the fee to  
150 make the process as simple for the applicants and staff as possible.

- 151 • **Ms. Mangle** explained that every city had implemented the Metro titles differently. Most  
152 cities came up with a localized version. Wilsonville had a different approach and applied the  
153 Code to any development in the designated areas and that "nothing new is permitted if it has  
154 negative impacts on the water quality. In addition, no unauthorized clearing or grading ..." It  
155 was very restrictive, but also had a higher allowance of up to 600 sq ft encroachment if it  
156 was an expansion of a single-family residential property. Gresham asked for a boundary  
157 verification within 50 ft and allowed 500 sq ft of encroachment for an expansion or alteration.
- 158 • **Mr. Kelper** noted Gresham and Happy Valley kept their construction management plan  
159 requirement and applied the rules more specifically to properties that only had the resource.
- 160 • **Ms. Mangle** added that Gresham and Happy Valley had an allowance of only 120 sq ft for a  
161 small encroachment, which was more like the 150 sq ft proposed.

162

163 **Commissioner Stoll** asked if the Metro model code called for 500 sq ft.

- 164 • **Mr. Kelper** responded it would depend. Some of the numbers that Happy Valley and  
165 Gresham were using were actually found in the version of Code Milwaukie had, and those in  
166 particular were exemptions. If only dealing with HCA, the model Code suggested up to 120  
167 sq ft could be disturbed for a new patio, walkway, or little shed for example. They were  
168 considering making the 120 sq ft more similar to 150 sq ft to avoid gaps. Metro suggested  
169 200 sq ft of temporary disturbance for installing a utility for example, and several jurisdictions  
170 had adopted that, but staff felt it made sense to make the number similar to the 150 sq ft  
171 and require a construction management plan. The 500 sq ft in the model code, which  
172 usually involved alterations to existing utilities or existing buildings, especially if in an area  
173 only designated as HCA, were adopted by the other jurisdictions and were in the proposed  
174 Code as well.

175

176 **Commissioner Gamba** asked if any of the restrictions spoke to gardening, such as tilling as  
177 opposed to development.

- 178 • **Mr. Kelper** responded most did. Gresham had a pretty clear statement about existing lawns  
179 and gardens being fine, but any expansion of these was not okay and came out of the  
180 exempt category.

181  
182 **Commissioner Stoll** asked if an exemption existed for turning an existing lawn into a garden.

- 183 • **Ms. Mangle** replied that most of the other codes had much less detail than the current  
184 proposal, because many of these questions remained unanswered. Those cities would  
185 address reviews through either administrative rules or a director's interpretation.

186  
187 **Mr. Kelper** stated that additional correspondence had been received that was not included in  
188 the meeting packet with the staff report, all of which the Commission had received electronically.  
189 This material was distributed to the Commission, made available to the audience, and entered  
190 into the record as follows:

- 191 • Exhibit 5: Letter from Metro dated April 8, 2011, responding to the City's amendments with  
192 regard to Title 13 compliance.
- 193 • Exhibit 6: Email received from Christopher Burkett dated April 9, 2011, responding to  
194 correspondence with Brett Kelper.
- 195 • Exhibit 7: Letter sent electronically from the Audubon Society of Portland dated April 12,  
196 2011.
- 197 • Exhibit 8: Letter from Stoel Rives, LLP dated April 12, 2011, regarding mapping errors.
- 198 • He noted some of the mapping errors had already been addressed. One property of concern  
199 had HCA coverage over the Springwater Corridor which included the paved path down the  
200 strip and a couple of driveways accessing parking lots, so where it was very clear and easy  
201 to see, corrections had been made to those areas on the Administrative Natural Resource  
202 map. These changes were made after the meeting packet was distributed, so a newer  
203 version was available.

204  
205 **Chair Batey** called for public testimony in favor of, opposed, and neutral to the application.

206  
207 **Steven Berliner**, representative of the Friends of Kellogg and Mount Scott Creeks Watershed  
208 and the Audubon Society of Portland, read the letter submitted to the City by the Audubon



209 Society of Portland, which was entered into the record as Exhibit 7 and recommended specific  
210 changes in language.

211

212 **Commissioner Gamba** inquired about the comment that the City had already weakened some  
213 protections in comparison to the Metro version.

- 214 • **Mr. Berliner** replied that he only had the example in the letter which was the combining of  
215 the low and moderate habitat value areas, apparently lessening the standard on the  
216 moderate and treating it more like a low habitat value.

217

218 **Dick Shook, 4815 SE Casa Del Rey Dr, Clackamas County**, stated he was a board member  
219 of the Friends of Kellogg and Mt. Scott Creeks Watershed and served on a number of other  
220 conservation boards and committees, but he was representing himself as an individual citizen.  
221 His piece of property in unincorporated Clackamas County was contiguous with Mt. Scott Creek  
222 and was directly across from North Clackamas Park. The City needed to move forward with this  
223 measure and let some of these details that were more or less individual items work themselves  
224 out through regular hearings with the Commission in the future. He urged the Commission to  
225 move forward and adopt Code they could work with and refine as needed later. He confirmed  
226 that he had been a member of the Natural Resources advisory group and had attended a  
227 number of the hearings.

228

229 **David Greene, 5431 SE Willow St**, stated that he owned a 4-acre parcel with a large portion  
230 now covered by either HCA or WQR designations. He supported the intent of the Code and the  
231 regulations Milwaukie was trying to move forward, but had concern about some of the specifics.

- 232 • Regarding the discretionary aspects of the Code, there was a lot of use of the terms “shall”  
233 and “must” when it came to what property owners were required to do, but many “maybe”  
234 and “may” and “we will consider” when it came to how the Planning Department and the  
235 Commission considered variances, cluster development, etc.
- 236 • The ordinances and Code in place basically said the HCAs and WQRs were important to the  
237 community and the region, but private property owners were being asked to bear that  
238 burden for what was seen as a community good. They were not only being regulated but  
239 also being asked to pay a number of fees and hire boundary verification specialists and  
240 construction managers and natural resource scientists in order to simply move forward with  
241 projects that had been planned for some time. The administrative and financial burden of the  
242 new Code should not be deemphasized.

- 243 • He was concerned with the lightness with which the Commission took to what Mr. Kelter  
244 handed out as a potential change to the Code. He was concerned that suddenly now there  
245 was a different thought process on larger parcels or larger areas of habitat. He did not  
246 understand why additional burden should be placed on larger properties.
- 247 • The specifics of the Code had been worked through with the advisory group. As there was a  
248 shift away from the base Code that had been worked on for the last 6 to 9 months, the  
249 concern was if there was enough public process and opportunity to comment on the  
250 changes being considered.

251

252 **Chair Batey** responded that given all the caveats Mr. Kelter raised, she did not believe the  
253 Commission would vote on the issue regarding larger parcels tonight. It would be continued for  
254 further discussion and further opportunity for comment. She asked if Mr. Greene had a sense of  
255 what the burden was on him under the Title 13 model ordinance versus the proposed ordinance.

256 • **Mr. Greene** replied he did not know the specifics of Metro's model ordinance, he did not  
257 know how it would change the affect on his property.

258

259 **Commissioner Stoll:**

- 260 • Stated he had made a site visit to Mr. Greene's property, Mr. Greene wanted to do a  
261 sensitive development of a portion of his land, which was a good thing as Milwaukie needed  
262 to add residential units to meet their Metro goals. The WQR had come through years ago,  
263 and now the HCA expansion was coming down. Mr. Greene had expressed concerns about  
264 what would happen in 5 years and if there would be another set of regulations.
- 265 • **Mr. Greene** stated that was correct, and he had raised this issue during the advisory  
266 meetings. If he continued to plant trees on his property, expanding the habitat area and  
267 another survey was done by Metro in the future, he might further degrade his ability to  
268 development his property. Adding trees along his property line might also impact his  
269 neighbors further. The people who were involved currently understood the intent, but  
270 there could be complete staff and commission turnover in 5 years. This was counter to  
271 protecting some of these places as it tended to force people's hands to develop sooner.
- 272 • Stated there were 7,500 tax parcels in the city with about 500 being affected by the WQR  
273 and an additional couple of hundred by the HCA. The burden of protecting and regulating  
274 the watersheds fell on 10% of the taxpayers in the city. It did reduce the ability to do what  
275 one wanted on their property and it did somewhat reduce the value of a property. There  
276 should be a property tax reduction from the City for complying with the regulation, and there

277 should be a modest tax increase for the remaining 90% of the citizens to make up the lost  
278 revenue.

- 279 • **Mr. Greene** responded that he did not know that property tax was the right vehicle, but it  
280 was important to point out that the property owners were providing what was a public  
281 good and they were not being compensated. They were being asked to jump through  
282 more administrative and regulatory hurdles.

283

284 **Chair Batey** noted one question sent by email from Vice Chair Harris was if Mr. Greene had  
285 any idea how these rules impacted his real estate value.

- 286 • **Mr. Greene** replied he did not have specific numbers. Basically, the development potential  
287 for the one acre parcel in the southwest corner has been pushed essentially up to the top of  
288 the hill in a pretty small area. There had been some attempt to address that with the cluster  
289 development concept.

290

291 **Commissioner Gamba:**

- 292 • Asked what Mr. Greene would change in the way the Code was currently written to address  
293 his concerns.
  - 294 • **Mr. Greene** responded that his biggest concern was the discretionary aspects of things  
295 like variances and cluster development. The onus was on him to move through the  
296 review and Commission process in a Type III process of some sort. There were no  
297 specific allowances in the Code. There were attempts to identify possible solutions and  
298 avenues to pursue, but there was a pretty big discretionary process. The Code language  
299 should be more definitive.
  - 300 • **Ms. Mangle** noted the Type III review for residential cluster development had been the  
301 specific request of the Commission.
- 302 • Asked if the cost of the various levels of review was the issue, or the extra amount of work it  
303 would take to move through the process.
  - 304 • **Mr. Greene** replied it was both. A lot of it was just his time or the cost to pay a developer  
305 to move through the process, hearings, and review. The fees could be substantial as  
306 well. He did not know if there was an opportunity for the City to provide some of the  
307 boundary verifications and various other things for property owners working to protect  
308 their HCA and WQR, but this would be an avenue to minimize the additional impact.

309

310 **Jeanne Baker, 2607 Monroe St, Milwaukie**, made the following comments:

- 311 • On 5.1 Page 3 of the packet, the question, “What is ‘disturbance’?” was pretty clear except  
312 for the tree replacement options on 5.1 Page 30. In Option 2, it stated so many shrubs and  
313 trees had to be put in for 500 sq ft of disturbance area, but it did not stipulate if that was  
314 temporary or permanent, and that should be clarified.
- 315 • On 5.1 Page 30, the over 30-in trunk (Table 19.402.11.D.2.a) had been changed from 25-in;  
316 but in Option 2, it was still the old numbers.
- 317 • There was also a distinction between the disturbance area and the number of trees  
318 removed. This was good, but it still neglected the size of the property. One thing that  
319 seemed to be a goal was to develop with some sensitivity to the topography and the  
320 individual land. When a mechanical number was being used without regard to property  
321 size, it could backfire later in overplanting.
- 322 • The idea of getting instant replacement of the whole canopy was an important  
323 consideration, but she believed they could wait and use more judgment. She had  
324 suggested using “practical”, but that was stricken. Some planning methodology was  
325 needed rather than just doing tree replacement by the numbers. The property’s size  
326 must be considered.
- 327 • There had been a lot of improvement in the way Type II reviews had been modified by the  
328 exceptions. However, on 5.1 Page 14 in the Type III review, “development activities” in  
329 subdivisions needed some adjustment/explanation. “Development activities” was a vague  
330 term.
- 331 • She admired how the City had really responded to complaints, suggestions, and questions.  
332 There was a good planning process underway, and even though she did not like everything  
333 she saw, she admired the process.
- 334 • On 5.1 Page 16, B. Limited Exemptions, anything more than 150 ft required a construction  
335 management plan, and then on Page, B.2, everything was subject to a construction  
336 management plan regardless of size. This seemed to be a conflict.
- 337 • On Page 21, D.3, the minimal impacts was excellent in scaling things down. When a big  
338 planned unit development or cluster development or anything like that got to go in under a  
339 Type III review and tiny little projects had to meet the same thing, it just did not seem  
340 practical. There needed to be an exemption for the miniature project. If an existing property  
341 owner wanted to move one foot closer to the resource they would not be allowed, but a new  
342 development would be able to do things to get closer to the water than some of the existing  
343 homes.

- 344 • She stated that the same review was required to move one foot as was required for a  
345 whole planned unit or cluster development. The amount of work required for a very small  
346 project was huge. Mr. Kelder had advised her that an engineering report was needed  
347 which was a couple of thousand dollars, in addition to a couple of thousand dollars in fees  
348 to the City, plus building permits, etc. Essentially, the regulations were not addressing  
349 any differences in scale between a large developer or a whole new building and an  
350 individual homeowner doing a minor addition.
- 351 • Homeowners would have to expend a huge amount of money to make any modifications  
352 to their homes. She agreed a review was still necessary, and the Type II review had been  
353 good at looking at the need for smaller projects, but more needed to be included. The  
354 Type II review, engineering reports and proving the case were all good, but to have to  
355 pay double engineering fees was not good.
- 356 • She appreciated that the City and the Commission were taking time to do this right.

357

358 **Christopher Burkett, 4512 SE Ryan Court, Milwaukie**, distributed a 2-page letter dated April  
359 12, 2011, which was entered into the record as Exhibit 11, as well as pictures of his commercial  
360 and residential properties, entered into the record as Exhibits 9 and 10, respectively. He noted  
361 the driveway of his studio property was a WQR, perhaps because of the City's culvert going  
362 underneath it. On his residential property, 85% of the potential landscape area was considered  
363 either WQR or HCA. He had talked with Bryan Harper of Metro who had made it clear that  
364 Metro was comfortable with the way Milwaukie was progressing, and there was no time  
365 pressure. He read his letter into the record with these additional comments:

- 366 • The home exemption clause in Metro's model ordinance included a large number of things  
367 that would be prohibited by the regulations being considered by the City.
- 368 • Cutting any 4-in diameter living tree would require a full Type III review by the Commission  
369 and cost \$1,700 plus a possible \$2,000 resource review. Metro's model ordinances allowed  
370 the prohibition on tree cutting be limited to WQR areas with severe restrictions on tree  
371 cutting not being applicable to HCAs.

372

373 **Ms. Mangle** clarified that the definition in Section 6.28.020.C was an existing definition and was  
374 not a proposed change.

375

376 **Mr. Burkett** stated this would still apply, because it basically said if one had muddy footprints,  
377 there could be some erosion. It was pretty wide open.

378

379 **Commissioner Stoll** understood Mr. Burkett was saying that the current restriction in the WQR  
380 was too prescriptive.

381

382 **Ms. Mangle** clarified Mr. Burkett was referring to that the erosion control policies that were not  
383 WQR, but a separate title in the City Code.

384

385 **Mr. Burkett** responded that it was a catchall thing, but it seemed that it stated that whenever  
386 there was potential for erosion, a permit could be required.

- 387 • If tree removal involved ground disturbance of any size, the permitting process was  
388 automatically bumped up for review. If a small tree was cut down and only 16 sq ft was  
389 disturbed to deal with the stump, it would be automatically bumped up to higher level of  
390 review.
- 391 • In his study of all the different regulations, Metro's guidelines, and some other jurisdictions,  
392 some other jurisdictions were less detailed but they did not have that awful word "activity" in  
393 terms of prohibitions; they were more generalized, but did not prohibit anything that was not  
394 mentioned.
- 395 • The proposed regulations were much more specific and still used the catchall phrase  
396 covering any type of activity, which left the door wide open for any kind of restriction. This  
397 was consciously done 8½ years ago. A woman had asked if she could remove large  
398 cottonwood trees from the WQR area and was told she could maintain her landscape  
399 plantings and cut small trees and shrubs. That Planning Director knew tree cutting was not  
400 specified in the regulations, yet were intended to be applied. If the City wanted to prohibit  
401 something that dramatic, it ought to just be written in there instead of pretending it did not  
402 exist.
- 403 • He had discussed the Portland Japanese Gardens with Mr. Harper as the Metro maps  
404 showed them completely exempt from any HCA regulations.

405

406 **Chair Batey** verified that all that was green on the photos was WQR, and this new regulation  
407 had no additional impact on his commercial property.

- 408 • **Mr. Burkett** replied that was true because there was not HCA, but there were still  
409 additional restrictions. He was not complaining about that property, because it was wild  
410 and pretty much kept that way with all native trees, a stream, and an artificial pond the  
411 City made years ago. Aside from being unable to extend his garage, it was really not a

412           problem. The real issue was the landscaping that had been done for 80 years on his  
413           residential property.

- 414           • He confirmed he had not had any problems or been prohibited from doing things due to  
415           previously approved regulations. They were very conscientious and did not use poisons  
416           or produce any runoff.

417

418   **Commissioner Gamba:**

- 419           • Stated Mr. Burkett had noted Metro had already made the exception for homes and  
420           landscaping. He asked which specific things that were proposed would Mr. Burkett prefer be  
421           exempted.

- 422           • **Mr. Burkett** stated the proposed document included the intent, which was stated very  
423           similarly to what Metro had as exempt, so it simply needed to be the same kind of  
424           wording put into the exempt category. The document stated that was the intention, but it  
425           was not being implemented. He would take out the word “activity” in the prohibited uses,  
426           because it still covered new structures and development. Also, 5.1 Page 15,  
427           19.402.4.A.1 talked about if one already had a building permit, they could keep building.  
428           Metro referred to something already built and not just a building in progress. That was  
429           the home exemption.

- 430           • Asked if the City exempted a fully matured landscaped property, what would keep someone  
431           who was not a good steward from coming in and clear cutting their property.

- 432           • **Mr. Burkett** responded that was covered by Metro which stated up to 10% of the  
433           vegetative cover could be removed within the original mapped HCA or lot.

434

435   **Chair Batey** asked if Mr. Burkett had talked with Mr. Kelter about remapping his property.

- 436           • **Mr. Burkett** stated he had quite a few discussions with Mr. Kelter about the matter.

437

438   **Commissioner Stoll:**

- 439           • Had visited Mr. Burkett’s property and noted he was a good steward of the property. He  
440           understood Mr. Burkett felt that the regulations did not make enough of a distinction  
441           between people developing empty land and citizens with already developed homesteads,  
442           which might not be fully manicured and landscaped.

- 443           • **Mr. Burkett** stated that was correct, and the definition of development in Metro’s model  
444           regulation gave more protection to existing homes than the current Milwaukie definition.

445 Mr. Harper at Metro had said the intent was primarily to regulate new development and  
446 not existing situations.

- 447 • Noted that under the current classification scheme, Mr. Burkett's property was considered  
448 degraded. He assumed the properties along the creek across from and next to Mr. Burkett  
449 would also be considered degraded.
- 450 • **Mr. Burkett** replied that Mr. Harper said that was what happened when biologists were  
451 put in charge of classifying things.
- 452 • Said that calling properties degraded that people had maintained well in the watersheds was  
453 not a good way to win support amongst Milwaukie citizens. He suggested calling a  
454 homestead with all native vegetation and all native plants and no invasives "ideal", calling a  
455 property such as Mr. Burkett's that was exquisitely landscaped and manicured but using  
456 many ornamental plants "good", calling currently open lands that had not been developed  
457 "wild", and properties like those of neighbors who did not take care of their property  
458 "degraded".
- 459 • **Mr. Burkett** stated calling his property degraded showed the biologists' mentality. This  
460 was not the only round of regulations; he was here 8 years ago saying the same thing,  
461 and now there were significantly stiffer regulations. This was a creeping thing that was  
462 taking over property. It was very important to include something in the regulations that  
463 specifically protected one's ability to take care of their landscape as opposed to having it  
464 taken away year by year by year.
- 465 • He appreciated the Commission having this process, adding that staff had been very  
466 good throughout the whole thing.

467

468 **Chair Batey** called for a brief recess, reconvening the meeting at 8:54 p.m. She closed the  
469 public testimony and called for any additional comments from staff.

470

471 **Ms. Mangle** explained that Mr. Kelter's comments would focus on addressing many of the  
472 questions raised by some of the people who had testified tonight. Staff had been working on this  
473 for 2½ years. Many players had changed including members of the Commission. Something  
474 staff had received direction early on from the Commission and City Council was their broader  
475 strategy of building on the WQR code. There were obvious, egregious problems with it that staff  
476 wanted to fix, but they did not go through and question every assumption. If the Commission  
477 identified some specific things that needed to be renegotiated or reworked, that should be  
478 focused on.



479  
480 **Chair Batey** stated when Mr. Kelder finished his comments they would put a list on the board of  
481 all the outstanding issues.

482  
483 **Mr. Kelder** addressed the following points heard during public testimony:

- 484 • Regarding the difficulty revising the map, he agreed with Mr. Burkett's assessment that  
485 someone trying to have their property reassessed in terms of the HCA values and locations  
486 would not be easy. All the analysis that went into that process by Metro had to meet certain  
487 rigorous criteria, and a property owner wanting a reevaluation would have to go back  
488 through a similar process.
- 489 • There were specific features on the Precision Castparts site, such as a driveway,  
490 walkway, or some other kind of developed feature where small corrections had been  
491 made.
- 492 • The citywide revisions focused on edges of the HCAs in terms of where it seemed  
493 important to trim some things away.
  - 494 • On the Burkett property, there was a concrete circle-looking feature in the middle of  
495 the property which was clearly not habitat so it could be taken out. The feature that  
496 appeared to be a walkway near the driveway would get shaved out if it was  
497 impervious. The citywide revision did not get into this level of detail.
- 498 • A Type I review existed for tree removal. If the tree removal was not exempt because it  
499 required some earth disturbance, it was worth considering that an exemption be included in  
500 the outright exempt category for tree removal if it could be done with less than 150 sq ft of  
501 disturbance, if that remained the threshold.
- 502 • The 4-in size tree definition did not sound entirely consistent with other jurisdictions, as 6-in  
503 was the number used. The Commission could consider making that amendment to that  
504 definition.
- 505 • With respect to the 1:1 tree replacement requirement, if it was not involving development as  
506 well as other mitigation options, it was suggested to move to a 1½- in caliber size. As far as  
507 survivability and rate of growth, if the Commission could consider lowering the caliber to 1 in  
508 or ½ in, or including some provision for a certain caliber or height to allow for a more  
509 consideration of species, because different species of trees grew at different rates.
- 510 • The one particular erosion control provision was included in the packet of changes primarily  
511 because staff was trying to be consistent with references throughout the rest of the  
512 Municipal Code, so WQR regulations were changed to natural resource rules.

- 513 • The inclusion of the word “activity” was intentional in the prohibition section. Rather than  
514 listing everything the City did not want people to do, this was set up so they were as clear  
515 and specific as possible about the things that could be done and in particular what levels of  
516 review were required. If it was not found in the list, it could probably not be done.
- 517 • There was a gap with regard to tree removal in terms of the process step. The path to tree  
518 removal could be found in the exempt category, which was limited, and the Type I path  
519 which was specific and limited. Currently, if there was not some kind of an emergency  
520 situation that would require tree removal, a property owner needed to go directly to the  
521 Commission. Staff had tried to identify some specific reasonable situations where one could  
522 be exempt or go through a lower level review.
- 523 • For certain situations such as that of the Burkett’s where a lot of the property was in a  
524 resource designation, most of the property was already landscaped to some degree and  
525 the day-to-day management of the property could involve tree removal, there was not  
526 currently a clear or easy path. There could be a difference between WQRs and HCAs  
527 with regard to tree removal.

528

529 **Commissioner Gamba** asked why staff had moved away from the Metro language exempting  
530 current landscaping with some caveats of not more than 10%.

- 531 • **Mr. Kelver** answered that a sound majority, 25 or 30, of other jurisdictions in the Metro  
532 region had some kind of tree protection ordinance on private property. With the exception of  
533 regulating tree removal in the public right-of-way, it has been the only place for some limited  
534 protection for trees. It seemed reasonable to include tree protections within the designated  
535 resource areas because a significant part of the HCA inventory was involved.

536

537 **Chair Batey** stated Section 3B of the Title 13 model ordinance said, “Where construction of  
538 residence was completed before adoption date, owner shall not be restricted from engaging in  
539 any development that was allowed prior to adoption date.” She asked if development meant tree  
540 cutting, trees and other landscaping activities, building onto the house, building an outbuilding,  
541 etc.

- 542 • **Mr. Hall** responded there was an exemption in the draft Code for landscaping, so they were  
543 dealing more with the tree cutting issue specifically.
- 544 • **Mr. Kelver** stated that early on in the process, there was a conversation about how to  
545 potentially administer or handle that kind of exemption, and how easy it would be to evaluate  
546 on a property-by-property basis. It did not seem appropriate after all the inventory and

547 recognition of some habitat resources on these properties to say a property owner could  
548 basically go ahead and do whatever they wanted as long as they did not scrape the house  
549 off and build a new one.

550 • **Ms. Mangle** added that only 20% of Milwaukie's HCAs or WQRs were actually in private  
551 ownership; the rest were parks, schools, and fully developable public lands as well. There  
552 had been as much skepticism in Milwaukie about that kind of development as anything else.  
553 In terms of the strategy, there were more questions about how Section 3B would be  
554 implemented than the language answered. Staff tried to be very specific about what that  
555 would mean in Milwaukie.

556

557 **Mr. Kelper** continued addressing items heard during public testimony as follows:

558 • All the definitions provided in the model Code were fairly specific to Title 13 whereas the  
559 definitions they were dealing with pertained to the entire Zoning Code, so by nature, they  
560 were a bit more general. He would be hesitant to make the current definition of development  
561 too much more specific to deal just with WQRs when it was found over and over throughout  
562 other sections of the Code.

563 • The model ordinance was a model. It had a lot of structure and elements that Metro was  
564 looking for as a minimum for compliance. Metro recognized that many jurisdictions had  
565 tree removal ordinances already in place, and the tree removal provisions in the model  
566 code were pretty much focused on how they related to development. Room was left for  
567 the different cities to implement whatever other tree ordinances they had.

568 • Regarding the two criteria involved for a Type II review for very small alterations like a small  
569 addition to a building, staff did not want to loosen the existing WQR rules, but did recognize  
570 there were some areas where it might make sense to provide some flexibility. It was fair for  
571 the Commission to consider and discuss whether there was appreciable danger in removing  
572 something such as keeping it at 150 sq ft regardless if it was getting closer to the feature or  
573 not.

574 • He reminded with regard to the discrepancy noted in the paragraph under B, Limited  
575 Exemptions on 5.1 Pages 16 and 17, that they were in the exempt category that basically  
576 had three levels: Outright Exemptions, when no more than 150 sq ft would be disturbed;  
577 Limited Exemptions, which were specific provisions for being exempt whether WQR and  
578 HCA; and Additional Exemptions, which were only for HCAs. The distinction was because if  
579 one was within 100 sq ft of a WQR and within an HCA, it did not matter how much was

- 580 being disturbed, a construction management plan would be required because it was close  
581 enough to the WQR. The trigger was the distance to the WQR.
- 582 • He clarified that the 120 sq ft in 19.402.4.B.2b came from language in the model Code.  
583 The number in 2c used to be 200 sq ft from the model Code, and was standardized by  
584 bringing it into the 150 sq ft. It would be fair to make the 120 sq ft consistent.
  - 585 • Staff could look at the issue regarding the activity chart and how the development activities  
586 were labeled. It sounded like it could just be as language issue.
  - 587 • With respect to what appeared to be a discrepancy between numbers in the chart and those  
588 under Mitigation Option 2 on 5.1 Page 30, he reminded these were two different options for  
589 tree mitigation. The table went with Mitigation Option 1, 5.1 Page 29, with 10 trees and 30  
590 shrubs required for replacement if the tree being removed was over 30 in. This was  
591 deliberately different in Mitigation Option 2, which was a different path one could choose  
592 with the standard being 5 trees and 25 shrubs.
  - 593 • He clarified the 1:1 replacement was if a property owner just wanted to take out one tree  
594 and wanted to know if this was allowed as an exemption, allowed through the Type I  
595 process or, as currently, requiring a higher level such as a Type III.
  - 596 • He explained that as the Code was proposed, if one tree were removed and another  
597 planted elsewhere in a yard, the property owner would technically need to come to  
598 the Commission, which was a \$1,700 process. The Type III process was a  
599 discretionary review process. Mitigation could apply if the tree was in an HCA or a  
600 WQR.

601

602 **Commissioner Gamba** asked that the issue about taking into account the size of the property  
603 be addressed.

- 604 • **Mr. Kelder** explained that Mitigation Options 1 and 2 were not intended to be used for the  
605 exempt and Type I tree removal. Those options were part of the clear and objective,  
606 nondiscretionary Type I process in place specifically for HCA-related disturbance. This was  
607 one feature of Title 13 that if not included, the City would not be compliant with Metro. By  
608 asking for special consideration, one could not be in the Type I process, because discretion  
609 was being requested. One way to address the issue was to establish a clear and objective  
610 standard involving some kind of percentage of tree canopy per the area or something  
611 similar.
- 612 • **Ms. Mangle** clarified that the concern raised applied to both homestead properties and  
613 properties undergoing new development.

614

615 **Mr. Kelper** agreed that more clarity was needed with regard to 19.402.1.C.8, "Preserve existing  
616 native vegetation against removal and replacement with lawns..." on 5.1 Page 11, and  
617 19.402.1.E.4, which talked about it not being the intent to prohibit lawn and yardscape planting  
618 and maintenance.

619 • Regarding Mr. Berliner speaking in the context of the Audubon Society letter and issue of  
620 the weakening being the combination of the moderate and low, the City combined all three  
621 HCA layers instead of designating low, moderate, and high.

622 • **Ms. Mangle** noted that compared to many other jurisdictions, most of Milwaukie's HCA  
623 areas were already covered by WQR areas.

624 • **Damien Hall, City Attorney**, added that the letter from Metro regarding being in  
625 substantial compliance with Title 13 stated the options were to either adopt their model  
626 Code outright or demonstrate to them that what was adopted was as or more protective.

627 • He acknowledged Mr. Greene's point about the nature of the discretionary process and if  
628 something could be identified, for example with cluster development, to establish more  
629 specific standards that would provide more of a guarantee.

630 • **Ms. Mangle** stated the model Code did not have that type of development allowed in  
631 going to the Commission, so the Commissioners had specifically requested that if more  
632 dense-appearing development was happening in the neighborhoods to make sure that it  
633 came through the Commission.

634

635 **Commissioner Stoll:**

636 • Asked if Commissioner Gamba's point that in subdividing larger parcels into 10,000 sq ft  
637 parcels that habitat continuity be maintained was currently covered.

638 • **Ms. Mangle** stated that was addressed in the proposal Mr. Kelper handed out.

639 • Asked if there were provisions for enforcement in the proposal if one was being a poor  
640 steward in an HCA.

641 • **Ms. Mangle** replied if they were doing something prohibited that the City found out  
642 about, Code Compliance could be notified. The City had no recourse if they were just not  
643 maintaining their land.

644

645 **Commissioner Gamba:**

646 • Quoted the Metro letter, Page 2, Item 3, "Title 13 requires the removal of barriers to Habitat  
647 Friendly Development Practices. In order to determine compliance, please send this

648 information on new practices you will implement and/or how various elements in your local  
649 Codes currently help meet this requirement,” and noted that this was the first he heard of  
650 this.

- 651 • **Ms. Mangle** replied staff had sent a letter regarding the matter. One thing staff started  
652 with was a Code audit Metro had done on barriers to Habitat Friendly Development  
653 Practices. Staff believed they had met this requirement given the work on the  
654 Transportation System Plan, Parking Code, and others, which was outlined for Metro. If  
655 staff found other parts of the Code that were barriers to development, it would be  
656 included in the Code package.
- 657 • Could think of barriers throughout the City Code that the Commission was trying to address  
658 in the other Code work but was not included in this proposal at all.
- 659 • **Ms. Mangle** stated habitat-friendly development was the purpose. As development  
660 happened, the City wanted to ensure development was mitigating for improving on  
661 habitat, while also making sure people were not being precluded from doing things that  
662 were habitat-friendly.
- 663 • **Mr. Kever** commented that the Code amendment projects focused on the regulatory  
664 aspect of the Code. When working on revisions to the Code language, they wanted to  
665 make sure the allowance for people to remove noxious blackberries was maintained, for  
666 example, and not require a permit or other hassle for planting native plants.
- 667 • **Ms. Mangle** added that some recommendations in the 2006 audit were to expand  
668 flexible site design provisions to allow their use within the HCAs, which this Code was  
669 doing, and to revise the street requirements and design standards to allow narrow street  
670 rights-of-way through stream corridors and habitat-friendly culvert designs, which had  
671 already been done.
- 672 • Would like to see Metro’s response to the City’s letter when it came back.

673

674 **Commissioner Batey** suggested making a list of issues for the Commission to consider and  
675 discuss further.

676

677 **Mr. Hall** advised that the Commission determine if everyone generally agreed there was an  
678 issue and provide clear direction to staff where possible to maximize their time over the next two  
679 weeks.

680

681 The Commission listed items for further discussion were:

- 682 • The 150 ft threshold for a construction management plan as well as for distinguishing one
- 683 type of review from another across the board.
- 684 • High percentage resource parcel division.
- 685 • The “feasible”, “practicable”, “possible” language.
- 686 • Matching Metro’s definition of home exemption on Section 3B of the model ordinance as far
- 687 as scope, impact, and differences.
- 688 • Tree removal issues.
- 689 • The concept of protecting properties for the greater good and putting the bulk of that burden
- 690 on individual landowners. Consider a fee structure where the fees were lower or zero in an
- 691 HCA or WQR, and other fees bumped up to cover the lower fees.
- 692 • Consider the danger of getting frivolous applications if there was no burden or fee on
- 693 HCAs or WQRs.
- 694 • Whether a landowner had any opportunity to get their taxes reassessed if their property
- 695 value was diminished because of restrictions placed on their land.
- 696 • This could be addressed by seeing if the presence of these resources was a factor in the
- 697 County’s assessment.
- 698 • Prohibition language.
- 699 • WQR categorization language and definitions.

700

701 **Ms. Mangle** clarified that at this point, the proposal had not changed, so it would be up to the  
702 Commission to open the hearing again for deliberations. The Commission had the option to  
703 leave the record open and take more public testimony, but as of now, the public testimony was  
704 closed and would be closed until reopened.

705

706 **Mr. Hall** added that was at the Commission’s discretion in a legislative matter.

707

708 **Commissioner Stoll** stated there were two ways of viewing the issue, either nothing was  
709 permitted except that which was not prohibited, or everything was permitted except what was  
710 prohibited.

- 711 • He still liked a classification of property where “ideal” was what they wanted everyone to
- 712 move to if they were comfortable or Mr. Burkett’s property was “good”. The City should ask
- 713 Metro to change their classifications a bit, because it was a political question to enlist the
- 714 citizens in the watershed. It was important that property was not degraded. If they could
- 715 comply with Metro’s requirements and classify the property in such a way that was friendlier

716 to citizens and the good things they were trying to do, the City would be a lot better off in the  
717 long run.

718 • He confirmed that he was talking about changing “good”, “marginal”, or “degraded” to some  
719 other words, but also about redefining the categories. He also wanted the home exemption  
720 to be part of that.

721  
722 **Ms. Mangle** commented if such a wholesale approach was the direction, the project would need  
723 to start over, and in the interim the Title 13 model code would be adopted. The question was  
724 whether the Natural Resource amendments could be accomplished within the framework  
725 established by staff, building on the existing WQR Code, and adjusting certain areas to refine  
726 the Code and achieve compliance, or an overhaul as indicated by Commissioner Stoll. She  
727 reminded about the public involvement to this point that helped develop the current proposal,  
728 and added she believed the issues could be addressed.

729  
730 A straw poll was taken, with Commissioner Stoll preferring an overhaul, and Commissioners  
731 Wilson, Gamba, and Chair Batey preferring further refinement.

732  
733 **Chair Batey** stated the City had way too much invested in the current proposal and too many  
734 people had given their time for two years to start over.

735  
736 **Commissioner Gamba** believed that by and large it was really good. He was suggesting  
737 tweaking it, because this document was meant to last for a long time, so it was best to get it  
738 right now.

739  
740 **Commissioner Gamba moved to continue ZA-11-01 and CPA-11-01 to a date certain of**  
741 **April 26, 2011. Commissioner Wilson seconded the motion, which passed unanimously.**  
742 **[4-0]**

743  
744 **6.0 Worksession Items – None.**

745  
746 **7.0 Planning Department Other Business/Updates**

747 7.1 Draft Wastewater Master Plan (for discussion on 4/26/11)

748 **Ms. Mangle** noted a copy of the Wastewater Master Plan had been sent early so the  
749 Commission would have time to review for a brief discussion on April 26.



750

751           7.2     April 16 Volunteer Brunch and Fair at the Masonic Lodge 10am to noon

752                     Request for PC representative and group photo

753     **Ms. Mangle** requested that a Commissioner volunteer to talk about what the Commission does  
754 for those who might consider being on the Commission.

755

756           7.3     Library Taskforce Assignment

757     **Ms. Mangle** stated a volunteer was needed to serve on the Library Taskforce by the end of the  
758 week. Information was available in the packet.

759

760     **Chair Batey** stated she had submitted comments as a citizen to the Council that she believed  
761 they were jumping the gun on assuming a bigger library was needed and that reconfiguring the  
762 current library was probably enough. Although she was probably not the volunteer they wanted,  
763 she was willing to be involved if there were no other volunteers.

764

765           7.4     PC Letter for Kanso Case

766     **Ms. Mangle** stated that Chair Batey had prepared a letter from the Commission to Judge Gray  
767 regarding the Kanso case essentially explaining the Code was still being worked on and  
768 begging his understanding. The letter was included in the packet, and if everyone agreed, the  
769 final version was available for Chair Batey's signature tonight.

770

771     The Commission consented to the drafted letter which was then signed by Chair Batey.

772

## 773     **8.0     Planning Commission Discussion Items**

774     **Chair Batey** stated that North Clackamas Park was in the City's Master Plan and was  
775 something the Commission could help tweak. She had redlined the document to address her  
776 concerns and invited the rest of the Commission to do the same and get in their comments to  
777 the North Clackamas Parks and Recreation District before they returned in May or June.

778

779     **Ms. Mangle** asked that staff be kept in the loop so they would know what was going on.

780

781     **Commissioner Gamba** stated he would be meeting with Tonia Burns on Thursday to talk  
782 specifically about the creek restoration and some of those concerns.

783

784 **9.0 Forecast for Future Meetings:**

785 April 26, 2011 1. Public Hearing: WQR-11-01 Johnson Creek Confluence Project

786 2. Worksession: Sign Code Draft Amendments

787 3. Worksession: Wastewater Master Plan

788 May 10, 2011 1. TBD

789 **Ms. Mangle** stated a public hearing would be held on April 26 on the WQR application for the  
790 Johnson Creek Watershed Council. This continued hearing could be held after that and the time  
791 available be utilized for deliberations instead of continuing it until May. The scheduled  
792 worksessions would be postponed. The Wastewater Master Plan would have to be addressed  
793 briefly, as that would be coming up for a hearing also.

794  
795 Meeting adjourned at 8:53 p.m.

796

797

798

Respectfully submitted,

799

800

801

802

803

Paula Pinyerd, ABC Transcription Services, Inc. for  
Alicia Stoutenburg, Administrative Specialist II

804

805

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808

809 \_\_\_\_\_  
Lisa Batey, Chair



# MILWAUKIE

*Dogwood City of the West*

**To:** Planning Commission

**Through:** Katie Mangle, Planning Director *KM*

**From:** Brett Kolver, Associate Planner

**Date:** June 1, 2011, for June 14, 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

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## **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 opened the public hearing on the proposed amendments on March 22, 2011, and continued the hearing to April 12, again to April 26, and again to June 14, 2011. Please refer to the March 22, April 12, and April 26 staff reports for additional background information.

At the April 26 hearing, the Commission identified several specific issues for staff to research and address at the next hearing on June 14, 2011. The record remains open for additional written public comment and the June 14 hearing will begin with deliberation by the commissioners. The hearing may be reopened for public testimony at the discretion of the Commission.

### **A. History of Prior Planning Commission Actions and Discussions**

Staff reports, meeting material, and minutes for each of the following discussions are available on the City website at <http://www.ci.milwaukie.or.us/meetings>.

- **April 26, 2011:** Planning Commission reopened the hearing for additional public testimony, began deliberations, gave staff directions on how to revise the proposal, and continued the hearing to June 14, 2011.
- **April 12, 2011:** Planning Commission heard additional public testimony and continued the hearing to April 26, 2011.

- **March 22, 2011:** Planning Commission held the first public hearing on the proposed code amendments and continued the hearing to April 12, 2011.
- **January 11, 2011:** Work session to prepare for adoption hearing, with a recap of the Draft 4 version of the proposed amendments, including the latest list of exempt activities and other activities grouped by review type.
- **September 28, 2010:** Work session focused on adjustments and variances and the distance to be used to trigger the new regulations.
- **August 24, 2010:** Work session on project progress, review of Draft 3 of the proposed amendments.
- **June 8, 2010:** Joint meeting with Natural Resource Advisory Group to discuss significant issues.
- **April 27, 2010:** Work session on project progress, review of Draft 2 of the proposed amendments.
- **July 28, 2009:** Second of two-part work session on the City's strategy for complying with Metro's Title 13 (Nature in Neighborhoods). The Commission gave staff direction to pursue the approach that has resulted in the draft amendments.
- **July 14, 2009:** First of two-part work session on the City's strategy for complying with Title 13.
- **October 14, 2008:** Staff briefed the Commission on options for the City to comply with Title 13.
- **July 8, 2008:** First work session briefing on requirements of Title 13.

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

## B. Proposal

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

1. **Continue to protect Water Quality Resource areas.** Through the existing provisions of Milwaukie Municipal Code (MMC) Section 19.402, the City already regulates development and tree removal on land within approximately 50 ft of wetlands, creeks, and rivers. The proposed amendments maintain the high level of protection currently in place for those resources. However, the proposed amendments reduce the degree of City control over some activities, particularly with regard to tree removal and small projects on already-developed land. Where WQRs and HCAs overlap, the WQR designation takes precedence and the WQR level of protection applies.
2. **Expand the swath of protected land to include Habitat Conservation Areas.** The City proposes to designate Habitat Conservation Areas (HCAs) as resources warranting protection, resulting in a slightly larger swath of regulatory coverage than is currently provided by the WQR designation alone. While the WQR protections extend a fixed distance (generally 50 ft) from primary water features, the HCA

designations focus on physical attributes such as tree canopy and other substantial vegetation near those same water features.

3. **Adopt a local version of Metro’s HCA map.** Metro provided the City with a regional inventory of High-, Moderate-, and Low-value HCAs to be protected. However, the inventory was done at such a scale that there were inevitably some inaccuracies, such as the misidentification of paved or otherwise developed areas. Milwaukie’s proposed Natural Resource (NR) Administrative Map also relies on the Metro data but corrects obvious errors. In addition, the NR Administrative Map eliminates the High-, Moderate-, and Low-value HCA categories for the purposes of streamlining implementation of the new regulations. The proposal would change how the City administers these maps, making it easier for the City to correct inaccuracies and incorporate new information.
4. **Develop new regulations, based on the Metro Title 13 Model Code, to apply to HCAs outside of the WQR areas.** Metro provided a model code to demonstrate how local jurisdictions could meet the Title 13 requirements. The proposed amendments draw on this model code as a resource but tailor it for Milwaukie and integrate it with the existing regulations for WQRs provided in Section 19.402.
5. **Develop policies that are smart, local, and flexible.** Though the City will retain the overarching policy direction provided by the existing WQR regulations, staff has also worked to improve the clarity and organization of the code language. By including all environmental regulations in one place, and by revising aspects of the existing regulations that are confusing or unworkable, the proposal reflects the City’s goal that major code improvement projects should result in regulations that are smart and local and that offer predictable flexibility.

### Proposal Summary

The proposed amendments address the five concepts listed above by:

- Repealing the existing MMC Section 19.402 Water Quality Resource Regulations and replacing it with a new Section 19.402 Natural Resource Areas.
- Amending Chapter 3 Environmental and Natural Resources of the Milwaukie Comprehensive Plan to reflect the new HCA designation and establish an updated map of natural resource areas.
- Amending limited portions of several other sections of MMC Title 19 Zoning because they coordinate in some way with Section 19.402.
- Removing the Water Quality Resource maps from the Zoning Code and adopting a Natural Resource Administrative Map by reference.

The complete package of proposed amendments is listed below, but only those items that are noted as having been revised are attached to this report. For items that have not been revised, refer to the staff report prepared for the March 22 hearing, specifically Attachment 1 (Draft Ordinance, with Exhibits A-G).

- March 22 Staff Report
  - ❖ Attachment 1: Draft Ordinance
    - Exhibit A: Recommended Findings in Support of Approval
    - Exhibit B: Proposed Section 19.402 Natural Resource Areas (Clean Version) – revised for June 14, 2011 hearing, *included as **Attachment 2***.

- Exhibit C: Proposed Amendments to Comprehensive Plan and Other Municipal Code Sections (Strikeout/Underline Version) – revised for June 14, 2011 hearing, *included as **Attachment 4***.
- Exhibit D: Proposed Amendments to Comprehensive Plan and Other Municipal Code Sections (Clean Version) – revised for June 14, 2011 hearing, *included as **Attachment 5***.
- Exhibit E: Proposed Natural Resource Administrative Map (last revised on April 11, 2011), *included as **Attachment 7***.
- Exhibit F: Comprehensive Plan Map 5, Natural Resource Areas
- Exhibit G: Comprehensive Plan Appendix 2 Map, Natural Resource Sites

The proposed amendments and other project documents are available online at: <http://www.ci.milwaukie.or.us/planning/natural-resource-overlay-project>. A list of the project information and background material available on the website is provided in Attachment 8 (List of Public Information and Background Materials Available on Project Website).

## KEY ISSUES

### Summary

During the hearing on April 26, the Commission identified several concerns and questions for staff and provided direction on some specific key issues (see Attachment 9, Whiteboard Notes from Planning Commissioner Deliberations at April 26 Hearing):

- |  |   |
|--|---|
| <ol style="list-style-type: none"> <li>1. 150-sq-ft threshold for minor encroachments</li> <li>2. Division of high-percentage resource properties</li> <li>3. Use of the term “practicable”</li> <li>4. Exemption for existing residences (“Homestead Exemption”)</li> <li>5. Tree removal</li> <li>6. Fee reductions and other options for alleviating financial burdens on affected property owners</li> </ol> | <ol style="list-style-type: none"> <li>7. Language regarding “activities” and prohibition of activities not specifically allowed</li> <li>8. Categorization of WQRs for mitigation requirements</li> <li>9. Applicability in the public right-of-way</li> <li>10. 150-sq-ft disturbance threshold for construction management plans</li> <li>11. Providing adequate oversight without overregulation</li> </ol> |
|--|---|

Staff’s responses to these issues, as well as to several other items that have come to staff’s attention during the hearings process, are provided below. Related changes to the proposal are reflected in revised versions of the proposed Natural Resource Areas code (see Attachment 1, Proposed Section 19.402 Natural Resource Areas (Strikeout/Underline Version) – revised for June 14, 2011 hearing) and the amendments to the Comprehensive Plan and other Municipal Code sections (see Attachment 4, Proposed Amendments to Comprehensive Plan and Other Municipal Code Sections (Strikeout/Underline Version) – revised for June 14, 2011 hearing). Updated commentary documents explaining the proposed changes to Section 19.402 and to the Comprehensive Plan and other sections of the Municipal Code are provided in Attachments 3 and 6, respectively.

## Discussion of Issues Identified at April 26 Hearing

### 1. 150-sq-ft threshold for minor encroachments

What is the Issue: The draft code uses the figure "150 sq ft" to demark several thresholds, including: 1) the amount of HCA disturbance that begins to trigger the requirement that the property owner submit a construction management plan for City approval (demonstrating how the nearby resources would be protected), for minor encroachments that would otherwise be exempt (Subsection 19.402.4.B); and 2) the amount of WQR disturbance that begins to trigger Type III review, for minor encroachments that could otherwise be reviewed through the Type II process (Subsection 19.402.7.D).

For these minor WQR encroachments and for some minor HCA encroachments, the draft code also includes requirements that the new encroachments not move closer to any protected water feature than the existing encroachment.

Direction Provided: The commissioners agreed that the proposed 150-sq-ft threshold is the right one for defining the maximum area of HCA one would be allowed to disturb without providing a construction management plan. That same threshold appeared to be acceptable for defining the maximum area of WQR one would be allowed to disturb if approved through a Type II process; more than 150 sq ft would require Type III review. However, several commissioners requested more perspective on the question of whether such minor encroachments should be allowed to move closer to a protected water feature.

Discussion: For HCAs, as long as the new encroachment does not intrude into the WQR (which, by definition, includes a 50-ft buffer around the protected water feature), staff does not see a significant threat to any protected water feature by a disturbance of less than 150 sq ft. Similarly, staff does not see a significant threat by any disturbance of 150 to 500 sq ft that a construction management plan could not adequately address.

In the April 12 version of the proposal, a project to improve an existing structure that would disturb less than 150 sq ft of the WQR would still require Type III review if the encroachment was proposed to go any closer to the protected water feature. As illustrated in the scenarios that staff prepared for consideration of this issue (see Attachment 10, WQR Encroachment Scenarios), it is often the case that the most common direction to expand an existing development within a WQR is in fact toward a protected water feature. Given that (1) the maximum encroachment allowed with Type II review is only 150 sq ft and (2) Type II review is discretionary and requires the provision of an impact evaluation to justify the proposed encroachment, staff believes that the existing policy of restricting new encroachments that go closer to a protected water feature is unnecessarily limiting. For WQR encroachments, potential impacts can be adequately minimized and mitigated through the Type II review process.

#### Related Changes to the Proposal:

Staff has incorporated the following changes to the proposal, included in Attachment 1:

- Subsection 19.402.4.B.1 – Removed the provision that would prevent minor HCA encroachments from being exempt if they go closer to a protected water feature. This makes the exemption available to more projects.
- Subsections 19.402.7.D.3 and D.4 – Removed the provisions that would only allow minor encroachments into a WQR if the encroachment does not go closer to a protected water feature.

Alternatives:

- If the Commission wishes to continue the existing policy of strongly dissuading any new development (no matter how small) near protected water features, the changes listed above could be removed from the proposal.

**2. Division of high-percentage resource properties**

What is the Issue: The nondiscretionary standards for HCA disturbance allow lots that have a high percentage of HCA coverage to disturb up to 50% of the HCA (5,000-sq-ft maximum). Partitioning or subdividing properties that are almost entirely covered by HCA could result in significant fragmentation of intact habitats.

Direction Provided: The commissioners agreed that division of high-percentage resource properties should be limited, but done in such a way that does not establish a prohibition that could create a "takings" situation. The general suggestion was to encourage the creation of undevelopable resource tracts when possible, and, when forming a separate tract is not an option, to emphasize the value of maintaining contiguity of the resource area and/or use of the cluster development principles.

Discussion: After much consideration of this issue, staff believes that, with a few adjustments to the proposed policy, the Commission will have sufficient discretion to address this issue in the few applications for which it could be a concern.

In general, the proposed regulations would require discretionary Type III review for any partitions or subdivision proposals that cannot (or do not) place the natural resource in a separate, undevelopable tract.<sup>1</sup> Such subdivision proposals would be required to design the lots so they either result in "adequate buildable area" outside the WQR and HCA, or request a variance to this standard. If the natural resource could not be placed in a tract, the area would still be protected—most proposals to develop within a WQR would require Type III review; the Commission would require HCA to be evenly distributed across new parcels.

But for partitions in particular, the April 12 version of the proposed code did not provide any guarantee that large natural resource areas would not be carved into smaller developable parcels, each with a high percentage of WQR and/or HCA. The "low-impact" partition option proposed in Subsection 19.402.13.G was created especially to facilitate partitions that would not substantially affect natural resources. However, it could conceivably allow significant fragmentation of large HCAs into multiple parcels with only Type II review. Those parcels could then potentially use the nondiscretionary standards in Subsection 19.402.11.D to disturb up to 50% of the HCA on each parcel (up to a maximum of 5,000 sq ft) with Type I review.

Staff estimates that when HCA covers 85% or more of a property, the proposed code would allow from 30 to 50% of the HCA on the site to be disturbed. Staff recommends using this 85% coverage threshold to require that the impact evaluation for a partition or subdivision examine opportunities to configure the allowable disturbance areas across the new lots in a way that preserves as much contiguity of the HCA as possible. The "low-impact partition" option (Type II review) should not be available for properties that are not 85% or more HCA, to ensure that the Commission has a chance to determine whether a proposal does as much as possible to keep large HCAs contiguous across the new parcels.

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<sup>1</sup> All subdivisions always require Type III review; partitions that do not involve natural resources may be reviewed through a Type II or Type III process, depending on the situation.



#### Related Changes to the Proposal:

Staff has incorporated the following changes to the proposal, included in Attachment 1:

- Subsection 19.402.13.G – Limited the “low-impact partition” option to properties where the HCA covers 85% or less of the total lot area.
- Subsections 19.402.13.H and 13.I – Required partitions and subdivisions of properties where the HCA covers more than 85% of the total lot area to demonstrate how the contiguity of the HCA will be preserved across the new lots as much as possible.

#### Alternatives:

- The Commission could choose to simply prohibit the division of properties with a high percentage of HCA. Given that the proposal does allow for development on *existing* lots, the question of whether such a prohibition results in a taking would probably have to be evaluated on a case-by-case basis.

### **3. Use of the term "practicable"**

What is the Issue: The Metro model code for Title 13 used the term “practicable” and provided a definition. The City Attorney pointed out the potential for confusion between this term and the terms “possible,” “feasible,” and “practical.”

Direction Provided: Several commissioners expressed concern that the terms be clarified and used consistently, and asked staff to investigate how these terms are used in the code and propose a solution.

Discussion: In addition to its use in Section 19.402, the term "practicable" appears in 10 other sections of the current zoning code, although it is not currently included in Section 19.201 Definitions. Staff has concluded that it would be useful to have a definition for "practicable" that could apply throughout the zoning code. The definition provided in the Title 13 model code is useful as a starting point but needs some adjustment to function effectively in the broader context of the entire zoning code.

#### Related Changes to the Proposal:

Staff has incorporated the following changes to the proposal, included in Attachments 4 and 1, as appropriate:

- Section 19.201 – Added a definition of “practicable.”  
Given the term's broad usage, staff proposes to add the following definition in Section 19.201, where it would apply to the entire zoning code. This definition reflects a modification of the definition of "practicable" presented in the Title 13 model code:  
*"Practicable" means capable of being realized after considering cost, existing technology, logistics, and other relevant considerations such as ecological functions, scenic views, natural features, existing infrastructure, and/or adjacent uses.*
- Section 19.402 – Throughout the section, replaced the terms "feasible," "reasonable," and "possible" with the term “practicable.”

Staff has confirmed that the term "practicable," as defined above, is appropriate for use in this proposal and throughout Title 19 Zoning.

#### Alternatives:

- None identified.

#### 4. Exemption for existing residences ("Homeowner Exemption")

What is the Issue: The model code includes a specific exemption from some of the HCA regulations for existing residential properties:

*"Where construction of a residence was completed before January 1, 2006, the owners or residents shall not be restricted from engaging in any development that was allowed prior to September 22, 2005,<sup>2</sup> unless such development required obtaining a land use decision, or a building, erosion control, or grading permit."*

This exemption is limited to disturbance of a maximum of 10% of the vegetative cover that was originally mapped within the HCA on the site, up to a maximum of 20,000 sq ft.

Direction Provided: The majority of commissioners were not in favor of establishing some sort of exemption for already developed residential sites. However, the Commission was unanimous in its instruction to staff to review the proposed amendments with an eye toward identifying ways to maintain appropriate oversight of gardening and landscaping activities without overregulating them. The rules for tree removal represent the other primary concern regarding the balance of oversight and overregulation of everyday landowner activity.

Discussion: The Metro model code for Title 13 was intended to provide one example of how a local jurisdiction could comply with the region's Nature in Neighborhood requirements. In fact, the proposal incorporates most of the model code, integrating those HCA policies with the City's existing WQR regulations.

Staff does not recommend establishing the broad exemption suggested in the Title 13 model code for a number of reasons:

1. It would be difficult to implement, requiring that the City become aware (through unknown means) of vegetation removal over time and track these small changes in HCA square footage on individual properties.
2. The exemption would apply to most residential properties but not to all, unfairly setting one standard for properties developed prior to 2006 and another for infill development properties, so next-door neighbors might have to follow different rules.
3. It would effectively pit residential uses against all other land owners (commercial, industrial, institutional), even though it seems reasonable to expect all types of uses to share a proportional responsibility for protecting the community's natural resources.
4. It would apply only to HCAs and not to WQRs, which does not provide the broad relief from regulation for which some are advocating, and would add another level of complexity to the day-to-day implementation of the rules.

The exemption would largely excuse residential properties from regulations related to tree removal and small disturbances (less than 500 sq ft). In Milwaukie this would allow a property owner to remove trees and vegetative cover (up to 10% of the vegetated cover on their property, or much more if the City was not aware of such removal) *before* coming to the City to apply for a land use or building permit that would trigger the NR regulations that would have otherwise protected those trees. Most of the cities that have included this exemption also have some kind of adopted ordinance protecting significant trees on private property; Milwaukie does not.

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<sup>2</sup> These two dates are relative to the date that the model code was prepared as part of the adoption of Title 13 in 2005.

The Commission directed staff to modify the proposal to “identify ways to maintain appropriate oversight of gardening and landscaping activities without overregulating them” (noted as Issue 11). Staff sees the exemption included in the Metro modal code as one blunt, unworkable exemption but is proposing several more specific exemptions that will give all residential properties more “breathing room.” See the Natural Resource Areas Activity Table that is included with Attachment 3, Commentary on Proposed Amendments to Section 19.402, for a summary of the proposed revised approach.

#### Related Changes to the Proposal:

Staff has incorporated the following changes to the proposal, included in Attachment 1:

- Subsection 19.402.4.A – Made more landscaping and “normal” landowner activities exempt from any review (including exemption from the previously proposed requirement to provide a construction management plan).

The proposal has been revised to move most landscaping and yard improvement activities into the outright exempt category. Additional specific exemptions have been added to provide more “breathing room” for common yard improvement activities, as long as those activities do not disturb more than 500 sq ft, the existing threshold for requiring an erosion control plan.<sup>3</sup>

- Subsection 19.402.4.B – Reduced the number of limited-exemption situations in which a construction management plan would be required. Removed the requirement of a construction management plan based on proximity to a WQR.

A construction management plan would be required for activities listed in the HCA-only exemption category (revised to be Subsection 19.402.4.B) only when the disturbance exceeds 150 sq ft.

- Revisions are also proposed regarding tree removal requirements, as explained in Issue 5, below.

#### Alternatives:

- The Commission could expand either the exemption or the Type I option to allow the removal of native trees from within HCAs.

## 5. Tree removal

What is the Issue: The existing policy for tree removal within WQRs is extremely restrictive and unworkable in many situations (see the Type I activity list in Section 19.402.5 in the current code). In stark contrast, the proposed approach provides property owners with many options for seeking approval to remove a tree. As presented on April 26, when trees on private property are proposed to be removed (not related to a land use application), the April 12 version of the draft code would regulate the removal of trees in WQRs and HCAs as follows:

Exempt from review:

- Trees with a diameter at breast height of less than 4 in
- Downed trees
- 3 or fewer nuisance-species trees in one year

<sup>3</sup> The erosion control provisions of Section 16.28.020.C.3 allow the City to require an erosion control permit below the normal disturbance threshold of 500 sq ft whenever a situation is determined to have the potential for impacts to a WQR or HCA.

- Trees that present an immediate emergency
- Trees designated for removal in an approved natural resource management plan

Type I review:

- Trees that present a hazardous but non-emergency situation
- Dead or dying trees
- More than 3 nuisance-species trees
- Downed or nuisance trees whose removal requires more than 150 sq ft of earth disturbance
- 3 or fewer nonnative trees that are in WQRs categorized as "Degraded" in one year

Type III review:

- All other proposals

Direction Provided: There appeared to be general agreement that the various tree removal scenarios are appropriate as proposed. Some wondered if Type III review by the Planning Commission was warranted for tree removal of any kind.

Discussion: The draft proposal allows for multiple removal scenarios that would require very little or no review in a range of common situations. In particular, the various Type I scenarios allow property owners a great deal of latitude in managing existing trees, while still requiring one-to-one replacement. The scenarios that do not fit the exempt or Type I categories would involve removal of healthy native species trees from a WQR or HCA area. Staff recommends that tree removal in this "healthy native tree" scenario be reviewed through a Type III process, allowing the Commission to use discretion while considering the impacts and alternatives.

Related Changes to the Proposal:

Staff has incorporated the following changes to the proposal, included in Attachments 4 and 1, as appropriate:

- Section 19.201 – Revised the definition of "tree" to use 6 in. diameter at breast height (dbh) as the threshold for regulating something as a tree instead of 4 in. dbh.

Staff reviewed the definition of "tree" from several other local jurisdictions and confirmed that most use the 6 in. metric to define a tree.

- Subsection 19.402.6.B.1.f – Amended the language so that up to 3 nonnative trees can be removed per year with Type I review, provided the trees are not native species and are not located within a WQR categorized as "Good."

This revision serves to emphasize the character of the tree and de-emphasize the character of the environment from which it would be removed. Native trees are highly valued, as is the existing tree canopy in "Good" WQRs.

Alternatives:

- The Commission could decide that "other" tree removal proposals (nonexempt, non-Type I) could be reviewed through a Type II process instead of Type III.
- The Commission could make "other" tree removal from within HCAs either exempt or allowable with Type I review.

- As suggested under “Alternatives” for Issue 4, the Commission could expand either the exemption or the Type I option to allow the removal of native trees from within HCAs (not WQRs).

## **6. Fee reductions and other options for alleviating financial burdens on affected property owners**

What is the Issue: The regulations would introduce new regulatory requirements for affected property owners and would also introduce fees when these property owners seek approval of a project. The City’s adopted financial policies expect that part of the City’s cost of conducting land use and development review be covered by application fees. Staff’s recommendation has been that the City waive fees for certain Type I applications (boundary verifications, construction management plans, and natural resource management plans) that are likely to be very common, are in the public interest, and should require relatively little staff time to review.

Direction Provided: The commissioners indicated a strong desire to provide some relief to those property owners whose holdings include WQRs and HCAs and who are therefore responsible for protecting an asset to the larger community. One commissioner asked for more information about the impact the resources have on assessed value, and whether establishing a conservation restriction on a property could result in a reassessment or revaluation of that property by the County that would lower the tax burden. Several commissioners appreciated the desire to waive fees for construction management plans and boundary verifications, but requested examples of such plans to better understand the work that would be involved.

Discussion: All City fees are reviewed and updated annually as part of City Council’s adoption of the City budget. It is impossible to guarantee that certain fees would remain waived over the long term. With this in mind, staff has considered other options for moving the application types in question out of the realm of land use decisions, thereby insulating them from automatic fee increases. Unfortunately, there does not appear to be an effective way to do that. It is worth noting that, by reducing the number of situations that would trigger a requirement for Type I construction management plan review (see Issue 4, above), far fewer situations will rely on such a fee waiver.

As to the question of whether establishing a conservation easement on a property would result in a reassessment or revaluation of that property by the County, lowering the tax burden, staff is still gathering information. Current indications are that simply having a WQR or HCA on a property is not enough by itself to affect the property valuation and tax rate. It appears that one would have to be more proactive and establish some kind of conservation restriction that clearly spells out what rights of use are being signed away for the purpose of conservation. If a separate tract is created to contain all or most of the WQR or HCA (such as with a partition or subdivision), that undevelopable tract would be valued and taxed at a different rate than a developable residential lot.

It is worth remembering that the mere presence of a stream or wetland on or near a property will itself affect the property’s value, raising or lowering it depending on specific conditions. Regulations place limits on activities involving these water features and habitat areas. While it is true that these restrictions could have the effect of lowering the property’s value, it is also arguable that the rules can also add value by protecting the resource and allowing it to be an amenity. The fact that a neighbor is not allowed to develop all the way to the stream’s edge provides certainty to surrounding properties and could improve their value.

Examples of construction management plans and a natural resource management plan are provided in Attachments 11 and 12, respectively.

Related Changes to the Proposal:

- Staff is not proposing changes to the proposed code amendments related to this issue.
- Staff will propose to City Council that the City waive fees for Type I boundary verifications, construction management plans, and natural resource management plans, and reduce fees for Type III tree removal requests. Staff will recommend that Council adopt these through a separate, special resolution to give added weight to the policy direction to facilitate these particular applications.

Alternatives:

- None identified.

**7. Language regarding "activities" and prohibition of activities not specifically allowed**

What is the Issue: Public testimony included the concern that the prohibition of any "activities" within WQRs or HCAs that are not specifically allowed by Section 19.402 is unnecessarily broad and could affect civil liberties.

Direction Provided: Request for staff and City Attorney explanation and recommendation.

Discussion: The language proposed in Subsection 19.402.5, prohibiting "new structures, development, or activity other than those allowed by Section 19.402" is consistent with the regulatory structure of the larger zoning code. The zoning code is comprised of regulations that deal with the use of land; it does not extend into the broader realm of laws that regulate most non-land use personal activities. The word "activity" is included in the prohibition subsection of Section 19.402 to address actions that do not clearly fall into the category of "development" but that are in fact regulated land uses, such as tree removal, riparian restoration, and routine repair and maintenance of existing structures and utilities.

The City Attorney agrees with staff's assessment that the fundamental structure of Section 19.402 adequately addresses and categorizes the majority of land use activities and that it is not necessary to alter this structure.

Related Changes to the Proposal:

Staff has incorporated the following changes to the proposal, included in Attachment 1:

- Subsection 19.402.5 – Added statement in introductory paragraph to clarify the scope of zoning regulations with respect to activities not involving land use or development.
- Subsection 19.402.5.A – Inserted the word "landscaping" to further clarify the types of activities that are regulated by Section 19.402.

Alternatives:

- Add additional specific activities that, to avoid their being unintentionally prohibited, should be more clearly spelled out in the proposed amendments as being exempt or allowable with review.

**8. Categorization of WQRs for mitigation requirements**

What is the Issue: Table 19.402.11.C provides direction for the mitigation required when WQR disturbance triggers discretionary review (Type II and Type III situations). The table categorizes the existing condition of the WQR according to how much vegetation and tree canopy is present. Mitigation requirements can then be tailored by the decision maker to address the existing condition of the WQR.

In the April draft of the proposed code, the existing condition categories were labeled "Good," "Marginal," and "Degraded." The "Degraded" label has drawn some criticism in public testimony and from some commissioners because it carries a connotation of judgment on the landowner as steward of the property. Also, the current table has been interpreted as categorizing WQRs as "Degraded" if they include more than 10% surface coverage by any nonnative species, which probably would actually include most of the WQRs in Milwaukie.

Direction Provided: The Commission asked staff to review the proposed Table 19.402.11.C with an eye toward making clearer distinctions between the mitigation requirements for the three different WQR-condition categories and to improve the category labels themselves to be less judgmental. The majority of the Commission did not want staff to radically change how the table was proposed to be used in the context of a Natural Resource application. The Commission also asked staff to explain why the 10% nonnative species threshold would be important for qualifying WQRs as "Degraded."

Discussion: A primary reason the City would assess the existing condition of a WQR would be to know the value of the resource that is proposed to be disturbed. On a site that is already well vegetated and has significant tree canopy, the City would push the applicant to minimize any allowed disturbance and ensure that impacts are mitigated to maintain the ecological integrity of the existing resource. Thus, the main requirement for applications that involve "Good" WQRs is to submit a plan that specifically explains how the important water quality functions of that WQR will be maintained. On a site that does not have as much vegetated coverage or tree canopy, there is less ecological value to be lost or disturbed in the first place. The required mitigation for "Marginal" or "Degraded" WQRs should serve to improve conditions on the site and perhaps even pull the WQR into a higher category for the future.

It is important to remember how Table 19.402.11.C is used – the City only applies it when there is a proposal to disturb a WQR with an activity that requires Type II or Type III discretionary review. The monikers "Good," "Marginal," and "Degraded" are deliberately intended to differentiate between areas based on the amount of existing vegetation and tree canopy, to qualify a site's functionality with respect to protecting water quality.

One of the factors that define a site as being "Degraded" in the April 12 version of the table is the presence of "10% surface coverage by any nonnative species." Staff consulted with Metro staff regarding the original intent of this table (which came from the Title 3 model code) and about how to use the table to distinguish the value of different WQR conditions with respect to improving water quality. Metro staff agreed that the 10% nonnative standard may not be as useful a metric as the simple existence of vegetation and tree canopy in the WQR, regardless of whether or not that vegetation is native. With that adjustment, many existing WQR properties in Milwaukie that are well vegetated but include some nonnative species are more rightly identified as being "Good" instead of "Degraded" with respect to their value for water quality protection. The general standards established in Subsection 19.402.11.B require that native plants are used for mitigation, which ensures that more natural restoration will occur when development and disturbance are allowed.

Related Changes to the Proposal:

Staff has incorporated the following changes to the proposal, included in Attachment 1:

- Table 19.402.11.C – In response to concerns about the judgmental tone of the WQR category titles, added the labels "Class A," "Class B," and "Class C" to the existing-condition categories. Changed the "Degraded" label to "Poor" and added language to describe each category (see page 20 in Attachment 1).

- Revised the table to remove the metric of “10% surface coverage by any nonnative species” as a standard that by itself would qualify a site as being in "Poor" condition.

## 9. Applicability in the public right-of-way

What is the Issue: The current WQR regulations and the proposed NR rules specifically exempt activities in the public right-of-way from compliance, which seems to let the City off the hook from having to meet the same standards that it expects property owners to meet.

Direction Provided: The commissioners asked staff to provide more information about any standards in place for the right-of-way that serve to protect natural resources.

Discussion: Public right-of-way extends throughout the Milwaukie area as the location for providing improvements that serve and benefit the entire community. Infrastructure such as streets, sidewalks, waterlines, sewer pipes, and stormwater facilities is constructed within the public right-of-way to provide access and necessary services to all properties. Public right-of-way is not property that is owned by any entity—it is a commonly held space that the City (or another public agency) is entrusted with managing. This is not to be confused with tax lots owned by the City or other public agencies, such as the various public parks and public buildings like City Hall—natural resource areas on these and similar tax lots are subject to the provisions of Section 19.402.

The need for the proposed amendments stem in part from the City’s responsibility to implement land use regulations that comply with the Clean Water Act. The City has similar responsibilities with regard to managing improvements in the public right-of-way, and for the overall health of the City’s watershed. These requirements have led to the City adopting a set of practices and standards for managing the public right-of-way. (Clackamas County and ODOT have similar requirements for rights-of-way under their jurisdiction.)

One of the City’s primary responsibilities with respect to the Clean Water Act is the annual demonstration of compliance with its National Pollutant Discharge Elimination System (NPDES) permit. Compliance includes capturing and treating stormwater runoff from impervious surfaces to reduce the amount of pollutants entering the City’s groundwater, creeks, and streams. These are implemented through various projects in the following ways:

- Construction projects in the public right-of-way are subject to the City’s adopted Public Works Standards, which require protection of trees and vegetation that will remain and restoration of disturbed areas. New development of the public right-of-way is either triggered by development on the adjacent property (construction of a new house that requires installing a sidewalk, for example) or by a Capital Improvements project (upgrading a water line or widening an existing road, for example). Stormwater runoff from new impervious surfaces must be captured and cleaned before entering the stormwater system.
- Trees in all public rights-of-way are regulated by Chapter 16.32 of the Milwaukie Municipal Code, which establishes a permitting system for tree removal and major pruning and requires one-to-one replacement.
- Recent updates to the Public Works Standards allow the Engineering Director to have more flexibility to adjust street designs to better fit with specific site conditions, instead of requiring a one-size-fits-all configuration. This allows the possibility of narrower streets where wider streets that would disturb a larger area are not warranted.

Staff believes that the public right-of-way is adequately and appropriately regulated and protected by provisions and standards other than those found in the existing WQR regulations and proposed NR rules.



Related Changes to the Proposal:

- None.

Alternatives:

- None identified. The entirety of Title 19 Zoning specifically applies only to fee title lots, and not to public right-of-way.

## 10. 150-sq-ft disturbance threshold for construction management plans

What is the Issue: For all nonexempt activities, and for activities that are exempt only in HCAs, proposals that will disturb more than 150 sq ft within 100 ft of a WQR or HCA would require a construction management plan (Type I review).

Direction Provided: At the April 26 hearing, the commissioners appeared to be comfortable with the proposed 150-sq-ft threshold for requiring a construction management plan.

Discussion: Construction management plans are intended to provide some practical assurance that designated resource areas will be adequately protected when disturbance occurs nearby. Activities that are completely exempt from the NR rules, which generally involve very minimal or no disturbance, are not required to provide a construction management plan.

Related Changes to the Proposal:

- Subsection 19.402.3.B – Revised the language to clarify that construction management plans are not required for outright exempt activities.

Alternatives:

- The Commission could increase the threshold for the amount of disturbance that would trigger a construction management plan.
- Construction management plans could be required only for nonexempt activities within a certain distance of a WQR or HCA, regardless of the amount of disturbance.

## 11. Providing adequate oversight without overregulation

See discussion of Issue 4, above.

### Other Issues Addressed by Staff since April 12 Hearing

#### A. NR Administrative Map: Adding more protected water features?

What is the Issue: Two commissioners have raised questions about two different properties where a protected water feature may exist but is not shown on the current draft of the NR Administrative Map.<sup>4</sup>

Discussion: Staff has researched readily available information about both sites, and has not yet been able to access enough information about either site to warrant adding new features to the map at this point. However, once enough data is available to make a determination, staff will add the features to the map if appropriate, following the new procedures for map administration in Subsection 19.402.15 of the proposed amendments (see page 37 in Attachment 1). Both sites are close to the proposed alignment for the Portland-Milwaukie light rail, so more information about the water features may be forthcoming as that project

<sup>4</sup> One site is just south of Highway 224 near SE 26<sup>th</sup> Ave; the other is near the ODOT gravel yard along McLoughlin Blvd near Wren St.

continues to unfold. Since both sites are suspected to be WQRs, a lack of mapping would not impair the City's ability to apply the NR regulations if the features are determined to meet the code definition of "protected water features."

Related Changes to the Proposal:

- None.

## **B. Cluster Development Language**

What is the Issue: One property owner participating in the hearing process raised a concern about whether the proposed code language related to cluster development was solid enough to support a reasonable proposal that met the approval criteria, in the face of neighborhood opposition based largely on a fear of change. Since the review process for cluster development is subject to discretionary review, is there any way to inject a little more assurance for the developer who puts together an approvable proposal?

Discussion: The cluster development provision is an important tool the City can offer a property owner as an incentive to pursue low-impact development. Based on the Commission's discussion of this issue at the September 28, 2010 work session, staff believes the Commission should have an opportunity to consider such proposals on a case-by-case basis. At the same time, one of the options for cluster development is to propose housing types that would not otherwise be allowed in the underlying zone, though not exceeding the overall allowed density of a site. For this to be an effective tool, staff believes there should be some stronger language in the proposed code to give the Commission a platform for findings in favor of approving a cluster development that meets the relevant criteria, even if there are neighbors who simply do not want development to occur.

Related Changes to the Proposal:

- Subsection 19.402.14.C – Added language that clarifies the intent of the cluster development provisions and that requires the Commission to approve those proposals that meet the relevant criteria. The discretionary review process gives the Commission an ample platform for denying a proposal that it feels does not satisfy the intent or the criteria. The proposed language would provide more certainty to potential applicants.

## **C. Natural Resource Management Plan Option for "Heritage Landscaping"**

What is the Issue: One participant in the hearing process has suggested that there should perhaps be an option to prepare a natural resource management plan that does not seek to restore the WQR or HCA on a site but instead preserves an existing landscaped area.

Discussion: Given the newly bolstered category of exempt activities, including relatively generous allowances for removing trees that are not native species, staff does not believe it is necessary to establish a special type of natural resource management plan focused on landscape preservation. As previously noted, neither the existing WQR regulations nor the proposed NR rules require restoration efforts unless there is some development. Allowing property owners to actively promote exotic species over native trees and plants would effectively formalize the prevention of natural resource restoration, which seems antithetical to the intentions outlined in Subsection 19.402.1.

With the latest revisions to the definitions in Section 19.201, a plant is not considered a "tree" until it has a diameter at breast height of at least 6 in. In many situations, property owners should have ample opportunity to remove undesired trees before they grow large enough to be officially regulated as "trees." And if a more manicured landscape has not already been established on a site (where it can be maintained according to the exemptions

provided in Subsection 19.402.4), then staff sees little reason to facilitate new, nonexempt disturbances to established vegetation unless those efforts are aimed at restoring the site.

Related Changes to the Proposal:

- None.

Alternatives:

- The Commission could direct staff to develop approval criteria for a special type of natural resource management plan that focuses on maintaining a particular manicured landscape rather than on restoring a WQR or HCA to more natural conditions.

### Summary of Revisions to Proposal

At the direction of the Commission and in response to public comments, staff is proposing numerous changes to the April 12 version of the proposed amendments to Section 19.402. Changes are reflected in ~~strikeout~~/underline format (see Attachment 1, Proposed Section 19.402 Natural Resource Areas – revised for June 14, 2011 hearing). Revisions to the April 12 version of the proposed amendments to the Comprehensive Plan and other sections of the Municipal Code are reflected in ~~double-strikeout~~/double-underline format in Attachment 4 (Proposed Amendments to Comprehensive Plan and Other Municipal Code Sections (Strikeout/Underline Version) – revised for June 14, 2011 hearing). Attachment 7 is the latest version of the NR Administrative Map, last revised on April 11, 2011.

Attachment 1, Proposed Section 19.402 Natural Resource Areas (Strikeout/Underline Version) – revised for June 14, 2011 hearing

*Notable changes are listed below, to serve as a guide for readers who wish to understand the difference between the April 12 and June 14 drafts of the proposal. "Wordsmithing" or clarifying revisions to the earlier "PC Hearing Draft 4-12-11" that do not have policy ramifications are not included in this list but are shown in ~~strikeout~~/underline format shown in the document.*

- General Revisions
  - Replaced the terms "feasible," "possible," and "reasonable" with "practicable" throughout Section 19.402.
- 19.402.1 (Intent) – Added clarifying language to E.4 to eliminate potential conflict with C.8, regarding the intent to allow maintenance of existing landscaping without sanctioning the removal of native vegetation for new landscaped areas.
- 19.402.2 (Coordination) – In 2.D, removed the references to nonconforming "uses," since the NR regulations focus primarily on development and activities associated with development and do not address the kinds of use (e.g., residential, commercial, industrial) that are allowable in WQRs or HCAs.
- 19.402.3 (Applicability)
  - In 3.F, added a clarification of the term "disturbance."
  - Table 19.402.3 – Made changes in the "exempt" section of the table to reflect the consolidation of the exemption categories formerly found in Subsections 19.402.4.B.1 and B.2 (now simply Subsection 19.402.4.B).
  - Table 19.402.3.K – Added additional language to clarify that "development activities" only need Type III review if they are not otherwise exempt or allowable with Type I or

Type II review. Also added a row specifically for Type III tree removal, which had previously been included as “other development.”

- Deleted 3.L as redundant because Subsection 19.1002.2 establishes the requirements for preapplication conferences.
- 19.402.4 (Exemptions) – Moved many items related to landscaping and alteration of existing structures from the "Limited Exemptions" category into the "Outright Exemptions" category of 19.402.4.A (see discussion of Issue 4). Then eliminated the B.1 and B.2 categories and made a single B category for exemptions limited to HCAs.
- 19.402.5 (Prohibitions) – Added language to clarify that the proposed regulations are limited to activities pertaining to land use and development.
- 19.402.6 (Type I Activities)
  - In B.1, revised the B.1.e tree removal category, splitting it into B.1.e and B.1.f for clarity. The B.1.f category allows removal of trees as long as they are not native species and are not located in a WQR categorized as Class A ("Good"), with a limit of 3 trees per year.
  - In B.3, revised the requirement for tree replacement to a minimum size of 1/2-in caliper (instead of 1 1/2 in) and added an option for minimum height of 6 ft, to account for size variability depending on the specific species.
- 19.402.7 (Type II Activities) – In D.3 and D.4, removed the condition that minor WQR encroachments go no closer to the protected water feature.
- 19.402.11 (Development Standards) – In Table 19.402.11.C, made significant revisions to simplify and clarify the table, including improvements to the three category labels and removal of redundant language related to mitigation requirements that are addressed elsewhere in 19.402.11. Also removed the "10% nonnative species" threshold for the Class C ("Poor") category (see discussion of Issue 8).
- 19.402.12 (General Discretionary Review) – In 12.A, added language to clarify that the Planning Director can waive the requirement to provide a technical report for small projects.
- 19.402.13 (Land Division) – In 13.G, 13.H, and 13.I, established limitations on division of properties with a high percentage of HCA coverage, requiring such proposals to demonstrate an attempt to preserve contiguity of the natural resource across the new lots (see discussion of Issue 2).
- 19.402.14 (Adjustments) – In 14.C, added language to clarify the intent of the cluster development allowance and to require that the Planning Commission approve cluster development proposals that meet the relevant approval criteria (see discussion of "Other Issue" B).

Attachment 4, Proposed Amendments to Comprehensive Plan and Other Municipal Code Sections (Strikeout/Underline Version) – revised for June 14, 2011 hearing

*Revisions to the earlier "PC Hearing Draft 4-12-11" are shown in ~~double-strikeout~~/double-underline format.*

- 19.201 (Definitions)
  - Added "designated" to the term "natural resource area" and relocated it within this section to remain alphabetical.
  - Added definition for "practicable."

- Renamed definition of "significant pruning" to "major pruning" to be consistent with the term used in Section 16.32 Tree Cutting.
- Revised definition of "tree" to set the threshold diameter at breast height at 6 in instead of 4 in.

Attachment 7, Proposed Natural Resource Administrative Map (last revised on April 11, 2011)

- Removed the HCA designation from the paved portion of the Springwater Trail Corridor and nearby parking lots on a portion of the Precision Castparts site on SE Johnson Creek Boulevard.

### ADDITIONAL COMMENTS RECEIVED

Since the last Planning Commission discussion of this project on April 26, staff has received several additional inquiries and comments. Staff has received one phone call from an attendee of the Open House event in January 2011—the caller had questions about the overall amendment project and reminded staff that any public outreach information needs to be clear and easy to understand. Another affected property owner came to the public Planning counter to better understand why he was continuing to receive notices about the continued hearing.

Additional written comments have been received from several people (see Attachment 13, Comments Received) and are summarized as follows, with staff responses where appropriate:

1. **Christopher Burkett**, property owner of properties at 2566 SE Harrison St and 4512 SE Ryan Ct (both Milwaukie, OR 97222). Comments were originally sent via e-mail on 4/11/11 but were blocked by the City's "spam" screening software; they were re-sent and received via e-mail on 4/27/11. Comments focus on protecting stream banks from erosion and the apparent lack of address of the issue in both the current code and proposed amendments. Questions include asking what things the proposed amendments will and won't allow property owners to do to fortify stream banks against erosion.

**Staff Response:** *The existing and proposed code for WQRs discourages the installation of new impervious surfaces along stream banks. However, maintenance of existing rock walls or rip-rap along the stream bank is allowed outright. Planting native vegetation is also allowed outright, and the appropriate native species can effectively stabilize stream banks and reduce soil erosion.*

2. **Christopher Burkett** (comments received via e-mail on 4/29/11). Comments focus on the language in Subsection 19.402.5 Prohibited Activities, specifically that use of the phrase "[prohibition of any] activity other than those allowed by Section 19.402" is unnecessarily broad and restrictive and impinges upon civil liberties.

**Staff Response:** *See staff's address of Issue 7.*

3. **Christopher Burkett** (comments received via e-mail on 5/01/11). Comments focus on the sense that the proposed amendments represent intrusive and unnecessary government regulation of private life.

**Staff Response:** *The proposed amendments are designed to ensure that all areas in the city that are identified as Water Quality Resources or Habitat Conservation Areas are protected from significant, unmitigated disturbance. The rules are based on an acceptance that the long history of legal development in Milwaukie has resulted in substantial changes to these natural areas; also that property owners maintain a basic right to use their properties. Many activities that are considered to be a normal part of maintaining existing structures and landscaping are allowed outright by the proposed code policies and would require no special review or permits.*

*However, one of the roles of government is to manage a balance between individual desires and the greater good of the whole community. Proposals that would generate significant new disturbances within designated natural resource areas would require review and, when necessary, mitigation to address negative impacts. In response to the comments provided during the public hearing process to date, staff has revised the proposed amendments to more clearly exempt the most everyday activities that have little or no impact on natural resource areas.*

4. **Pat Russell**, property owner/resident at 15989 SE Bilquist Circle, Milwaukie, OR 97267 (comments received via e-mail on 5/04/11). Comments focus on salmon habitat and the need for continued efforts to restore native vegetation and habitat along Milwaukie's streams.
5. **Christopher Burkett** (comments received via e-mail on 5/18/11). Suggestions to staff: (1) provide a comparison of Metro's Title 13 model ordinance and the proposed amendments, with a rationale for any differences; and (2) provide an estimate of the costs to property owners for various NR applications and reviews.

**Staff Response:** *The City is responsible for ensuring that its municipal code is "substantially compliant" with the various titles of Metro's Urban Growth Management Functional Plan, including Title 3 (Water Quality and Flood Management) and Title 13 (Nature in Neighborhoods). Metro provided a Title 13 model code as an example of one way local jurisdictions could demonstrate compliance, but of the 23 jurisdictions that have complied with the Title 13 requirements, only 2 have done so by adopting the model code. The City's requirement is to comply with Title 13, not the model code. Staff is preparing a memo to Metro that explains how the City's proposed amendments are substantially compliant with the language and principles of Title 13. That memo will be shared with the Planning Commission and posted on the project website as soon as it is available.<sup>5</sup>*

*The costs for nonexempt activities will vary depending on the type of review required for a particular activity. Currently, the following fees are in effect:*

- *Type I = \$150*
- *Type II = \$900*
- *Type III = \$1700*

*Fees are reviewed by the City and can be adjusted annually, with changes going into effect every year on July 1. For the coming fiscal year beginning on July 1, 2011, no changes are proposed to the above-listed fees.*

*For Type II and Type III applications, the applicant will usually be required to submit a technical report prepared by a qualified natural resource professional. At the time of application submittal, the City will collect a deposit to cover the City's costs of reviewing the technical report. Currently, the required deposit for WQR Technical Report Review is \$1500. For the 2011-2012 fiscal year (which begins July 1, 2011), staff is recommending an increase in that deposit to \$2000, to better reflect increases in the actual current costs of technical report review. The cost of preparing the technical report will vary depending on the specifics of the project, but an applicant could expect that the cost to prepare the report to be comparable (at least \$2000). The Planning Director has the ability to waive this requirement if a technical report is not deemed necessary to evaluate a small project.*

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<sup>5</sup> The text of both Titles 3 and Metro Title 13 from the Metro Functional Plan are available on the project website (see Attachment 8, List of Public Information and Background Materials Available on Project Website).

6. **Christopher Burkett** (comments received via e-mail on 5/31/11). Comments on staff's use of the Title 13 model ordinance in preparing the proposed amendments, concern that the proposed amendments represent a taking of private property, and disappointment with the overall process of public input and legislative decision making.

Any comments received prior to 3pm on the day of the June 14 hearing will be provided to the Commission before the hearing. Comments received after 3pm will be presented at the hearing.

## 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 2, 4, 5, and 7. The Commission may include in this motion any proposed additional modifications for staff to incorporate into the proposal that is presented to City Council.

## CODE AUTHORITY AND DECISION-MAKING PROCESS

**Note:** 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) became effective on May 14, 2011. Although the proposed Natural Resource code amendments reflect the version of Title 19 Zoning that is now in effect, the City must review the application against the criteria for amendments to the Zoning Code that were in place at the time the application was submitted. *Therefore, the following section and the draft findings in support of approval use the previous 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 and updated.
2. Forward a recommendation to City Council to approve the proposed amendments and ordinance with modifications.
3. Continue the hearing to further evaluate the proposed amendments and ordinance.

4. Deny the proposed amendments and ordinance. Per the City's procedures for deciding legislative applications, if the Planning Commission votes to deny a legislative application that was initiated by the Planning Commission, "the matter shall be terminated" and a hearing before City Council would not be required (MMC 19.1011.5.B).

This would have the effect of deciding to continue to implement the Water Quality Resource (WQR) code in its current state and continuing to directly implement Metro's Title 13 model code and maps. Because the City is required to amend its ordinances to comply with Title 13, the Commission would need to give staff direction on how the City should meet this requirement. Staff has identified two alternatives:

- A. Staff could return (through a separate application) with a proposal that the City adopt Metro's Title 13 Model Code and HCA map. The City would then implement the *existing* Section 19.402 to regulate WQRs and a new Section 19.406 to regulate HCAs. This would be the most expeditious route; a hearing could be scheduled within approximately 2-3 months.
- B. If the Commission provides precise direction on how to modify the proposal, staff could return with a different proposal that the Commission believes better fulfills the City's policy goals while meeting the Metro Functional Plan requirements of Titles 3 and 13. This would require that staff continue to spend significant resources on this project and would preclude staff time from being spent on other projects. Depending on the direction provided, a hearing could be scheduled within 6-9 months.

### **Recommendation Deadline**

Because this 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, and the City has requested a second one-year extension. Until the City adopts regulations and maps that comply with Title 13, the City will continue to be in the awkward position of directly implementing the regional maps and model code alongside the existing Water Quality Resource regulations.

### **ATTACHMENTS**

#### Documents Directly Related to Section 19.402

1. Proposed Section 19.402 Natural Resource Areas (Strikeout/Underline Version) – revised for June 14, 2011 hearing
2. Proposed Section 19.402 Natural Resource Areas (Clean Version) – revised for June 14, 2011 hearing
3. Commentary on Proposed Amendments to Section 19.402

#### Documents Directly Related to the Comprehensive Plan and Other Municipal Code Sections

4. Proposed Amendments to Comprehensive Plan and Other Municipal Code Sections (Strikeout/Underline Version) – revised for June 14, 2011 hearing
5. Proposed Amendments to Comprehensive Plan and Other Municipal Code Sections (Clean Version) – revised for June 14, 2011 hearing
6. Commentary on Proposed Amendments to Comprehensive Plan and Other Municipal Code Sections



#### Other Documents

7. Proposed Natural Resource Administrative Map (last revised on April 11, 2011)
8. List of Public Information and Background Materials Available on Project Website
9. Whiteboard Notes from Planning Commissioner Deliberations at April 26 Hearing
10. WQR Encroachment Scenarios
11. Sample Construction Management Plans
12. Sample Natural Resource Management Plan
13. Comments Received
  - a. Christopher Burkett (received 4/27/11 via e-mail)
  - b. Christopher Burkett (received 4/29/11 via e-mail)
  - c. Christopher Burkett (received 5/01/11 via e-mail)
  - d. Pat Russell (received 5/04/11 via e-mail)
  - e. Christopher Burkett (received 5/18/11 via e-mail)
  - f. Christopher Burkett (received 5/31/11 via e-mail)

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

**Note:** Effective on May 14, 2011, the Zoning Code has been reorganized (File #ZA-10-02), including renumbering the Water Quality Resource regulations from Section 19.322 to Section 19.402. This “PC Hearing Draft 6-14-11” document reflects that change.

*PC Hearing Draft 6-14-11*

## **~~Strikeout/Underline~~ Amendments**

### **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 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 that does not involve removal and replacement of existing native vegetation. 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 ~~was~~ere legally existing for WQRs as of January 16, 2003, the effective date of Ordinance #1912, or that ~~was~~ere legally existing for HCAs as of DATE, the effective date of Ordinance #\_\_\_\_, and that ~~is~~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~~. 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.

- ~~EF.~~ 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.
- 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

- ~~DA.~~ The regulations in Section 19.402 apply to all properties that containing, or are within 100 feet of 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 Milwaukie Natural Resource Administrative Map (hereafter "NR Administrative Map").
- ~~FB.~~ 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 an activity not listed as exempt in Subsection 19.402.4.A will disturb 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).
- ~~AC.~~ 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.
- ~~BD.~~ 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~~ shall be determined in the field 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.
- ~~CE.~~ ~~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.

~~E~~F. In the context of designated natural resource areas, "disturbance" is a condition or result of an act that "disturbs" as defined in Section 19.201. Disturbance can be either temporary or permanent as noted below:

1. Temporary disturbances are those that occur during 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 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~~G. 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.

~~G~~H. Proposed activities that are listed as exempt or 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~~I. 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.

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.

<b>Table 19.402.3 Applicability of Requirements of Section 19.402</b>		
<b>Situations/activities that may trigger Section 19.402</b>	<b>Prepare Construction Management Plan per Subsection 19.402.9</b>	<b>Comply with remainder of Section 19.402</b>
<b>Activities listed as exempt per:</b> <ul style="list-style-type: none"> <li>• <b>Subsection 19.402.4.A</b> (outright exemptions for both WQRs and HCAs)</li> <li>• <del><b>Subsection 19.402.4.B.1</b></del> (limited exemptions for both WQRs and HCAs)</li> <li>• <b>Subsection 19.402.4.B.2</b> (limited exemptions for HCAs only)</li> </ul>	<p><b>No</b></p> <p><b>No</b> (unless &gt;150 sq ft of disturbance is proposed)</p> <p><b>No</b> (unless activity is within 100' of WQR and &gt; 150 sq ft of disturbance is proposed)</p>	<p><b>No</b></p> <p><b>No</b></p> <p><b>No</b></p>
<b>Nonexempt activities:</b> <ul style="list-style-type: none"> <li>• Outside of WQR and HCA</li> <li>• Within WQR or HCA</li> </ul>	<p><b>No</b> (unless activity is within 100' of WQR or HCA and &gt; 150 sq ft of disturbance is proposed)</p> <p><b>Yes</b></p>	<p><b>No</b></p> <p><b>Yes</b></p>

- 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.

<b>Table 19.402.3.K</b>			
<b>Types of Process Review for Various Activities</b>			
<b>Activity</b> (and applicable code sections)	<b>Type of Review Process</b>		
	<b>Type I</b> (19.1004)	<b>Type II</b> (19.1005)	<b>Type III*</b> (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)	✓		
<u>Tree removal that is not exempt or allowable with Type I review</u> (Subsection 19.402.8.A.8)			<u>✓</u>
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.G)	✓		
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 <del>development activities that are not exempt or allowable with</del> Type I or Type II review (Subsections 19.402.8.B, 19.402.12, and 19.402.13.F, H or I)			✓
Boundary verifications with minor corrections (Subsection 19.402.15.A.1)	✓		
Boundary verifications with substantial corrections (Subsection 19.402.15.A.2)		✓	

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

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

**19.402.4 Exempt Activities**

A. Outright Exemptions

The following activities in WQRs or HCAs 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.~~ 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).
- ~~4.~~ 5. The planting or propagation of plants categorized as native plants-species on the Milwaukie Native Plant List.
- ~~5.~~ 6. Removal of plants categorized as nuisance species on the Milwaukie Native Plant List. After removal, all open soil areas shall be replanted and/or protected from erosion.
- ~~6.~~ 7. 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 more than 150 square feet of 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 more than 150 square feet of 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.
  - e. Major pruning of trees and shrubs within 10 feet of existing structures.
7. Landscaping and maintenance of existing landscaping and gardens. This exemption extends to the installation of new irrigation and drainage facilities and/or erosion control features as well as to landscaping activities that do not involve the removal of native plants or plants required as mitigation, do not involve the planting of any vegetation identified as a nuisance species on the Milwaukie Native Plant List, and do not produce an increase in impervious area or other changes that could result in increased direct stormwater discharges to the WQR.
8. Additional disturbance for outdoor uses such as gardens and play areas where the new disturbance area does not exceed 150 square feet, does not involve the removal of any trees larger than 6 inches in diameter, and is located at least 30 feet from the top of bank of a stream or drainage and at least 50 feet from the edge of a wetland.
69. Routine repair and maintenance, alteration, demolition, and/or change of use of existing legal structures, provided that the following criteria are met:
- a. There is no change in the location of or increase in the footprint of any building, impervious surface, or outdoor storage area within a WQR or HCA.
  - b. No variances to site-related development standards are required.
  - c. No other site changes are proposed that could result in increased direct stormwater discharges to 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.
610. Routine repair and maintenance, and/or alteration, and/or total replacement of existing utility facilities, accesses, streets, driveways, trails, walkways, and parking improvements, including asphalt overlays, provided there is no new 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.
711. Routine repair and maintenance of public and private stormwater facilities in accordance with a stormwater management plan approved by the City.



12. 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.
13. Removal of debris, as defined in Section 19.201.
14. Change of ownership
15. Lot consolidations, as defined in Chapter 17.08.
16. Activities and improvements in existing public rights-of-way.
17. Establishment and maintenance of trails in accordance with the following standards:
  - a. Trails shall be confined to a single ownership or within a public trail easement.
  - b. Trails shall be no wider than 30 inches. Where trails include stairs, stair width shall not exceed 50 inches and trail grade shall not exceed 20 percent except for the portion of the trail containing stairs.
  - c. Trails shall be unpaved, constructed with non-hazardous, pervious materials.
  - d. Trails shall be located at least 15 feet from the top of bank of all water bodies.
  - e. Plants adjacent to trails may be trimmed, but trimming clearances shall not exceed a height of 8 feet and a width of 6 feet.
  - f. Native trees larger than 6 inches in diameter and native shrubs or conifers larger than 5 feet tall shall not be removed.

B. Limited Exemptions Within HCAs

The following activities within HCAs are exempt from the provisions of Section 19.402, except that where the activity disturbs a total of more than 150 square feet a construction management plan is required according to the provisions of Subsection 19.402.9:-

1. ~~Limited Exemptions Within All Designated Natural Resource Areas~~

- a. ~~Landscaping and maintenance of existing landscaping and gardens. This exemption extends to landscaping activities that do not involve the removal of native plants or plants required as mitigation, do not involve the planting of any vegetation identified as a nuisance species on the Milwaukie Native Plant List, and do not produce an increase in impervious area or other changes that could result in increased direct stormwater discharges to the WQR. Annual or seasonal tilling of gardens is exempt from the requirement to provide a construction management plan, regardless of the amount of earth disturbance involved.~~
- b. ~~Removal of plants identified on the Milwaukie Native Plant List as nuisance species. After removal, all open soil areas shall be replanted and/or protected from erosion. Removal done with handheld tools is exempt from the requirement to provide a construction management plan, regardless of the amount of earth disturbance involved.~~
- c. ~~Removal of debris, as defined in Section 19.201. For removal of debris from within a protected water feature, removal that involves earth disturbance may only be done during the allowable windows for in-water work as designated by the Oregon Department of Fish and Wildlife.~~

- ~~d. Existing agricultural practices or uses, excluding buildings and structures, provided that such activities or uses do not result in increased direct stormwater discharges to WQRs.~~
- ~~e. Routine repair and maintenance, alteration, demolition, and/or change of use of existing legal buildings or structures, provided that the following criteria are met:
 
  - ~~(1) There is no change in the location of or increase in the footprint or size of any building, impervious surface, or outdoor storage area within the WQR or HCA.~~
  - ~~(2) No other site changes are proposed that could result in increased direct stormwater discharges to the WQR. If the project will result in increased direct stormwater discharges, the proposal is subject to the Type II review process and the standards for discretionary review established in Subsection 19.402.12.~~~~
- ~~f. Activities and improvements in existing public rights-of-way.~~

## ~~2. Additional Exemptions within HCAs~~

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

- ~~a1. The alteration, expansion, and/or total replacement of existing structures, provided that both of the following standards are met:
 
  - ~~(1)a. The alteration, expansion, and/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. The alteration and/or replacement shall not result in increased direct stormwater discharges to a WQR.
- ~~b2. Minor encroachments not to exceed 500 square feet for residential zones, 1520 square feet in non-residential zones of impervious surface, for new features such as accessory buildings, patios, walkways, or retaining walls, or other similar features.~~
- ~~c3. 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.~~
- ~~d4. 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 no more 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.~~
- ~~e5. 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 a nuisance species on the Milwaukie Native Plant List.

#### 19.402.5 Prohibited Activities

Title 19 Zoning is comprised of regulations that deal with the use of land; it does not extend into the broader realm of laws that regulate personal activities not related to land use and development. Given such limitations, the following activities are prohibited within WQRs and HCAs:

- A. New structures, development, or landscaping 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 or herbicides 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 major 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 ~~more than 34 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 a "downed tree" but is not exempt per Subsection 19.402.4.A.5.a because some~~ more than 150 square feet of earth disturbance is necessary to remove it.
  - e. The tree ~~is a nuisance species but not exempt per Subsection 19.402.4.A.5.b because some~~ more than 150 square feet of earth disturbance is necessary to remove it.
  - f. ~~T or because the tree is not categorized as either a nuisance or native species on the Milwaukie Native Plant List, provided that the tree is not a native species and is not located in a WQR categorized as "Degraded" Class A ("Good") according to Table 19.402.11.C, provided that no more than three such trees will be removed during any 12-month period.~~
  - fg. For ~~significant~~ major 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~~ has determined, and documented in a report, that the tree will survive the proposed pruning.
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 4-1/2 inches in caliper or at least 6 feet in overall height after planting. 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~~criteria:

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.

G. 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.

H. Boundary Verification

Boundary verifications that propose minor corrections will be processed in accordance with Subsection 19.402.15.A.1 and 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. New 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 would result in increased direct stormwater discharges to the WQR.
3. Routine repair and maintenance, Alteration, and/or total 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. Routine repair and maintenance, Alteration, and/or total replacement of existing utility facilities, accesses, streets, driveways, and parking improvements that 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 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 that propose substantial corrections will be processed in accordance with Subsection 19.402.15.A.2 and 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 are not exempt per Subsection 19.402.4 or 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, total replacement, 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,~~ and/or total replacement 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 ~~feasible-practicable~~ feasible-practicable for the approved project. The perimeter of the root protection zone shall be flagged, fenced, or otherwise marked and shall remain undisturbed. Material storage and construction access is prohibited within the perimeter. The root protection zone shall be maintained until construction is complete.

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

#### **19.402.10 Natural Resource Management Plans**

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

##### **A. Plans Eligible for Type I Review**

The plan has already been approved by the U.S. Fish and Wildlife Service, Oregon Department of Fish and Wildlife (ODFW), Oregon Division of State Lands (DSL), Oregon Watershed Enhancement Board (OWEB), Metro, Clackamas County Soil and Water Conservation District, or other agency approved by the Planning Director.

##### **B. Plans Eligible for Type II Review**

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

##### **C. Approval Criteria**

Every plan prepared for approval under Section 19.402 ~~must~~ shall 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 ~~feasible~~-practicable 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 ~~feasible~~practicable, lights shall be placed so that they do not shine directly into any WQR and/or HCA location; and the type, size, and intensity of lighting shall be selected so that impacts to habitat functions are minimized.
10. All work on the property shall conform to a construction management plan prepared according to Subsection 19.402.9.

## B. General Standards for Required Mitigation

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

### 1. Disturbance

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

### 2. Required Plants

~~Unless otherwise specified elsewhere in Section 19.402, All~~ trees, shrubs, and ground cover ~~planted as mitigation must~~ shall be native plants as identified on the Milwaukee Native Plant List. Applicants are encouraged to choose particular native species that are appropriately suited for the specific conditions of the planting site (e.g., shade, soil type, moisture, topography, etc.).

### 3. Plant Size

Replacement trees ~~must~~ shall ~~be~~ average 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~~ shall be in at least a 1-gallon container or the equivalent in ball and burlap and ~~must~~ shall 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~~ shall consist of at least two different species. If 10 trees or more are planted, then no more than 50% of the trees ~~may~~ shall be of the same genus.

### 6. Location of Mitigation Area

#### a. On-site Mitigation

All mitigation vegetation ~~must~~ shall 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~~ identified as nuisance plants on the Milwaukie Native Plant List, ~~must~~ shall 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. Revegetation shall occur during the next planting season following the site disturbance.

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

C. Mitigation Requirements for Disturbance within WQRs

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

<b>Table 19.402.11.C Mitigation Requirements for WQRs</b>	
<b>Existing Condition of WQR</b>	
<b><u>Class A ("Good") = Extent and character of existing vegetation provides good conditions for water quality and wildlife habitat</u></b>	
<p><del>Vegetation coverage:</del> Combination of trees, shrubs, and groundcover are 80% present, <u>with -</u></p> <p><del>Tree canopy:</del> More than 50% tree canopy coverage in vegetated corridor.</p>	<ul style="list-style-type: none"> <li>• Submit 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.</li> <li>• <del>Revegetate disturbed and bare areas with native species from the Milwaukie Native Plant List.</del></li> <li>• <del>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.</del></li> <li>• Inventory and remove debris and noxious materials.</li> </ul>
<b><u>Class B ("Marginal") = Extent and character of existing vegetation provides marginal conditions for water quality and wildlife habitat</u></b>	
<p><del>Vegetation coverage:</del> Combination of trees, shrubs, and groundcover are 80% present, <u>with -</u></p> <p><del>Tree canopy:</del> 25-50% canopy coverage in vegetated corridor.</p>	<ul style="list-style-type: none"> <li>• 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.</li> <li>• <del>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.</del></li> <li>• Inventory and remove debris and noxious materials.</li> </ul>
<b><u>Class C ("Degraded/Poor") = Extent and character of existing vegetation provides poor conditions for water quality and wildlife habitat</u></b>	
<p><del>Vegetation coverage:</del> Combination of trees, shrubs, and groundcover are less than 80% present and/or <del>there is more than 40% surface coverage by any nonnative species.</del></p> <p><del>Tree canopy:</del> Less than 25% canopy coverage in vegetated corridor.</p>	<ul style="list-style-type: none"> <li>• <del>Remove plants categorized as "required eradication" species on the Milwaukie Native Plant List.</del></li> <li>• 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.</li> <li>• Plant and/or seed <u>all bare areas</u> to provide 100% surface coverage.</li> <li>• <del>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.</del></li> <li>• Inventory and remove debris and noxious materials.</li> </ul>

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~~shall 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.

<b>Size of tree to be removed (inches in diameter)</b>	<b>Number of trees and shrubs to be planted</b>
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 ~~feasible~~ practicable. Interim erosion control measures such as mulching shall be used to avoid erosion on bare areas.

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 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 the upgrade of existing utility facilities shall be no greater than 15 feet wide.

- b. 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 ~~feasible~~practicable, the types, sizes, and intensities of any lights associated with the walkway or bike path shall be placed so that they do not shine directly into any WQR and/or HCA locations.
5. Stormwater Management Plans
- Stormwater management plans that authorize disturbance within the WQR or HCA may be approved if in compliance with all of the following standards:
- a. Stormwater facilities will be designed to provide an environmentally beneficial hydrological impact on protected water features.
  - b. Protected water features will be protected from erosion by implementing a stream protection strategy and quantity control strategies.
  - c. Watershed health will be improved through the use of vegetated facilities to meet pollution reduction, flow control, and infiltration goals and these facilities will be maintained in a manner which ensures a continued benefit to watershed health.

- d. Proposed stormwater management facilities will correct or improve conditions caused by past management and/or disturbance events, if any are present.
- e. Where no reasonable expectation of returning to natural conditions exists, beneficial habitat, vegetation, and stream function and hydrology will be restored to the fullest extent ~~feasible-practicable~~ 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~~ shall be prepared and signed by a knowledgeable and qualified natural resource professional, such as a wildlife biologist, botanist, or hydrologist. At the Planning Director's discretion, the requirement to provide such a report may be waived for small projects that trigger discretionary review but can be evaluated without professional assistance.

The alternatives ~~must~~ shall 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 ~~reasonable-practicable~~ alternatives to the requested development exist that will not disturb the WQR or HCA.
  - b. Development in the WQR and/or HCA has been limited to the area necessary to allow for the proposed use.
  - c. If disturbed, the WQR can be restored to an equal or better condition in accordance with Table 19.402.11.C and the HCA can be restored consistent with the mitigation requirements of Subsection 19.402.11.D.2.
  - d. Road crossings will be minimized as much as possible.

5. For applications proposing ~~an~~ routine repair and maintenance, alteration, ~~addition,~~ rehabilitation, ~~and/or~~ total replacement of existing structures located within the WQR, the applicant shall do the following:
    - a. Demonstrate that no ~~reasonable-practicable~~ alternative design or method of development exists that would have a lesser impact on the WQR than the one proposed. If no such ~~reasonable-practicable~~ alternative design or method of development exists, the project shall be conditioned to limit its disturbance and impact on the WQR to the minimum extent necessary to achieve the proposed ~~addition, repair/maintenance, alteration, restoration, and/or 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 ~~feasible~~ practicable.
  6. A mitigation plan for the designated natural resource area that contains the following information:
    - a. A description of adverse impacts that will be caused as a result of development.
    - b. An explanation of how adverse impacts to designated natural resource areas will be avoided, minimized, and/or mitigated in accordance with, but not limited to, Table 19.402.11.C for WQRs and Subsection 19.402.11.D.2 for HCAs.
    - c. Sufficient description to demonstrate how the following standards will be achieved:
      - (1) Where existing vegetation has been removed, the site shall be revegetated as soon as ~~feasible~~ practicable.
      - (2) Where ~~feasible~~ practicable, the types, sizes, and intensities of lights shall be placed so that they do not shine directly into the WQR and/or HCA locations.
      - (3) Areas of standing trees, shrubs, and natural vegetation will remain connected or contiguous, particularly along natural drainage courses, except where mitigation is approved, so as to provide a transition between the proposed development and the 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. Unless specified elsewhere in Section 19.402, 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 ~~feasible~~ practicable. The proposed activity ~~must~~ shall have less detrimental impact to the designated natural resource area than other ~~reasonable~~

practicable alternatives, including significantly different ~~reasonable-practicable~~ alternatives that propose less development within the resource area.

b. Minimize

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

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

c. Mitigate

If the applicant demonstrates that there is no ~~reasonable-practicable~~ alternative that will avoid disturbance of the designated natural resource area, then the proposed activity ~~must~~shall mitigate for adverse impacts to the resource area. All proposed mitigation plans ~~must~~shall 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 ~~feasible~~practicable. Off-site mitigation for disturbance of WQRs shall not be approved. Off-site mitigation for disturbance of HCAs shall be approved if the applicant has demonstrated that it is not ~~feasible-practicable~~ to complete the mitigation on-site and that the applicant has documented that they can carry out and ensure the success of the off-site mitigation as outlined in Subsection 19.402.11.B.5.

In addition, if the off-site mitigation area is not within the same subwatershed (6th Field Hydrologic Unit Code) as the related disturbed HCA, the applicant shall demonstrate that it is not ~~feasible-practicable~~ to complete the mitigation within the same subwatershed and that, considering the purpose of the

mitigation, the mitigation will provide more ecological functional value if implemented outside of the subwatershed.

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

## 2. Municipal Water Utility Facilities Standards

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

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

## C. Limitations and Mitigation for Disturbance of HCAs

### 1. Discretionary Review to Approve Additional Disturbance within an HCA

An applicant seeking discretionary approval to disturb more of an HCA than is allowed by Subsection 19.402.11.D.1 shall submit an Impact Evaluation and Alternatives

Analysis as outlined in Subsection 19.402.12.A and shall be subject to the approval criteria provided in Subsection 19.402.12.B.

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

An applicant seeking discretionary approval to proportionally vary the number and size of trees and shrubs required to be planted under Subsection 19.402.11.D.2 (for example, to plant fewer larger trees and shrubs or to plant more smaller trees and shrubs) but who will comply with all other applicable provisions of Subsection 19.402.11 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~~shall 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~~shall 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 ~~feasible~~practicable difference in the percentage of HCA coverage on each property. Furthermore, the new boundary configuration will mitigate, to the extent ~~feasible~~practicable, 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, and where the HCA covers 85% or less of the total lot area, 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 would produces one parcel that is 55% HCA and the other that is 30% HCA is permissible with Type II review; whereas a two-lot partition that would produces one parcel that is 75% HCA and the other that is 40% HCA is not permissible with Type II review and shall be subject to the standards of Subsection 19.402.13.H.
  - 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.
4. For properties where the HCA covers more than 85% of the total lot area, the proposed partition shall be subject to the standards and review process established in Subsection 19.402.13.H.

## 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 ~~feasible-practicable~~ to comply with the partition standards in Subsection 19.402.13.G.1 and where the HCA covers 85% or less of the total lot area, 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 ~~feasible-practicable~~ percentage point difference in the percentage of HCA coverage on the parcels created by the partition.
  - b. To the extent ~~feasible-practicable~~, 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, or where the HCA covers more than 85% of the total lot area, the application shall comply with the following standards:
  - a. To the extent ~~feasible-practicable~~, 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.
  - c. For properties where the HCA covers more than 85% of the total lot area, the Impact Evaluation and Alternatives Analysis shall address how the applicant's

proposal retains the greatest practicable degree of contiguity of the HCA across the new parcels.

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 ~~feasible~~practicable, 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.
  - d. For properties where the HCA covers more than 85% of the total lot area, the Impact Evaluation and Alternatives Analysis shall address how the applicant's proposal retains the greatest practicable degree of contiguity of the HCA across the new lots.

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 any property that includes a WQR or HCA. 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. The intent of this section is to encourage creative and flexible site design that enables the allowable density to be transferred elsewhere on a site to protect environmentally sensitive areas and preserve open space and natural features. 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. A cluster development proposal may be considered in conjunction with a proposal for land division or property line adjustment as provided in Subsection 19.402.13.

#### 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.
- (3) A minimum separation of 10 feet shall be provided between all principal buildings and structures.
- (4) 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.
- (5) Each lot shall provide at least 12 feet of frontage on a public street.
- (6) More than one principal building or structure may be placed on a lot.
- (7) Not less than 25 percent of the site shall be conveyed as common open space.
- (8) 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 ~~feasible~~practicable, common open space shall be designated as a single tract and not divided into unconnected small parcels located in various parts of the development. Common open space shall be conveyed as allowed by Subsection 19.402.13.J.
  - (3) Individual lots, buildings, structures, streets, and parking areas are situated to minimize the alteration of natural features, natural vegetation, and topography.
  - (4) Impacts to WQRs and HCAs are avoided or minimized to the greatest degree ~~feasible~~practicable.

- (5) The cluster development advances the purposes of the Water Quality and Natural Resource overlay zone, as established in Subsection 19.402.1.
- b. The Planning Commission may apply such conditions or stipulations to its approval as may be required to maintain harmony with neighboring uses and to promote the objectives and purposes of the comprehensive plan and the zoning and land division ordinances.
- c. If the Planning Commission finds that the criteria in Subsection 19.402.14.C.4.a are met, it shall approve the residential cluster development, subject to any conditions established pursuant to Subsection 19.402.14.C.4.b.

#### 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.

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

<sup>1</sup> 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.

<sup>2</sup> 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.

<sup>3</sup> 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.

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

<sup>5</sup> 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).

<sup>6</sup> 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~~ shall 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~~ shall 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).

<b>Table 19.402.15.A.2.b(2)(a)(iv) Method for Determining Classification of Riparian Areas</b>			
<b>Distance from Protected Water Feature</b>	<b>Development/Vegetation Status<sup>1</sup></b>		
	<b>Low structure vegetation or open soils<sup>2</sup></b>	<b>Woody vegetation (shrub and scattered forest canopy)<sup>3</sup></b>	<b>Forest Canopy (closed to open forest canopy)<sup>4</sup></b>
<b>Surface Streams</b>			
0'-50'	Class I <sup>5</sup>	Class I	Class I
50'-100'	Class II <sup>6</sup>	Class I	Class I
100'-150'	Class II <sup>6</sup> if slope>25%	Class II <sup>6</sup> if slope>25%	Class II <sup>6</sup>
150'-200'	Class II <sup>6</sup> if slope>25%	Class II <sup>6</sup> if slope>25%	Class II <sup>6</sup> if slope>25%
<b>Wetlands (Wetland feature itself is a Class I Riparian Area)</b>			
0'-100'	Class II <sup>6</sup>	Class I	Class I
100'-150'			Class II <sup>5</sup>
<b>Flood Areas</b>			
Within 300' of river or surface stream	Class I	Class I	Class I
More than 300' from river or surface stream	Class II <sup>6</sup>	Class II <sup>6</sup>	Class I
0'-100' from edge of flood area		Class II <sup>6, 7</sup>	Class II <sup>6</sup>

<sup>1</sup> 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.

<sup>2</sup> "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.

<sup>3</sup> "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.

<sup>4</sup> "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.

<sup>5</sup> 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.

<sup>6</sup> 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.

<sup>7</sup> 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).

<b>Table 19.402.15.A.2.b(2)(c) Method for Identifying Habitat Conservation Areas (HCAs)</b>				
<b>Fish &amp; wildlife habitat classification</b>	<b>High Urban development value<sup>1</sup></b>	<b>Medium Urban development value<sup>2</sup></b>	<b>Low Urban development value<sup>3</sup></b>	<b>Other areas: Parks and Open Spaces, no design types outside UGB</b>
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 <sup>4</sup>
Class B Upland Wildlife	No HCA	No HCA	No HCA	No HCA / HCA <sup>4</sup>

**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.

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

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

<sup>3</sup> Tertiary 2040 design type: Inner and outer neighborhoods, Corridors

- <sup>4</sup> 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 ~~feasible~~practicable. Changes to the NR Administrative Map are not considered amendments to the City's comprehensive plan, to Comprehensive Plan Map 5 (Natural Resource Areas), or to the zoning map.

2. Mapping Implications of Allowed Disturbances

a. WQRs

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

b. HCAs

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

3. Designation of Annexed Areas

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

**Note:** Effective on May 14, 2011, the Zoning Code has been reorganized (File #ZA-10-02), including renumbering the Water Quality Resource regulations from Section 19.322 to Section 19.402. This “PC Hearing Draft 6-14-11” document reflects that change.

***PC Hearing Draft 6-14-11***

## **Clean Amendments**

### **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 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 that does not involve removal and replacement of existing native vegetation. 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 development that was legally existing for WQRs as of January 16, 2003, the effective date of Ordinance #1912, or that was legally existing for HCAs as of DATE, the effective date of Ordinance #\_\_\_\_, and that is 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 development within a WQR or HCA shall be subject to the applicable standards of Section 19.402.
- E. 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.

- F. 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.
- 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 regulations in Section 19.402 apply to all properties that contain, or are within 100 feet of 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 Milwaukie Natural Resource Administrative Map (hereafter "NR Administrative Map").
- B. 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 an activity not listed as exempt in Subsection 19.402.4.A will disturb more than 150 square feet, a construction management plan is required in accordance with Subsection 19.402.9 (see also Table 19.402.3).
- C. The Milwaukie 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.
- D. 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 shall be determined in the field 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.
- E. 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.



- F. In the context of designated natural resource areas, "disturbance" is a condition or result of an act that "disturbs" as defined in Section 19.201. Disturbance can be either temporary or permanent as noted below:
  - 1. Temporary disturbances are those that occur during 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 an allowed or approved development or activity is completed. Permanent disturbances include, but are not limited to, buildings, driveways, walkways, and other permanent structures.
- G. If more than 150 square feet of area will be disturbed in conjunction with a proposed activity listed as exempt in Subsection 19.402.4.B, 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.
- H. Proposed activities that are listed as exempt or 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.
- I. 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.
- 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.

<b>Table 19.402.3 Applicability of Requirements of Section 19.402</b>		
<b>Situations/activities that may trigger Section 19.402</b>	<b>Prepare Construction Management Plan per Subsection 19.402.9</b>	<b>Comply with remainder of Section 19.402</b>
<b>Activities listed as exempt per:</b> <ul style="list-style-type: none"> <li>• <b>Subsection 19.402.4.A</b> (outright exemptions for both WQRs and HCAs)</li> <li>• <b>Subsection 19.402.4.B</b> (limited exemptions for HCAs only)</li> </ul>	<b>No</b>  <b>No</b> (unless > 150 sq ft of disturbance is proposed)	<b>No</b>  <b>No</b>
<b>Nonexempt activities:</b> <ul style="list-style-type: none"> <li>• Outside of WQR and HCA</li> <li>• Within WQR or HCA</li> </ul>	<b>No</b> (unless activity is within 100' of WQR or HCA and > 150 sq ft of disturbance is proposed)  <b>Yes</b>	<b>No</b>  <b>Yes</b>

- 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.

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<b>Table 19.402.3.K Types of Process Review for Various Activities</b>			
<b>Activity (and applicable code sections)</b>	<b>Type of Review Process</b>		
	<b>Type I (19.1004)</b>	<b>Type II (19.1005)</b>	<b>Type III (19.1006)</b>
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)	✓		
Tree removal that is not exempt or allowable with Type I review (Subsection 19.402.8.A.8)			✓
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.G)	✓		
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. Development activities that are not exempt or allowable with Type I or Type II review (Subsections 19.402.8, 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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#### 19.402.4 Exempt Activities

##### A. Outright Exemptions

The following activities in WQRs or HCAs are exempt from the provisions of Section 19.402:

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. 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).
4. The planting or propagation of plants categorized as native species on the Milwaukie Native Plant List.
5. Removal of plants categorized as nuisance species on the Milwaukie Native Plant List. After removal, all open soil areas shall be replanted and/or protected from erosion.
6. 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 more than 150 square feet of 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 more than 150 square feet of 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.
- e. Major pruning of trees and shrubs within 10 feet of existing structures.
7. Landscaping and maintenance of existing landscaping and gardens. This exemption extends to the installation of new irrigation and drainage facilities and/or erosion control features as well as to landscaping activities that do not involve the removal of native plants or plants required as mitigation, do not involve the planting of any vegetation identified as a nuisance species on the Milwaukie Native Plant List, and do not produce an increase in impervious area or other changes that could result in increased direct stormwater discharges to the WQR.
8. Additional disturbance for outdoor uses such as gardens and play areas where the new disturbance area does not exceed 150 square feet, does not involve the removal of any trees larger than 6 inches in diameter, and is located at least 30 feet from the top of bank of a stream or drainage and at least 50 feet from the edge of a wetland.
9. Routine repair and maintenance, alteration, demolition, and/or change of use of existing legal structures, provided that the following criteria are met:
  - a. There is no change in the location of or increase in the footprint of any building, impervious surface, or outdoor storage area within a WQR or HCA.
  - b. No variances to site-related development standards are required.
  - c. No other site changes are proposed that could result in increased direct stormwater discharges to 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.
10. Routine repair and maintenance, alteration, and/or total replacement of existing utility facilities, accesses, streets, driveways, trails, walkways, and parking improvements, including asphalt overlays, provided there is no new 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.
11. Routine repair and maintenance of public and private stormwater facilities in accordance with a stormwater management plan approved by the City.
12. 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.
13. Removal of debris, as defined in Section 19.201.
14. Change of ownership
15. Lot consolidations, as defined in Chapter 17.08.
16. Activities and improvements in existing public rights-of-way.
17. Establishment and maintenance of trails in accordance with the following standards:
  - a. Trails shall be confined to a single ownership or within a public trail easement.
  - b. Trails shall be no wider than 30 inches. Where trails include stairs, stair width shall not exceed 50 inches and trail grade shall not exceed 20 percent except for the portion of the trail containing stairs.

- c. Trails shall be unpaved, constructed with non-hazardous, pervious materials.
- d. Trails shall be located at least 15 feet from the top of bank of all water bodies.
- e. Plants adjacent to trails may be trimmed, but trimming clearances shall not exceed a height of 8 feet and a width of 6 feet.
- f. Native trees larger than 6 inches in diameter and native shrubs or conifers larger than 5 feet tall shall not be removed.

#### B. Limited Exemptions Within HCAs

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

1. The alteration and/or total replacement of existing structures, provided that both of the following standards are met:
  - a. The alteration and/or replacement 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 #\_\_\_\_.
  - b. The alteration and/or replacement shall not result in increased direct stormwater discharges to a WQR.
2. Minor encroachments not to exceed 500 square feet for residential zones, 150 square feet in non-residential zones, for new features such as accessory buildings, patios, walkways, or retaining walls.
3. 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.
4. Low-impact outdoor recreation facilities for public use, including, but not limited to, multi-use paths, access ways, trails, picnic areas, or interpretive and educational displays and overlooks that include benches and outdoor furniture, provided that such a facility contains no more than 500 square feet of new impervious surface. Any trails shall have a maximum width of 5 feet and shall be constructed using non-hazardous, pervious materials.
5. Facilities that infiltrate stormwater onsite, including the associated piping, may be placed within the HCA so long as the forest canopy and the areas within the driplines of the trees are not disturbed. Such facilities may include, but are not limited to, vegetated swales, rain gardens, vegetated filter strips, and vegetated infiltration basins. Native or nonnative vegetation may be planted in these facilities, provided that none of the plantings are identified as a nuisance species on the Milwaukie Native Plant List.

#### 19.402.5 Prohibited Activities

Title 19 Zoning is comprised of regulations that deal with the use of land; it does not extend into the broader realm of laws that regulate personal activities not related to land use and development. Given such limitations, the following activities are prohibited within WQRs and HCAs:

- A. New structures, development, or landscaping 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 or herbicides with any of the active ingredients listed on the Milwaukie Chemicals of Concern List.

#### **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 major 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 is dead, diseased, or dying and cannot be saved, as determined and documented in a report by a certified arborist.
    - c. The proposal would remove more than 3 trees categorized on the Milwaukie Native Plant List as nuisance species during any 12-month period.
    - d. The tree is a “downed tree” but more than 150 square feet of earth disturbance is necessary to remove it.
    - e. The tree is a nuisance species but more than 150 square feet of earth disturbance is necessary to remove it.
    - f. The tree is not categorized as either a nuisance or native species on the Milwaukie Native Plant List and is not located in a WQR categorized as Class A (“Good”) according to Table 19.402.11.C, provided that no more than three such trees will be removed during any 12-month period.

- g. For major pruning, as defined in Section 19.201, a certified arborist has determined, and documented in a report, that the tree will survive the proposed pruning.
2. The provisions of Section 19.402.6.B.1 do not apply to tree removal proposed in association with development or other activities regulated by Section 19.402, for which other approval criteria and mitigation standards may apply.
  3. The Planning Director shall require the application to comply with all of the following standards:
    - a. A construction management plan shall be prepared in accordance with Subsection 19.402.9. When earth disturbance is necessary for the approved removal or pruning, all open soil areas that result from the disturbance shall be replanted and/or protected from erosion.
    - b. All pruning and/or tree removal shall be done in accordance with the standards of the International Society of Arboriculture (ISA).
    - c. Any tree that is removed in accordance with Subsection 19.402.6.B shall be replaced with a new tree, at least 1/2 inch in caliper or at least 6 feet in overall height after planting. 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 criteria:

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.

#### G. 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.

#### H. Boundary Verification

Boundary verifications that propose minor corrections will be processed in accordance with Subsection 19.402.15.A.1 and 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 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. New 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 would result in increased direct stormwater discharges to the WQR.
3. Routine repair and maintenance, alteration, and/or total replacement of existing legal buildings or structures that disturbs no more than 150 square feet within the WQR.
4. Routine repair and maintenance, alteration, and/or total replacement of existing utility facilities, accesses, streets, driveways, and parking improvements that disturbs no more than 150 square feet within the WQR. . 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 Verification

Boundary verifications that propose substantial corrections will be processed in accordance with Subsection 19.402.15.A.2 and 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 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 are not exempt per Subsection 19.402.4 or 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, total replacement, and/or change of use of existing legal buildings or structures that would disturb more than 150 square feet within the WQR.
  11. Routine repair and maintenance, alteration, and/or total replacement of existing utility facilities, accesses, streets, driveways, and parking improvements that would disturb more than 150 square feet within the WQR.
- B. The activities listed below shall be subject to the review criteria for partitions and subdivisions provided in Subsections 19.402.13.H and 13.I, respectively:
1. The partitioning of land containing a WQR or HCA that cannot meet the standards provided in Subsection 19.402.13.G.
  2. The subdividing of land containing a WQR or HCA.

#### **19.402.9 Construction Management Plans**

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

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

**19.402.10 Natural Resource Management Plans**

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

**A. Plans Eligible for Type I Review**

The plan has already been approved by the U.S. Fish and Wildlife Service, Oregon Department of Fish and Wildlife (ODFW), Oregon Division of State Lands (DSL), Oregon Watershed Enhancement Board (OWEB), Metro, Clackamas County Soil and Water Conservation District, or other agency approved by the Planning Director.

**B. Plans Eligible for Type II Review**

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

**C. Approval Criteria**

Every plan prepared for approval under Section 19.402 shall 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 practicable within developed areas where no reasonable expectation of returning to natural conditions exists.

**D. Construction Management Plans**

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

**E. Ongoing Maintenance**

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

**F. Expiration of Plans**

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

### 19.402.11 Development Standards

#### A. Protection of Natural Resources During Site Development

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

1. Work areas shall be marked to reduce potential damage to the WQR and/or HCA.
2. Trees in WQRs or HCAs shall not be used as anchors for stabilizing construction equipment.
3. Native soils disturbed during development shall be conserved on the property.
4. An erosion and sediment control plan is required and shall be prepared in compliance with requirements set forth in the City's Public Works Standards.
5. Site preparation and construction practices shall be followed that prevent drainage of hazardous materials or erosion, pollution, or sedimentation to any WQR adjacent to the project area.
6. Stormwater flows as a result of proposed development within and to natural drainage courses shall not exceed pre-development flows.
7. Prior to construction, the WQR and/or HCA that is to remain undeveloped shall be flagged, fenced, or otherwise marked and shall remain undisturbed. Such markings shall be maintained until construction is complete.
8. The construction phase of the development shall be done in such a manner to safeguard the resource portions of the site that have not been approved for development.
9. Where practicable, lights shall be placed so that they do not shine directly into any WQR and/or HCA location; and the type, size, and intensity of lighting shall be selected so that impacts to habitat functions are minimized.
10. All work on the property shall conform to a construction management plan prepared according to Subsection 19.402.9.

#### B. General Standards for Required Mitigation

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

1. Disturbance
  - a. Designated natural resource areas that are affected by temporary disturbances shall be restored, and those affected by permanent disturbances shall be mitigated, in accordance with the standards provided in Subsection 19.402.11.C for WQRs and Subsection 19.402.11.D.2 for HCAs, as applicable.
  - b. Landscape plantings are not considered to be disturbances except for those plantings that are part of a non-exempt stormwater facility (e.g., raingarden or bioswale).
2. Required Plants

Unless otherwise specified elsewhere in Section 19.402, all trees, shrubs, and ground cover planted as mitigation shall 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 shall average 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, unless they are oak or madrone, which may be 1-gallon size. Shrubs shall be in at least a 1-gallon container or the equivalent in ball and burlap and shall 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 shall consist of at least two different species. If 10 trees or more are planted, then no more than 50% of the trees shall be of the same genus.

6. Location of Mitigation Area

a. On-site Mitigation

All mitigation vegetation shall 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 identified as nuisance plants on the Milwaukie Native Plant List, shall 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. Revegetation shall occur during the next planting season following the site disturbance.

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

## 10. Light Impacts

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

## C. Mitigation Requirements for Disturbance within WQRs

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

<b>Table 19.402.11.C Mitigation Requirements for WQRs</b>	
<b>Existing Condition of WQR</b>	
<b>Class A ("Good") = Extent and character of existing vegetation provides good conditions for water quality and wildlife habitat</b>	
Combination of trees, shrubs, and groundcover are 80% present, with more than 50% tree canopy coverage in vegetated corridor.	<ul style="list-style-type: none"> <li>• Submit 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.</li> <li>• Inventory and remove debris and noxious materials.</li> </ul>
<b>Class B ("Marginal") = Extent and character of existing vegetation provides marginal conditions for water quality and wildlife habitat</b>	
Combination of trees, shrubs, and groundcover are 80% present, with 25-50% canopy coverage in vegetated corridor.	<ul style="list-style-type: none"> <li>• Restore and mitigate disturbed 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.</li> <li>• Inventory and remove debris and noxious materials.</li> </ul>
<b>Class C ("Poor") = Extent and character of existing vegetation provides poor conditions for water quality and wildlife habitat</b>	
Combination of trees, shrubs, and groundcover are less than 80% present and/or less than 25% canopy coverage in vegetated corridor.	<ul style="list-style-type: none"> <li>• Restore and mitigate disturbed 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.</li> <li>• Plant and/or seed all bare areas to provide 100% surface coverage.</li> <li>• Inventory and remove debris and noxious materials.</li> </ul>

#### 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 shall 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.

<b>Size of tree to be removed (inches in diameter)</b>	<b>Number of trees and shrubs to be planted</b>
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 II 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. Interim erosion control measures such as mulching shall be used to avoid erosion on bare areas.

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 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 the upgrade of existing utility facilities shall be no greater than 15 feet wide.

- b. 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 Facilities

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

### 4. Walkways and Bike Paths

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

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

### 5. Stormwater Management Plans

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

- a. Stormwater facilities will be designed to provide an environmentally beneficial hydrological impact on protected water features.
- b. Protected water features will be protected from erosion by implementing a stream protection strategy and quantity control strategies.
- c. Watershed health will be improved through the use of vegetated facilities to meet pollution reduction, flow control, and infiltration goals and these facilities will be maintained in a manner which ensures a continued benefit to watershed health.

- d. Proposed stormwater management facilities will correct or improve conditions caused by past management and/or disturbance events, if any are present.
- e. Where no reasonable expectation of returning to natural conditions exists, beneficial habitat, vegetation, and stream function and hydrology will be restored to the fullest extent practicable 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 shall be prepared and signed by a knowledgeable and qualified natural resource professional, such as a wildlife biologist, botanist, or hydrologist. At the Planning Director's discretion, the requirement to provide such a report may be waived for small projects that trigger discretionary review but can be evaluated without professional assistance.

The alternatives shall 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 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 routine repair and maintenance, alteration and/or total replacement of existing structures located within the WQR, the applicant shall do the following:
    - a. Demonstrate that no practicable alternative design or method of development exists that would have a lesser impact on the WQR than the one proposed. If no such practicable alternative design or method of development exists, the project shall be conditioned to limit its disturbance and impact on the WQR to the minimum extent necessary to achieve the proposed repair/maintenance, alteration and/or replacement.
    - b. Provide mitigation to ensure that impacts to the functions and values of the WQR will be mitigated or restored to the extent practicable.
  6. A mitigation plan for the designated natural resource area that contains the following information:
    - a. A description of adverse impacts that will be caused as a result of development.
    - b. An explanation of how adverse impacts to designated natural resource areas will be avoided, minimized, and/or mitigated in accordance with, but not limited to, Table 19.402.11.C for WQRs and Subsection 19.402.11.D.2 for HCAs.
    - c. Sufficient description to demonstrate how the following standards will be achieved:
      - (1) Where existing vegetation has been removed, the site shall be revegetated as soon as practicable.
      - (2) Where practicable, the types, sizes, and intensities of lights shall be placed so that they do not shine directly into the WQR and/or HCA locations.
      - (3) Areas of standing trees, shrubs, and natural vegetation will remain connected or contiguous, particularly along natural drainage courses, except where mitigation is approved, so as to provide a transition between the proposed development and the 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. Unless specified elsewhere in Section 19.402, applications subject to the discretionary review process shall demonstrate how the proposed activity complies with the following criteria:
    - a. Avoid

The proposed activity avoids the intrusion of development into the WQR and/or HCA to the extent practicable. The proposed activity shall have less detrimental impact to the designated natural resource area than other practicable alternatives,

including significantly different practicable alternatives that propose less development within the resource area.

b. Minimize

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

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

c. Mitigate

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

- (1) The mitigation plan shall demonstrate that it compensates for detrimental impacts to ecological functions provided by resource areas, after taking into consideration the applicant's efforts to minimize such detrimental impacts.
- (2) Mitigation shall occur on the site of the disturbance, to the extent practicable. Off-site mitigation for disturbance of WQRs shall not be approved. Off-site mitigation for disturbance of HCAs shall be approved if the applicant has demonstrated that it is not practicable to complete the mitigation on-site and that the applicant has documented that they can carry out and ensure the success of the off-site mitigation as outlined in Subsection 19.402.11.B.5.

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

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

## 2. Municipal Water Utility Facilities Standards

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

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

## C. Limitations and Mitigation for Disturbance of HCAs

### 1. Discretionary Review to Approve Additional Disturbance within an HCA

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

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

An applicant seeking discretionary approval to proportionally vary the number and size of trees and shrubs required to be planted under Subsection 19.402.11.D.2 (for example, to plant fewer larger trees and shrubs or to plant more smaller trees and shrubs) but who will comply with all other applicable provisions of Subsection 19.402.11 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 shall 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 shall be completed prior to approval of the final plat for the subdivision, unless the Planning Commission's approval includes decision establishes a different schedule.
2. Not complete the mitigation requirements, thus requiring that any subsequent development be subject to review under Section 19.402.

E. Property Line Adjustments

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

1. The proposed property line adjustment will result in no more than a 30-point difference in the percentage of HCA coverage on each property. Such an adjustment shall be subject to the Type I review process.
2. The proposed property line adjustment will not contravene a condition of approval related to HCA distribution from a previously approved land division. Such an adjustment shall be subject to the Type I review process.
3. The proposed property line adjustment cannot meet the standard of Subsection 19.402.13.E.1, above, but will result in the smallest practicable difference in the percentage of HCA coverage on each property. Furthermore, the new boundary configuration will mitigate, to the extent practicable, 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, and where the HCA covers 85% or less of the total lot area, 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 would produce one parcel that is 55% HCA and the other that is 30% HCA is permissible with Type II review; whereas a two-lot partition that would produce one parcel that is 75% HCA and the other that is 40% HCA is not permissible with Type II review and shall be subject to the standards of Subsection 19.402.13.H.
  - 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.
4. For properties where the HCA covers more than 85% of the total lot area, the proposed partition shall be subject to the standards and review process established in Subsection 19.402.13.H.

### H. All Other Partitions

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

1. For properties that do not contain any WQRs but for which it is not practicable to comply with the partition standards in Subsection 19.402.13.G.1 and where the HCA covers 85% or less of the total lot area, the application shall meet the following standards and is not subject to the requirements of Subsection 19.402.12:
  - a. The partition plan shall result in the smallest practicable percentage point difference in the percentage of HCA coverage on the parcels created by the partition.
  - b. To the extent practicable, 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, or where the HCA covers more than 85% of the total lot area, the application shall comply with the following standards:
  - a. To the extent practicable, 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.
  - c. For properties where the HCA covers more than 85% of the total lot area, the Impact Evaluation and Alternatives Analysis shall address how the applicant's

proposal retains the greatest practicable degree of contiguity of the HCA across the new parcels.

I. Subdivisions

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

1. At least 90% of the property's HCA and 100% of the property's WQR shall be located in a separate tract. Applications that meet this standard are not subject to the discretionary review requirements of Subsection 19.402.12.
2. If a subdivision cannot comply with the standards in Subsection 19.402.13.1.1, the application shall comply with the following standards:
  - a. All proposed lots shall have adequate buildable area outside of the WQR and HCA.
  - b. To the extent practicable, 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.
  - d. For properties where the HCA covers more than 85% of the total lot area, the Impact Evaluation and Alternatives Analysis shall address how the applicant's proposal retains the greatest practicable degree of contiguity of the HCA across the new lots.

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 any property that includes a WQR or HCA. 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 so that land can be developed at allowed densities while avoiding or minimizing impacts to WQRs or HCAs. The intent of this section is to encourage creative and flexible site design that enables the allowable density to be transferred elsewhere on a site to protect environmentally sensitive areas and preserve open space and natural features. 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. A cluster development proposal may be considered in conjunction with a proposal for land division or property line adjustment as provided in Subsection 19.402.13.

#### 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.
- (3) A minimum separation of 10 feet shall be provided between all principal buildings and structures.
- (4) 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.
- (5) Each lot shall provide at least 12 feet of frontage on a public street.
- (6) More than one principal building or structure may be placed on a lot.
- (7) Not less than 25 percent of the site shall be conveyed as common open space.
- (8) No less than 50 percent of the designated natural resources on the site shall be included in calculating the common open space.

### 3. Site Plan Requirements

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

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

### 4. Approval Criteria

- a. Proposals for residential cluster development shall demonstrate compliance with the following criteria:
  - (1) The site plan satisfies the requirements of Subsections 19.402.14.C.1 and C.2.
  - (2) Buildings and structures are adequately grouped so at least 25 percent of the total area of the site is set aside as common open space. To the greatest degree practicable, common open space shall be designated as a single tract and not divided into unconnected small parcels located in various parts of the development. Common open space shall be conveyed as allowed by Subsection 19.402.13.J.
  - (3) Individual lots, buildings, structures, streets, and parking areas are situated to minimize the alteration of natural features, natural vegetation, and topography.
  - (4) Impacts to WQRs and HCAs are avoided or minimized to the greatest degree practicable.

- (5) The cluster development advances the purposes of the Water Quality and Natural Resource overlay zone, as established in Subsection 19.402.1.
- b. The Planning Commission may apply such conditions or stipulations to its approval as may be required to maintain harmony with neighboring uses and to promote the objectives and purposes of the comprehensive plan and the zoning and land division ordinances.
- c. If the Planning Commission finds that the criteria in Subsection 19.402.14.C.4.a are met, it shall approve the residential cluster development, subject to any conditions established pursuant to Subsection 19.402.14.C.4.b.

### 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.

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

<sup>1</sup> 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.

<sup>2</sup> 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.

<sup>3</sup> 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.

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

<sup>5</sup> 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).

<sup>6</sup> 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 shall 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) shall 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).

<b>Table 19.402.15.A.2.b(2)(a)(iv)</b>			
<b>Method for Determining Classification of Riparian Areas</b>			
<b>Distance from Protected Water Feature</b>	<b>Development/Vegetation Status<sup>1</sup></b>		
	<b>Low structure vegetation or open soils<sup>2</sup></b>	<b>Woody vegetation (shrub and scattered forest canopy)<sup>3</sup></b>	<b>Forest Canopy (closed to open forest canopy)<sup>4</sup></b>
<b>Surface Streams</b>			
0'-50'	Class I <sup>5</sup>	Class I	Class I
50'-100'	Class II <sup>6</sup>	Class I	Class I
100'-150'	Class II <sup>6</sup> if slope>25%	Class II <sup>6</sup> if slope>25%	Class II <sup>6</sup>
150'-200'	Class II <sup>6</sup> if slope>25%	Class II <sup>6</sup> if slope>25%	Class II <sup>6</sup> if slope>25%
<b>Wetlands (Wetland feature itself is a Class I Riparian Area)</b>			
0'-100'	Class II <sup>6</sup>	Class I	Class I
100'-150'			Class II <sup>5</sup>
<b>Flood Areas</b>			
Within 300' of river or surface stream	Class I	Class I	Class I
More than 300' from river or surface stream	Class II <sup>6</sup>	Class II <sup>6</sup>	Class I
0'-100' from edge of flood area		Class II <sup>6, 7</sup>	Class II <sup>6</sup>

<sup>1</sup> 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.

<sup>2</sup> "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.

<sup>3</sup> "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.

<sup>4</sup> "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.

<sup>5</sup> 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.

<sup>6</sup> 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.

<sup>7</sup> 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).

<b>Table 19.402.15.A.2.b(2)(c) Method for Identifying Habitat Conservation Areas (HCAs)</b>				
<b>Fish &amp; wildlife habitat classification</b>	<b>High Urban development value<sup>1</sup></b>	<b>Medium Urban development value<sup>2</sup></b>	<b>Low Urban development value<sup>3</sup></b>	<b>Other areas: Parks and Open Spaces, no design types outside UGB</b>
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 <sup>4</sup>
Class B Upland Wildlife	No HCA	No HCA	No HCA	No HCA / HCA <sup>4</sup>

**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.

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

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

<sup>3</sup> Tertiary 2040 design type: Inner and outer neighborhoods, Corridors

- <sup>4</sup> All Class A and B upland wildlife habitat in publicly-owned parks and open spaces, except for parks and open spaces where the acquiring agency clearly identified that it was acquiring the property to develop it for active recreational uses, shall be considered HCA.

(3) Notification to Metro and DLCD

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

B. Map Administration

1. Updates to the NR Administrative Map

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

2. Mapping Implications of Allowed Disturbances

a. WQRs

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

b. HCAs

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

3. Designation of Annexed Areas

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

**Note:** Effective on May 14, 2011, the Zoning Code has been reorganized (File #ZA-10-02), including renumbering the Water Quality Resource regulations from Section 19.322 to Section 19.402. This “PC Hearing Draft 6-14-11” document reflects that change.

## Commentary

### 19.402 NATURAL RESOURCE REGULATIONS

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

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

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

#### 19.402.1 Intent

A-D. The purpose of the Natural Resource (NR) regulations is to protect designated natural resources and encourage their restoration. Section 19.402 makes the City’s code compliant with applicable state and regional rules governing natural resources.

E. This subsection explains that, as long as no new development is proposed, the regulations do not require property owners to restore designated natural resource areas or prevent them from maintaining existing conditions such as landscaping. However, new development or vegetation removal activities that impact the resource area may trigger the requirements of these regulations.

#### 19.402.2 Coordination with Other Regulations

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

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

- D. Structures that become nonconforming as a result of the code amendment are not required to come into conformance by any particular date, though proposals to expand nonconforming structures are subject to the standards of Chapter 19.800 Nonconforming Uses and Development.
- E-F. The NR code is not the only set of rules in place for protecting streams and wetlands—there are other local, regional, state, and federal rules that may also apply to some activities. Generally, the most stringent rules trump any others. The City will notify and coordinate with other relevant agencies as appropriate.
- G. This subsection introduces the “Milwaukie Native Plant List” as a document maintained by the Planning Director. At present, the Planning Director is using the City of Portland’s native plant list (updated in July 2010) as the Milwaukie Native Plant List (<http://www.portlandonline.com/bps/index.cfm?c=45131>). The Portland list includes native plants that are recommended for use in this region as well as plants that should be removed according to the degree of nuisance they present. The plant list is referenced in the code but can be updated without requiring a formal code amendment.
- H. The “Milwaukie Chemicals of Concern” list is referenced in the code as a tool for tracking chemicals that are known to be harmful to water quality and habitat health. As noted in the Prohibitions section (19.402.5), chemicals on this list may not be applied within designated natural resource areas.

### 19.402.3 Applicability

- A-B. The NR code applies to all properties that contain a designated natural resource area, particularly to certain land use and development activities proposed to take place within the resource area. In addition, properties within 100 ft of a WQR or HCA may be required to provide a construction management plan for preventing impacts to the nearby resource from non-exempt activities.
- C-E. These subsections introduce the Natural Resource (NR) Administrative Map as a tool incorporated into the code by reference rather than something that is part of the official zoning map. This distinction is intended to make it possible to correct or adjust the map over time without needing a formal Zoning Map Amendment or “zone change.”

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

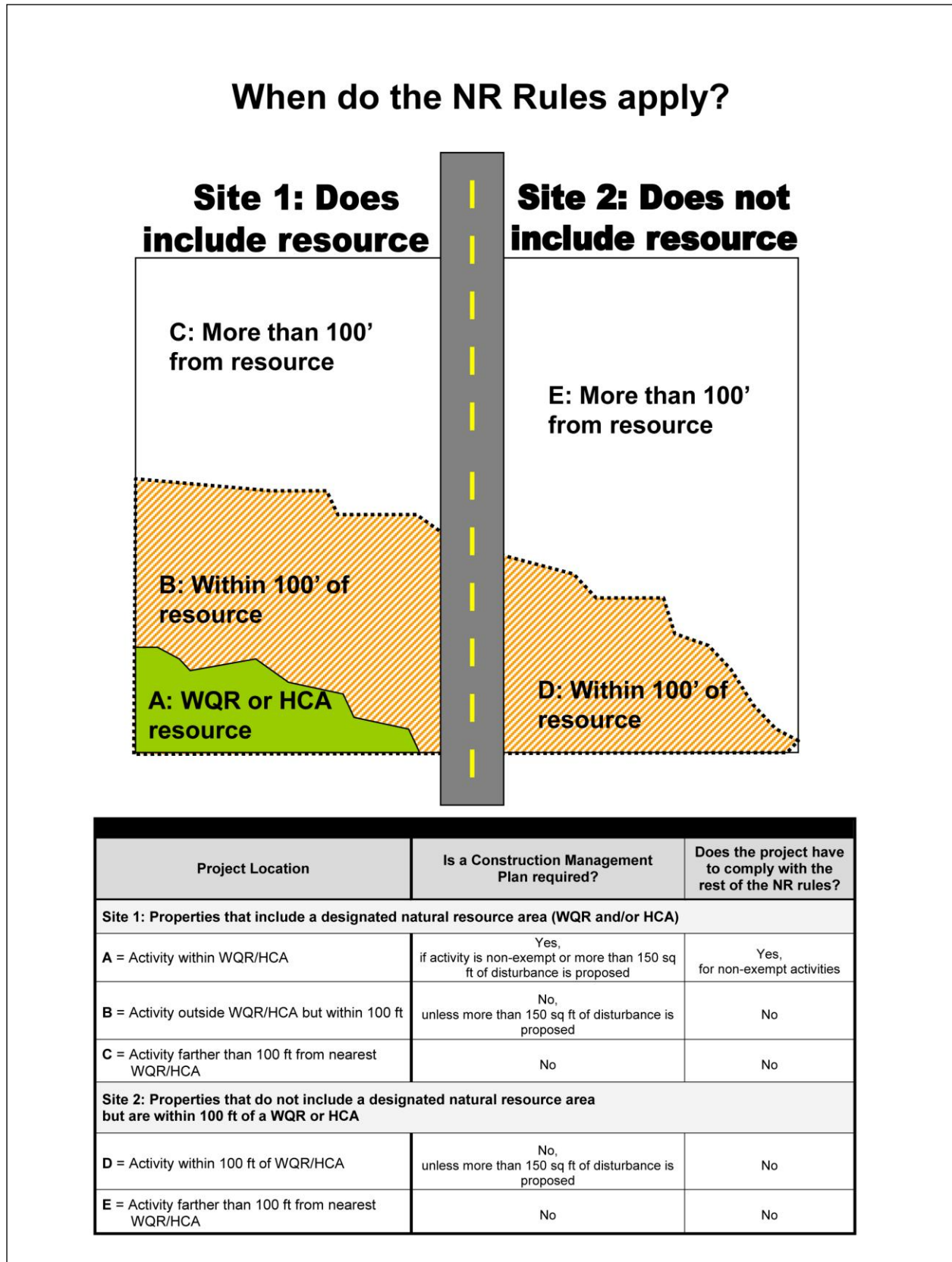
WQRs are determined according to Table 19.402.15, which establishes vegetated corridors alongside or around protected water features such as streams and wetlands.



The NR Administrative Map is intended to be a general indicator of the location of these WQRs; field measurements that cross reference the table are what would determine specific locations. For HCAs, the NR Administrative Map is intended to show the actual location of the resource, based on the most recent aerial photographs and the data available from Metro's original resource inventory.

- F. Explains that "disturbance" in this context is not only the permanent disturbance caused by a project, but also the temporary impacts caused by making the project.
- G. Activities that are in the "limited exemptions" category established in Subsection 19.402.4.B require a construction management plan when they generate more than 150 sq ft of disturbance.
- H. Activities that occur more than 100 ft from a resource area are not subject to Section 19.402.
- I. Clarifies that the regulations do not apply to water features that show up on the map but are piped or otherwise underground.
- J. Table 19.402.3 summarizes when the NR regulations apply, including when a construction management plan is required. For properties that do not contain a designated natural resource area, providing a construction management plan is the most that would be required. The graphic on the next page (Figure 1) shows when and how the NR code would apply depending on the location of the proposed activity.
- K. Table 19.402.3.K indicates what levels of review would be needed for various development and disturbance activities.

Figure 1



#### 19.402.4 Exempt Activities

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

##### A. Key exemptions in WQRs and HCAs include:

- Planting native species and restoring natural areas.
- Tree and plant removal under specific circumstances, including emergency situations and removal of a limited number of "nuisance" or "prohibited" trees. Trees that are already downed could be removed without further review, as long as only limited earth disturbance is involved in the removal.
- Normal landscaping and maintenance of all types of existing gardens, as long as native plants are not removed and new impervious surfaces are not added.
- Adding new outdoor uses such as gardens and play areas, with limited disturbances.
- Repair and maintenance of existing structures as long as the footprint does not increase or move, no variances are required, and no other site changes would affect the WQR.
- Repair and maintenance of utilities, driveways, and other site improvements as long as the footprint does not increase or move, the impervious area does not increase, and no other site changes would affect the WQR.
- Repair and maintenance of stormwater facilities.
- Existing agricultural uses.
- Debris removal.
- Change of ownership.
- Lot consolidation.
- Creating and maintaining new unpaved, narrow trails.

##### B. Some additional activities are listed as being "limited exemptions" only within HCAs (not in WQRs), meaning that they would be exempt from the rules but need to submit a construction management plan if an area greater than 150 sq ft is disturbed:

- Maintenance, repair, and total replacement of existing structures, as long as there is no change in the area of disturbance within the resource area.

- Establishment of new small structures and impervious areas (such as patios, walkways, and retaining walls), up to 500 sq ft for residential zones and up to 150 sq ft for non-residential zones.
- Temporary disturbance for excavation or material staging, up to 150 sq ft and provided that the disturbed area is restored afterward.
- Establishment of public outdoor recreation facilities such as multi-use paths, walkways, and picnic areas, up to 500 sq ft in size. Also, trails that are pervious and no wider than 5 ft.
- On-site stormwater facilities.

#### **19.402.5 Prohibited Activities**

The term "activities" is used in this chapter because it applies not only to development and land uses, but to other activities such as planting and maintenance. This term is in no way intended to extend into the broader realm of laws that regulate personal activities not related to land use.

The revised list of prohibited activities remains short and very similar to the list in the current WQR regulations, with the following exceptions:

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

*See the attached table that summarizes the review type and thresholds for various activities (Attachment 1, Natural Resource Areas Activity Table).*

#### **19.402.6 Activities Permitted Under Type I Review**

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

- A. Review of construction management plans and the boundary verification process would be handled with Type I review.
- B. Most proposals for tree removal that do not qualify as exempt would be processed with Type I review. These scenarios include trees that present an eventual hazard to

people or property (but not an immediate emergency), trees that can be shown to be diseased or dying, more than 3 nuisance-species trees per year, non-native trees as long as they are not in a Class A ("Good") WQR, and tree removal that would otherwise be exempt but involves more than 150 sq ft of disturbance. Major pruning, defined as removal of more than 20% of the tree canopy or more than 10% of the root system, also requires Type I review. Trees that are approved for removal through the Type I process must be replaced on a one-to-one basis.

- C. Projects that can meet the nondiscretionary standards in Subsection 19.402.11.D for HCAs would be handled with the Type I process.
- D. Implementation of an approved natural resource management plan is exempt from the NR code. However, natural resource management plans themselves need some level of review for approval. As proposed, natural resource management plans could be approved with Type I review if they have been prepared by a qualified agency. This is a change from existing policy, which requires Type III review to approve a management plan. The proposed rules recognize that a plan prepared in accordance with a qualified agency's standards should be presumed to be adequate to protect the resource.
- E. Maintenance of existing utility facilities (e.g., sewer, storm, water, etc.) that disturbs a WQR or HCA could be processed with Type I review if the work can be done in a way that minimizes and restores the disturbance (per the general standards for Special Uses in Subsection 19.402.11.E).
- F. When connections to existing utilities require disturbance of a WQR or HCA, the work could be processed with Type I review if it minimizes and restores the disturbance according to the general standards for Special Uses (Subsection 19.402.11.E). For trenching and excavation, the disturbance area is limited to a width of 10 ft.

#### **19.402.7 Activities Permitted Under Type II Review**

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

- A. Several "special uses" could be reviewed through a Type II process if they meet the standards in Subsection 19.402.11.E. The list of special uses include new public or private utility facilities (sewer, water, electricity, gas, etc.), improvement of existing utility facilities, new stormwater pre-treatment facilities, stormwater management plans, and pedestrian and bike paths. The current policy requires that many of these activities go through Type III review, which is excessive for approving what are often basic infrastructure items. In the proposed code, if the use cannot meet the

standards of Subsection 19.402.11.E it would require Type III review by the Planning Commission.

- B. Natural resource management plans that cannot meet the standards for Type I review would be processed as Type II applications.
- C. Current WQR policy requires all partitions involving WQRs to undergo Type III review. However, partitions usually require only Type II review. The proposed code acknowledges that if a partition could be done in such a way that most or all of the resource area (WQR area and/or HCA) is placed in a separate, unbuildable tract, the resulting protection is sufficient to allow such a "low-impact" partition to undergo Type II review.
- D. Certain activities that result in very limited disturbance to WQRs could be reviewed through the Type II process. These activities include farming or landscaping activities that result in some direct stormwater discharge, or alteration or expansion of existing buildings that disturbs a limited portion of the WQR area. These activities must meet the discretionary criteria of Subsection 19.402.12 (including the requirement to provide an evaluation of potential impacts and analysis of alternatives).
- E. Boundary verifications that propose substantial corrections to the HCA map would be processed with Type II review.

#### **19.402.8 Activities Permitted Under Type III Review**

Type III review is a higher level of review that involves a public hearing and decision by the Planning Commission (see Section 19.1006).

Unless an activity is prohibited or otherwise classified for Type I or Type II review, it would most likely be subject to Type III review. This includes new development that disturbs an HCA and cannot meet the nondiscretionary standards provided in Subsection 19.402.11.D. It includes subdivisions as well as partitions that do not qualify as "low-impact" partitions as outlined in Subsection 19.402.13.G.

#### **19.402.9 Construction Management Plans**

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

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

### 19.402.10 Natural Resource Management Plans

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

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

### 19.402.11 Development Standards

The development standards provided in the current WQR code are narrowly focused on protecting habitat during construction. The revised code reorganizes and expands this subsection to include mitigation requirements for WQRs and HCAs. It also provides the nondiscretionary standards for HCA disturbance that are an integral part of the Title 13 Nature in Neighborhoods program.

- A. This subsection is home to what are listed in the current WQR code as "development standards," practices aimed at protecting resource areas throughout the development process.
- B. This subsection provides general requirements for mitigating disturbances to resource areas. The revised code makes a distinction between temporary and permanent disturbances, though both must be mitigated and both must be counted when calculating the maximum disturbance area for HCAs.
- C. In the revised code, Table 19.402.11.C is a modified version of Table 19.402.9.E in the current WQR code, which includes several redundancies and some unclear language. One change is the removal of language that limits the mitigation requirements to only the WQR area disturbed by development. The reasoning is that WQR areas that are temporarily disturbed obviously need to be replanted and restored, while areas that

are permanently disturbed (e.g., removed to accommodate a new structure) cannot be restored and must be mitigated for elsewhere on the site. The table is applicable in situations that require discretionary review, and the decision maker should have the ability to evaluate each development situation and use the table as a guide for determining the appropriate mitigation in each case.

Other changes have been made to make the distinctions between the three categories of existing conditions in WQRs. The category labels have been enhanced to be more descriptive, and the term "Degraded" has been replaced with "Poor" to be less inflammatory to property owners. The key factor separating the categories is the amount of tree canopy and vegetated cover. The threshold of 10% nonnative species for the "Degraded" category has been removed because it is not as useful as tree canopy and vegetated cover in determining whether a WQR is functioning to protect water quality.

- D. One difference between the protections for WQRs and those for HCAs is that the revised code more easily allows for some limited disturbance of the HCA. This subsection provides a method for calculating allowable HCA disturbance and establishes requirements for mitigation that could be approved with Type I review.

D.1. For single-family residential projects, the allowed disturbance area is 50% of the HCA or 5000 sq ft, whichever is less. For all other uses (multi-family residential, commercial, industrial, etc.), the limit is 10% of the HCA. Projects that cannot meet these standards must go through the Type III review process by the Planning Commission and must provide an evaluation of impacts and analysis of alternatives to make the case for disturbing more of the HCA.

D.2. Mitigation for disturbance to an HCA is required, with two options that involve planting trees and shrubs: (1) replace trees in proportion to the diameters of those that are removed, or 2) plant trees in proportion to the total area of disturbance. The developer must choose whichever formula results in the planting of more new trees.

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

- E. Standards for Special Uses

This subsection provides specific review standards for the "special uses" outlined in Subsection 19.402.7.A. If they can meet the standards provided in Subsection



19.402.11.E, those special uses could be approved with Type II review; otherwise, they would require Type III review and would be subject to the general discretionary review criteria provided in Subsection 19.402.12.

### **19.402.12 General Discretionary Review**

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

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

### **19.402.13 Land Division and Property Line Adjustments**

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

- C. Platting new parcels or lots is more a matter of paperwork than actual earth-disturbing activity, but the act of drawing new boundary lines on a property can impact designated resource areas by determining how future development could occur. Since public improvements (streets, curb and gutter, sidewalks) are usually required to be constructed as part of the final plat process, it is important to ensure that any designated resources are adequately protected and that any disturbance will be mitigated during the land division process.
- D. Applicants would have the option of mitigating for future impacts from development either at the time of land division or when the future development happens.

- E. Property line adjustments (PLAs) are normally processed with Type I review. PLAs do not create new lots and do not usually offer an opportunity to establish a separate tract for the resource area. But shifting the boundary between two adjacent properties can affect the distribution of a designated resource area and therefore could increase the potential for disturbance of the resource.

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

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

- F. Replats are a type of land division that reconfigures parcels or lots that were created by partition or subdivision in the past. Depending on the number of lots that will result from a proposed replat, it will be similar in scale to either a partition or a subdivision and would be treated as such by the revised code.
- G. Under the existing WQR code, all partitions involving WQRs require Type III review. The revised code would establish a category of "low-impact" partitions, in which most or all of the resource area would be placed in a separate, unbuildable tract. Low impact partitions could be reviewed with the Type II process, which is the level of review partitions normally receive. As proposed, this option would not be available for properties that have 85% or more HCA coverage, because the revised code could allow up to 50% of the HCA on a property to be disturbed with only Type I review—the Planning Commission has decided that more discretionary review is appropriate for those cases.
- H. Partitions that do not meet the "low-impact" standards would be reviewed through the Type III process and encouraged to produce the smallest practicable difference in the percentage of HCA distributed across the new parcels. When WQRs are involved, an impact evaluation and alternatives analysis must also be conducted to demonstrate the least possible impact on the resource. Where a property has 85% or more HCA coverage, the applicant must make a reasonable effort to preserve some contiguity of the HCA across the new parcels to keep the habitat intact.
- I. Subdivisions involving WQRs or HCAs would be required to place most or all of the resource in a separate, unbuildable tract. If a proposal cannot meet that standard,

then the applicant must demonstrate that there are adequate buildable areas outside the resource areas and must conduct an impact evaluation and alternatives analysis to demonstrate the least possible impact on the resource. As with partitions, proposals to subdivide properties that have 85% or more HCA coverage must address the potential of preserving contiguous HCA across the new lots.

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

#### **19.402.14 Adjustments and Variances**

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

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

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

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

- B. Requests to deviate from particular standards require a standard variance request (Section 19.911). The revised code would allow an applicant to use economic hardship as a justification for the variance request, an argument that is not usually admissible in a standard variance application.
- C. In residential development scenarios, "clustering" would enable an applicant to develop a property to its normal density while concentrating the dwelling units in such a way

that avoids or minimizes impacts to the designated resource. At least 50% of the resource area must be set aside in a common open space, but the whole resource area may be factored into the calculation of the maximum number of dwelling units allowed.

As proposed, this clustering allowance would require Type III review and the submittal of an impact evaluation and alternatives analysis. It would give the Planning Commission an opportunity to consider creative design options without requiring the applicant to meet the less flexible variance criteria. At the Planning Commission's discretion, cluster developments could be allowed to incorporate housing types that would not otherwise be permitted in the base zone.

#### **19.402.15 Boundary Verification and Map Administration**

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

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

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

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

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

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

**Attachments**

1. Natural Resource Areas Activity Table

# Natural Resource Areas Activity Table

Category	Prohibited	Exempt	Type of Review Process		
			Type I	Type II	Type III
			19.1004	19.1005	19.1006
<b>New Development</b>					
<b>Standard new construction</b> (residential, commercial, industrial)	New structures, development, or activity other than those allowed by Section 19.402	Building permit for any portion of a phased development project for which the applicant has previously received NR or WQR permits	<u>HCA only</u> = If it can meet nondiscretionary standards	_____	If it is not exempt and cannot meet Type I standards
<b>Other minor encroachments or small new structures</b> (patios, impervious walkways, sheds, new landscaping, etc.)	_____	<b>PROPOSED</b> <u>HCA only</u> = Up to 500sq ft for residential uses or up to 150sq ft for non-residential uses	<u>HCA only</u> = If it can meet nondiscretionary standards	<u>WQR only</u> = If it disturbs <150sq ft and no increase in direct stormwater discharges to WQR	If it is not exempt and cannot meet Type I standards
<b>Paths and walkways</b>	_____	<u>HCA only</u> = Public trails that are <5ft wide, <500sq ft of new impervious surface OR <b>PROPOSED</b> <u>WQR or HCA</u> = Trails <30in wide, at least 15ft from protected water feature, <20% trail grade, pervious surface	<u>HCA only</u> = If it can meet nondiscretionary standards	If it can meet Special Use standards	If it is not exempt and cannot meet Type I or Type II standards
<b>Temporary clearing or disturbance</b> (excavation, material staging, etc.)	_____	<u>HCA only</u> = Up to 150sq ft, with restoration of disturbed area afterward	<u>HCA only</u> = If it can meet nondiscretionary standards	_____	If it is not exempt and cannot meet Type I standards
<b>New disturbances related to existing landscaped areas</b>	_____	<b>PROPOSED</b> Cumulative new disturbances up to 150sq ft, if no removal of trees 6in dbh or greater and disturbance stays at least 30ft from top of bank or wetland	<u>HCA only</u> = If it can meet nondiscretionary standards	_____	If it is not exempt and cannot meet Type I standards
<b>New roads, road widening, ingress/egress across WQR</b>	_____	If in public right-of-way and <150sq ft of disturbance	If in public right-of-way and >150sq ft of disturbance (requires Construction Management Plan)	_____	If it is not exempt and cannot meet Type I standards
<b>New utilities &amp; utility facilities</b>	_____	_____	<u>HCA only</u> = If it can meet nondiscretionary standards	If it can meet Special Use standards	If it cannot meet Type I or Type II standards
<b>Connections to existing or new utilities</b>	_____	_____	Any connections that disturb WQR or HCA	_____	_____
<b>New stormwater treatment facilities</b>	_____	<u>HCA only</u> = Facilities that infiltrate stormwater onsite	<u>HCA only</u> = If it can meet nondiscretionary standards	If it can meet Special Use standards	If it is not exempt and cannot meet Type I or Type II standards
<b>Restoration/enhancement projects</b>	_____	If in accordance with an approved Natural Resource Management Plan	_____	_____	_____

Category	Prohibited	Exempt	Type of Review Process		
			Type I	Type II	Type III
			19.1004	19.1005	19.1006
<b>Repair / Maintenance of Existing Structures, Facilities, Site Conditions, or Uses</b>					
<b>Activities and improvements in public right-of-way</b>	_____	If <150sq ft of disturbance	If >150sq ft of disturbance (requires Construction Management Plan)	_____	_____
<b>Repair/maintenance, additions, or expansions to existing structures</b>	_____	WQR or HCA = If no change in footprint or location of disturbance and no increase in direct stormwater discharges to WQR OR HCA only = Up to 500sq ft HCA disturbance	HCA only = If it can meet nondiscretionary standards	WQR only = If it disturbs <150sq ft	If it is not exempt and cannot meet Type I or Type II standards
<b>Landscape planting or removal and landscape maintenance</b>	Planting nuisance vegetation AND Use of prohibited chemicals	Removing nuisance vegetation AND Planting native vegetation AND Seasonal tilling of existing gardens AND Continued maintenance of existing gardens, pastures, lawns, and other planted areas, including installation of new irrigation and drainage facilities, new erosion control features (no new impervious surfaces)	HCA only = If it can meet nondiscretionary standards	WQR only = If it disturbs <150sq ft and no increase in direct stormwater discharges to WQR	If it is not exempt and cannot meet Type I or Type II standards
<b>Alterations/improvements of existing utility facilities, accesses, streets, driveways, parking improvements</b>	_____	If no disturbance to WQR or HCA, no increase in impervious area, no reduction in landscaped areas or tree cover, no increase in direct stormwater discharges to WQR	HCA only = If it can meet nondiscretionary standards	WQR only = If it disturbs <150sq ft	If it cannot meet Type I or Type II standards
<b>Repair/maintenance of existing utility facilities, accesses, streets, driveways, parking improvements</b>	_____	If no expansion of existing footprint or disturbance to WQR/HCA	HCA only = If it can meet nondiscretionary standards OR If <150sq ft of disturbance to WQR or HCA and can meet Special Use standards	_____	If >150sq ft of disturbance to WQR or HCA OR If it cannot meet Type I standards for HCAs
<b>Agricultural activities (existing)</b>	_____	If no increase in direct stormwater discharges to WQR (not involving buildings or structures)	HCA only = If it can meet nondiscretionary standards	WQR only = If it increases direct stormwater discharges to WQR	If it is not exempt and cannot meet Type I or Type II standards

Category	Prohibited	Exempt	Type of Review Process		
			Type I	Type II	Type III
			19.1004	19.1005	19.1006
<b>Tree removal</b> (must be at least 6in dbh to be a "tree")					
<b>Downed tree</b>	_____	If <150sq ft earth disturbance	If >150sq ft earth disturbance	_____	_____
<b>Hazardous tree</b>	_____	If emergency situation	If non-emergency situation	_____	_____
<b>Dead tree</b>	_____	_____	If tree is dead, diseased, or dying and cannot be saved	_____	_____
<b>Nuisance tree</b>	_____	Remove up to 3 nuisance trees in a year, with <150sq ft earth disturbance	Remove 4 or more nuisance trees in a year	_____	_____
<b>Native tree</b>	_____	In accordance with an approved natural resource management plan	_____	_____	_____
<b>Other situations</b>	_____	Removal of trees that are <6in dbh (<6in is not a "tree" by definition) AND Pruning that is not "major" (<20% of canopy)	Major tree pruning (>20% of canopy) AND Remove up to 3 non-nuisance, non-native trees from anywhere but a Class A ("Good") WQR	_____	All other tree removal that is not exempt or cannot meet Type I standards
<b>Other</b>					
<b>(Miscellaneous)</b>	Uncontained hazardous materials AND Unapproved outside storage of materials	Change of ownership	Other activities within HCAs that don't require Type II or Type III review and can meet nondiscretionary standards	_____	Any activity allowed in the base zone that is not otherwise exempt or permitted as a Type I or Type II activity
<b>Hazard abatement</b>	_____	In emergency situations	In non-emergency situations	_____	_____
<b>Debris removal</b>	_____	If done by hand	_____	_____	If not exempt * <u>Note</u> : Earth disturbance within a protected water feature itself may require review/approval by DSL



Category	Prohibited	Exempt	Type of Review Process		
			Type I	Type II	Type III
			19.1004	19.1005	19.1006
<b>Land Division</b>					
<b>Lot consolidations</b>	_____	Exempt because it does not result in further division of natural resource areas	_____	_____	_____
<b>Property line adjustments</b>	_____	_____	_____	Partitions that can put WQR in a separate tract and/or can balance the HCA distribution across parcels ("low-impact")	Partitions that cannot meet the Type II ("low-impact") standards
<b>Subdivisions</b>	_____	_____	_____	_____	All subdivisions * <b>Note:</b> Subdivisions that can put at least 90% of HCA and 100% of WQR into a separate tract are not subject to the general discretionary review standards because the natural resource is all/mostly out of play
<b>Replats</b>	_____	_____	_____	If <4 lots and meets Type II ("low-impact") standards	_____
<b>Plans</b>					
<b>Construction Management Plans</b>	_____	_____	Needed if disturbance >150sq ft or if specifically required	_____	_____
<b>Natural Resource Management Plans</b>	_____	_____	If prepared/approved by recognized agency	If prepared independently	_____
<b>Stormwater Management Plans</b>	_____	_____	_____	If it meets Special Use standards	If it cannot meet Type II standards
<b>Boundary Verification</b>	_____	_____	For small corrections	For substantial challenges to map accuracy	_____

*PC Hearing Draft 6-14-11***Strikeout/Underline 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 for Natural Resource Areas Regulations, that add protections for 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:** Effective on May 14, 2011, the Zoning Code has been reorganized (File #ZA-10-02). The changes 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 6-14-11" document reflects these changes.

***PC Hearing Draft 6-14-11***

**~~Strikeout/Underline~~ Amendments**

**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:

<b>Table 19.107.1 Classification of Zones</b>	
<b>Zone Description</b>	<b>Abbreviated Description</b>
<b>Base Zones</b>	
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
<b>Table 19.107.1 CONTINUED Classification of Zones</b>	
Zone Description	Abbreviated Description
<b>Overlay Zones</b>	
Willamette Greenway	WG
<del>Water Quality Resource</del>	<del>WQR</del>
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:

<b>Table 19.108.1 Classification of Special Areas</b>	
<b><u>Special Area Description</u></b>	<b><u>Abbreviated Description</u></b>
<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."

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

"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 a Habitat Conservation Area.

"Habitat Conservation Area (HCA)" means any significant Goal 5 wetland, riparian area, and fish and wildlife habitat, as established in 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.

"Major 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.

"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 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.

"Practicable" means capable of being realized after considering cost, existing technology, logistics, and other relevant considerations such as ecological functions, scenic views, natural features, existing infrastructure, and/or adjacent uses.

"~~Title 3 W~~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 woody plant characterized by one main stem or trunk that measures at least 46 inches in diameter according to the measurement standards established in Subsection 19.202.

"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~~ 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
<del>Water quality</del> <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~~ that includes 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

*PC Hearing Draft 6-14-11***Clean Amendments****COMPREHENSIVE PLAN****CHAPTER 3 — ENVIRONMENTAL AND NATURAL RESOURCES****OPEN SPACES, SCENIC AREAS, AND NATURAL RESOURCES ELEMENT**

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

Background and Planning Concepts

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

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

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

and other scattered wetland and upland resources have sufficient natural vegetation to allow the natural processes of habitat development and vegetative successional stages to occur. In addition, Elk Rock Island, although not within Milwaukie, but owned by the City of Portland, offers good wildlife habitat due to its sufficient ground cover and its proximity to the Willamette River. Active fish habitat exists within the City in the Willamette River, Kellogg Creek, and Johnson Creek. These waterways contain anadromous fish species.

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

### **OBJECTIVE #1 — OPEN SPACE**

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

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

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

### **Policies**

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



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

## **OBJECTIVE #2 — NATURAL RESOURCE AREAS**

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

### Planning Concepts

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

Between 1990 and 2002, natural resources were protected through Milwaukie Zoning Ordinance Section 19.322 Natural Resource Overlay Zone. In the fall of 2002, the City adopted revised regulations that strengthen wetland and riparian resource protections. In 2011, the City adopted revised regulations for Natural Resource Areas that add protections for Habitat Conservation Areas outside of the protected riparian and wetland areas. These regulations implement Titles 3 and 13 of the Metro Urban Growth Functional Plan and compliment and support long held city policies for environmental protection. Map 5 (Natural Resource Areas)

shows the City's designated Water Quality Resource areas and Habitat Conservation Areas as indicators of lands that are regulated by State Goal 6 (Air, Water, and Land Resources Quality) and Goal 5 (Natural Resources, Scenic and Historic Areas, and Open Spaces), respectively.

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

### **Policies**

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

**Note:** Effective on May 14, 2011, the Zoning Code has been reorganized (File #ZA-10-02). The changes 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 6-14-11" document reflects these changes.

***PC Hearing Draft 6-14-11***

**Clean Amendments**

**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:

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

## 19.108 SPECIAL AREAS

### 19.108.1 Special Area Classifications

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

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

### 19.108.2 Special Area Maps

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

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

### 19.108.3 Classification of Annexed Areas

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

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

### 19.108.4 Classification of Public Rights-of-Way

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

## CHAPTER 19.200

### DEFINITIONS AND MEASUREMENTS

#### 19.201 DEFINITIONS

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

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

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

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

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

"Habitat Conservation Area (HCA)" means any significant Goal 5 wetland, riparian area, and fish and wildlife habitat, as established in 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.

"Major 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.

"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 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.

"Practicable" means capable of being realized after considering cost, existing technology, logistics, and other relevant considerations such as ecological functions, scenic views, natural features, existing infrastructure, and/or adjacent uses.

"Title 3 wetlands" means wetlands of metropolitan concern as shown on the Metro Water Quality and Flood Management Area map and other wetlands added to the City's Natural

Resource Administrative Map consistent with the criteria in Metro Urban Growth Management Functional Plan Title 3, Section 3.07.340(E)(3).

“Tree” means a woody plant characterized by one main stem or trunk that measures at least 6 inches in diameter according to the measurement standards established in Subsection 19.202.

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

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

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

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

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

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

## 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 Natural Resource Areas
- 19.402 Historic Preservation Overlay Zone HP
- 19.404 Mixed Use Overlay Zone MU
- 19.405 Aircraft Landing Facility L-F

#### 19.402 NATURAL RESOURCE AREAS

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

#### 19.404 MIXED USE OVERLAY ZONE MU

##### 19.404.10 Consistency with Underlying Zones

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

##### C. Natural Resource Areas

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

## CHAPTER 19.900

### LAND USE APPLICATIONS

#### 19.901 INTRODUCTION

<b>Table 19.901 Land Use Applications</b>		
<b>Application Type</b>	<b>Municipal Code Location</b>	<b>Review Types</b>
Natural Resource Review	Section 19.402	I, II, III, IV

#### 19.905 CONDITIONAL USES

##### 19.905.4 Approval Criteria

- A. Establishment of a new conditional use, or major modification of an existing conditional use, shall be approved if the following criteria are met:

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

#### **19.905.9 Standards Governing Conditional Uses**

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

### **19.906 DEVELOPMENT REVIEW**

#### **19.906.4 Approval Criteria**

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

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

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

### **19.908 EXTENSIONS TO EXPIRING APPROVALS**

#### **19.908.4 Approval Criteria**

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

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



## **CHAPTER 19.1000**

### **REVIEW PROCEDURES**

#### **19.1001 GENERAL PROVISIONS**

##### **19.1001.7 Decisions**

#### **E. Expiration of Approved Decisions**

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

## **CHAPTER 19.1100**

### **ANNEXATIONS AND BOUNDARY CHANGES**

#### **19.1104 EXPEDITED PROCESS**

##### **19.1104.1 Administration and Approval Process**

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

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

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

## MUNICIPAL CODE (non-Planning titles)

### REFERENCE UPDATES

The following amendments are also proposed to update references:

#### **13.14.025.B:**

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

#### **16.28.020.C:**

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

#### **18.04.150.F.2.d:**

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

# Commentary

## City of Milwaukie Comprehensive Plan

### Chapter 3 — Environmental and Natural Resources

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

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

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

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

**Note:** Effective on May 14, 2011, the Zoning Code has been reorganized (File #ZA-10-02). The changes 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 6-14-11" document reflects these changes.

## **Municipal Code Title 19 Zoning**

### **CHAPTER 19.100**

#### **INTRODUCTORY PROVISIONS**

##### **19.107 Zoning**

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

##### **19.108 Special Areas**

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

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

### **CHAPTER 19.200**

#### **DEFINITIONS AND MEASUREMENTS**

##### **19.201 Definitions**

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

In particular, the following changes or additions are proposed:

- Revisions to the definition of "bankful stage," to clarify that this term is synonymous with the phrase "top of bank."
- A new definition for "designated natural resource area," to reference WQRs and HCAs as established in Section 19.402.
- A new definition for "direct stormwater discharge."
- Revisions to the definition of "disturbance," to note that disturbances can be temporary or permanent.
- New definitions for "downed tree" and "tree."
- A new definition for "Habitat Conservation Area (HCA)."
- A new definition for "major pruning," to mirror the definition used in Chapter 16.32 Tree Cutting.
- Revisions to the definition of "native vegetation," to specify that it does not include nuisance plants on the Milwaukie Native Plant List.
- Revisions to the definition of "net acre," to clarify that designated natural resource areas do not count against a property when calculating its allowable density.
- A new definition for "practicable," to establish a single term for consistent use in place of such terms as "possible," "feasible," and "practical."
- Revisions to the definitions of "vegetated corridor," "Water Quality Resource (WQR) area," "water quality and floodplain management area," and "wetlands," to provide greater clarity of terms.

### 19.202 Measurements

A new subsection (19.202.3) has been added to standardize the measurement of existing and newly planted trees.

## CHAPTER 19.400

### OVERLAY ZONES AND SPECIAL AREAS

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

## CHAPTER 19.900

### LAND USE APPLICATIONS

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

## CHAPTER 19.1000

### REVIEW PROCEDURES

#### 19.1001.7 Decisions

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

## CHAPTER 19.1100

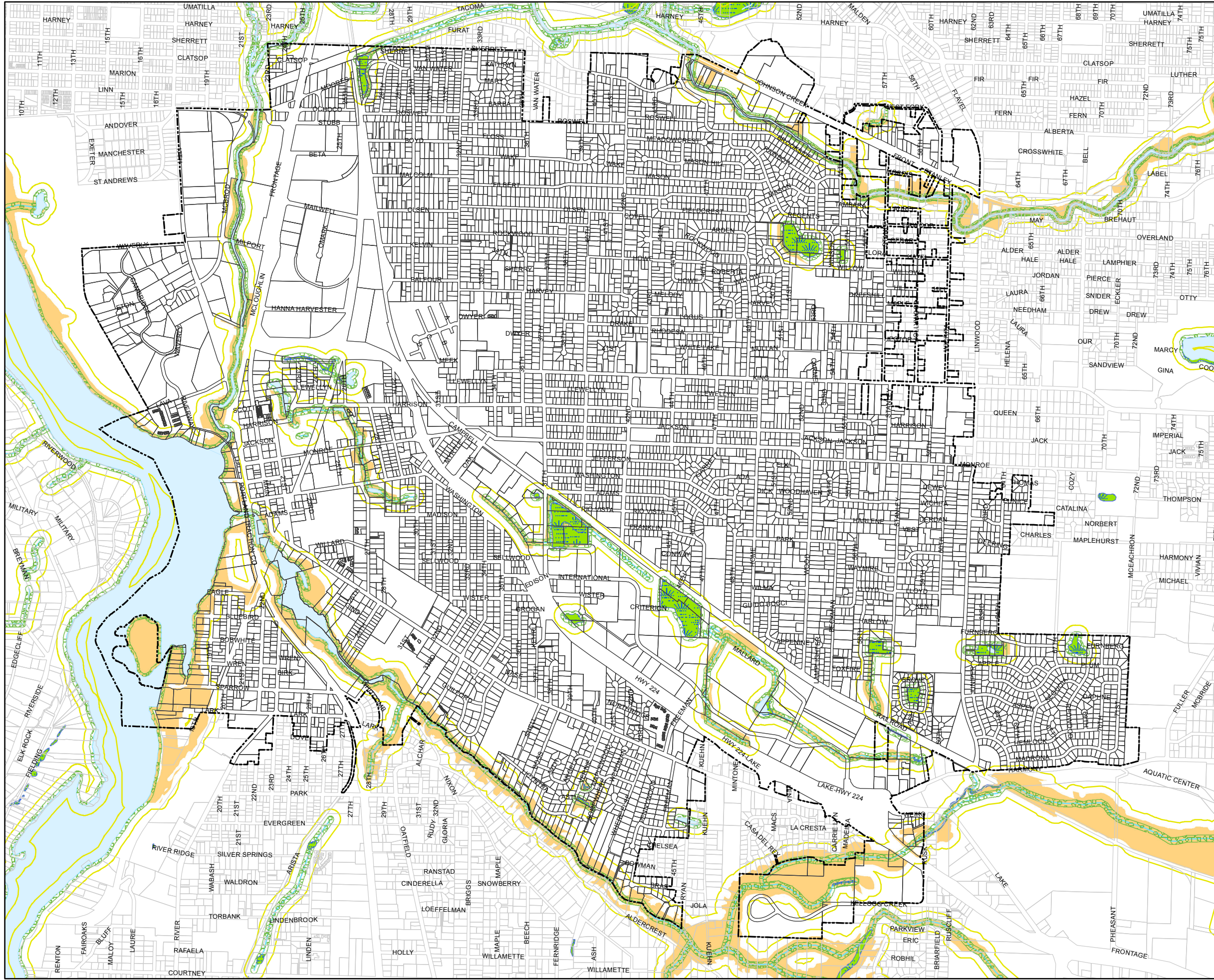
### ANNEXATIONS AND BOUNDARY CHANGES

#### 19.1104.1 Administration and Approval Process

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

# City of Milwaukie Natural Resource (NR) Map

## Administrative Map (Last updated Month Day, Year)



### Legend

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



Adopted by reference with Ord. XXXX  
Month Day, Year

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



## **List of Public Information Available on Natural Resource Overlay Project Website**

(<http://www.ci.milwaukie.or.us/planning/natural-resource-overlay-project>)

### **An Explanation of Title 13 (Nature in Neighborhoods)**

- Text of Metro Title 13 (Nature in Neighborhoods)
- Metro Title 13 Summary
- Text of Metro Title 3 (Water Quality and Flood Management)
- Regional Urban Forestry Assessment (prepared by Audubon Society of Portland and PSU)
- Link to Metro's Title 13 website  
(<http://www.oregonmetro.gov/index.cfm/go/by.web/id=13745>)

### **How Milwaukie is Complying with Title 13**

- Metro Title 13 Model Ordinance
- Title 13 Implementation Memo (by City Planning Director)
- Current Water Quality Resource Regulations (Milwaukie Municipal Code 19.402)
- Project Schedule
- Project Scope of Work
- Project Stakeholder Involvement Plan
- Link to Portland Plant List (used as Milwaukie Native Plant List)  
(<http://www.portlandonline.com/bps/index.cfm?c=45131>)

### **Draft Code Documents**

- Latest Version (May/June 2011)
  - Proposed Section 19.402 Natural Resource Areas (PC Hearing Draft 6-14-11)
  - Proposed Amendments to Comprehensive Plan and Municipal Code (Strikeout/Underline Version) (PC Hearing Draft 6-14-11)
- Version for April 12 PC hearing
  - Proposed Section 19.402 Natural Resource Areas (PC Hearing Draft 4-12-11)
  - Proposed Amendments to Comprehensive Plan and Municipal Code (Strikeout/Underline Version) (PC Hearing Draft 4-12-11)
- Version for March 22 PC hearing
  - Proposed Section 19.402 Natural Resource Areas (PC Hearing Draft 3-22-11)
  - Proposed Amendments to Comprehensive Plan and Municipal Code (Strikeout/Underline Version) (PC Hearing Draft 3-22-11)
- Draft 4 (December 2010)
- Draft 3 (August 2010)
- Draft 2 (February 2010)
- Draft 1 (November 2009)



### **Supplemental Documents**

- Commentary on Section 19.402 (May/June 2011)
- Commentary on Comprehensive Plan and Other Code Sections (May/June 2011)
- Applicability Flowchart (May/June 2011)
- Construction Management Plan Flowchart (May/June 2011)
- Link to Portland Plant List (used as Milwaukie Native Plant List)  
(<http://www.portlandonline.com/bps/index.cfm?c=45131>)

### **Draft Maps**

- Proposed Natural Resource Administrative Map (April 2011)
- Proposed NR Mapbook w/ aerial photos (May 2011)
- Proposed Comprehensive Plan Map 5, Natural Resource Areas (March 2011)
- Preliminary Map of WQRs and HCAs in Milwaukie (provided by Metro in 2008)
- Memo on Metro's Mapping Methodology (October 2009)

### **Planning Commission Meetings**

*E-Packet staff reports for the following Planning Commission meetings (2010 to present) can be found online by searching at <http://www.ci.milwaukie.or.us/meetings>:*

- June 14, 2011 (public hearing)
- April 26, 2011 (public hearing)
- April 12, 2011 (public hearing)
- March 22, 2011 (public hearing)
- January 11, 2011 (work session)
- September 28, 2010 (work session)
- August 24, 2010 (work session)
- June 8, 2010 (joint meeting w/ NR Advisory Group)
- April 27, 2010 (work session)

*E-Packet staff reports for the following Planning Commission meetings (prior to 2010) can be found online at <http://www.ci.milwaukie.or.us/archives/planning/planning-commission-agendas-and-minutes-archive>:*

- July 28, 2009 (work session)
- July 14, 2009 (work session)
- October 14, 2008 (work session)
- July 8, 2008 (work session)

### **City Council Meetings**

- February 22, 2011 (study session)

*E-Packet staff reports for the following City Council meetings (prior to 2010) can be found online by searching at <http://www.ci.milwaukie.or.us/meetings>:*

- January 18, 2011 (regular session, special report)
- May 4, 2010 (regular session, special report)
- October 6, 2009 (regular session, special report)

### **NRO Advisory Group Information**

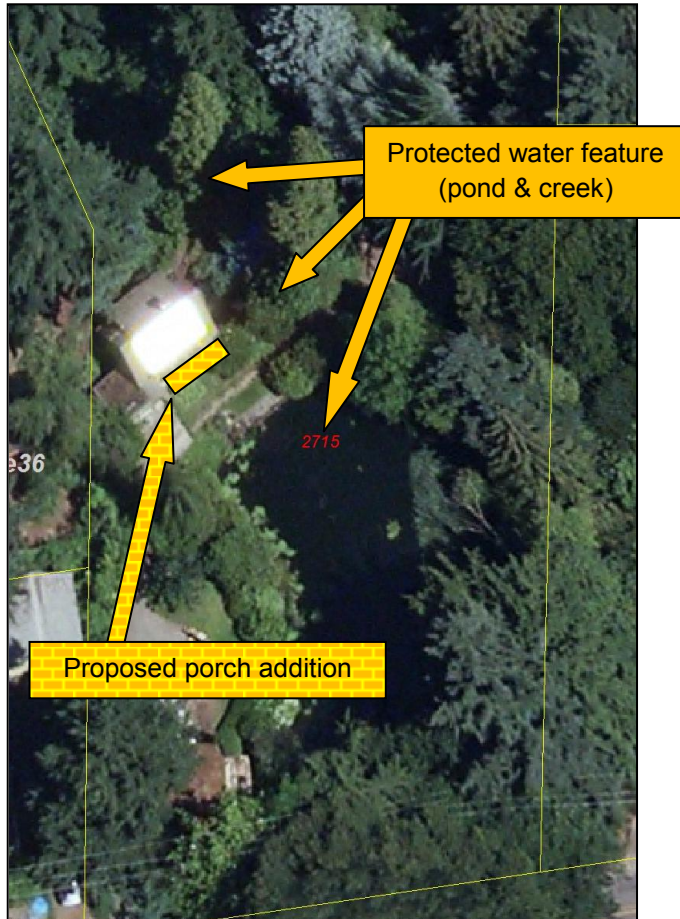
- Advisory Group Protocols
- Meeting Summary – June 8, 2010 (joint session w/ PC)
- Meeting Summary – April 28, 2010
- Meeting Summary – March 31, 2010
- Meeting Summary – March 10, 2010
- Meeting Summary – February 24, 2010
- Meeting Summary – September 29, 2009
- Tour of Affected Areas (November 2009)

### **Supporting Documents on Project Homepage**

- Natural Resource Overlay Project Flyer (December 2010)
- Measure 56 Public Hearing Notice for Land Use File # ZA-11-01

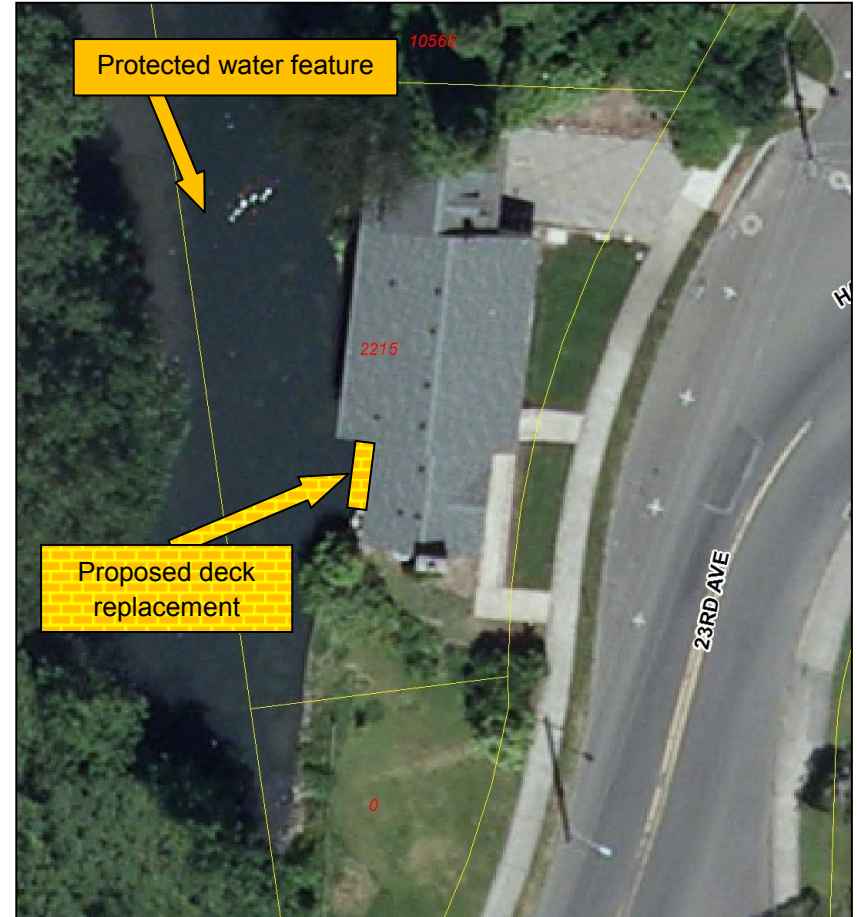
NATURAL RESOURCE REGULATIONS QUESTIONS PLANNING COMMISSION APRIL 26, 2011			LISA BATEY		NICK HARRIS		RUSS STOLL		MARK GAMBA		CHRIS WILSON		Notes
BURDEN ON PROPERTY OWNERS AND PROPERTY VALUE													
1	150 SF THRESHOLD FOR HCA MINOR ENCROACHMENT	150 SF TYPE 2 WQR	150	?	150	?	150	Y	150	Y	-	-	MORE INFO ON TYPE 2 WQR
2	LIMIT DIVISION OF HIGH % RESOURCE PROPERTIES		Y		Y		Y		Y		Y		- NOT A TAKING - ALLOW RESOURCE TRACTS
3	LANGUAGE:	FEASIBLE= PRACTICABLE= PRACTICAL USE "PRATICABLE" & ADD DEF.	NEEDS DEFINITION & CONSISTENCY		NEEDS DEFINITION & CONSISTENCY		NEEDS DEFINITION & CONSISTENCY		Y		Y		
4	HOME EXEMPTIONS – ADD?		N		N		Y		N		Y		
5	TREE REMOVAL		OK										
6	FEE REDUCTIONS B.V., CMP, TYPE I TREE REMOVAL		AS MUCH AS POSSIBLE		Y		Y		QUICK & CHEAP		Y		
7	PROHIBITIONS: WHAT IS NOT PROHIBITED IS ALLOWED		N		N		Y		N		N		MAYBE MORE EXEMPTIONS
8	WQR CATEGORIES: CHANGE LABELS		N		N		Y		N		-		
9	APPLICABILITY TO ROW: CONSIDER APPLYING TO ROW		Y		N		Y		Y		-		MORE INFO ON REQS THAT <u>DO</u> APPLY TO ROW
10	150 SF THRESHOLD FOR CMP		Y		Y		Y		Y		-		SAMPLE CMP & NRP
11	SOME OVERSIGHT, BUT NOT <u>TOO MUCH</u> REG. OF EVERYDAY GARDENING & LANDSCAPING		Y		Y		Y, TREES TOO		Y		Y		

## WQR Encroachment Scenarios



### 2715 SE Monroe St

- "Unranked" historic resource, old water works
- Entire site has WQR designation
- Protected water feature constrains the existing house on 2 sides—nonconforming setbacks constrain it on the other 2 sides
- Proposal = slightly expand front of house
- As proposed, the revised NR code would allow this project to be reviewed as a Type II application (instead of Type III).



### 2215 SE Harrison St

- City property—The Pond House
- Entire site has WQR designation
- Proposal = replace an existing deck overhanging the pond
- As proposed, the revised NR code would allow this project to be reviewed as a Type II application (instead of Type III).

## **Bonus Scenario**

HCA disturbance that encroaches toward a protected water feature



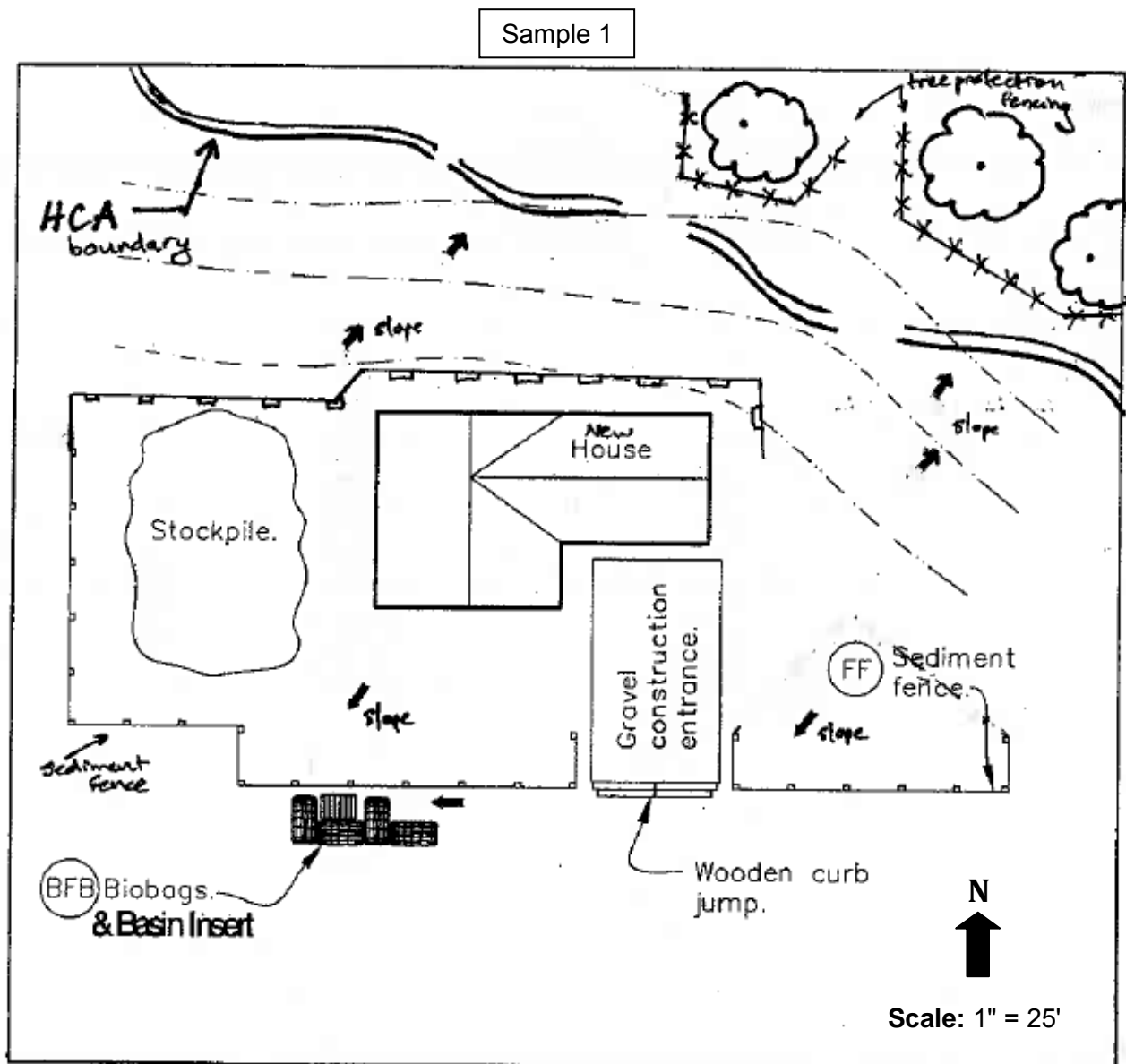
### **3740 SE Licyntra Ln**

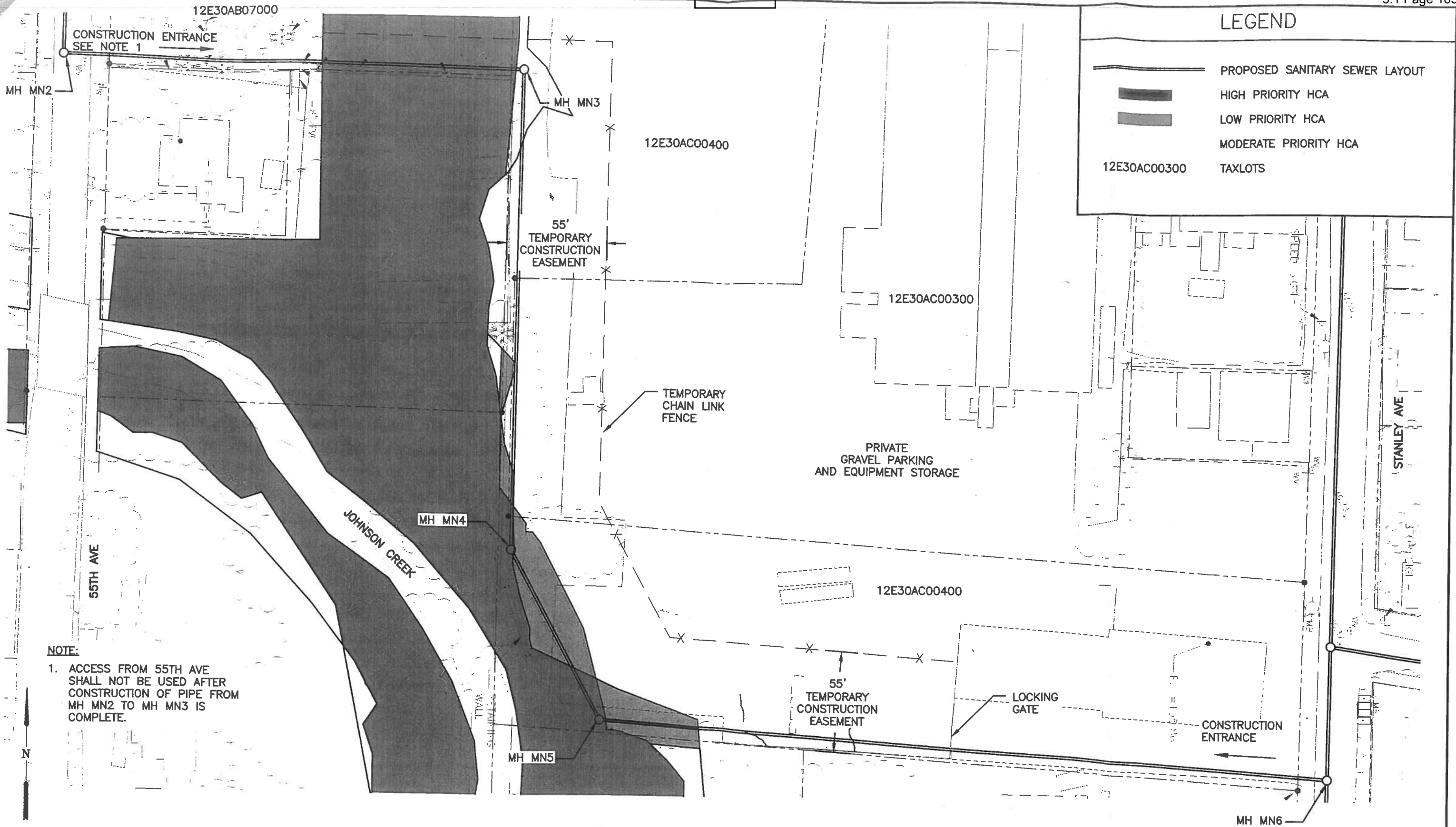
- Existing house backs up against both HCA and WQR along Kellogg Creek
- Proposal = build a 350-sq-ft addition (in HCA only) that projects closer to the creek
- Note: Most other properties in this area are developed with the house close to the creek. Any proposal to add on to the rear of the house would obviously be going closer to the protected water feature.
- As proposed, the revised NR code would allow this project to be exempt from review except for providing a construction management plan (instead of going to Type I or Type III review).

# Construction Management Plans

A construction management plan (drawn to scale) should show:

- Location of WQRs and HCAs
- Contour lines with elevations to show slope and/or retaining walls
- Location for storage of excavated materials
- Location of gravel construction entrance
- Property lines and distances to buildings
- Placement of erosion control devices
- Location of nearest City storm drain inlet and how it is protected
- Tree protection measures





LEGEND

	PROPOSED SANITARY SEWER LAYOUT
	HIGH PRIORITY HCA
	LOW PRIORITY HCA
	MODERATE PRIORITY HCA
12E30AC00300	TAXLOTS

**NOTE:**  
 1. ACCESS FROM 55TH AVE SHALL NOT BE USED AFTER CONSTRUCTION OF PIPE FROM MH MN2 TO MH MN3 IS COMPLETE.

SCALE: 1"=50'  
 DATE: 4/29/09

**CENTURY WEST**  
 ENGINEERING CORPORATION  
 6650 S.W. Redwood Lane, Suite 350  
 Portland, Oregon 97224  
 503-419-2130 phone • 503-639-2710 fax  
 www.centurywest.com

**CITY OF MILWAUKIE**  
**55TH AVE PUMP STATION IMPROVEMENTS**  
**CLACKAMAS COUNTY, OREGON**

**HABITAT CONSERVATION**  
**AREA DISTRICT OVERLAY**  
**SITE PLAN**

**FIGURE**  
**2**



## Clackamas County Soil & Water Conservation District Urban & Community Conservation Introductory Packet

### Map Your Property

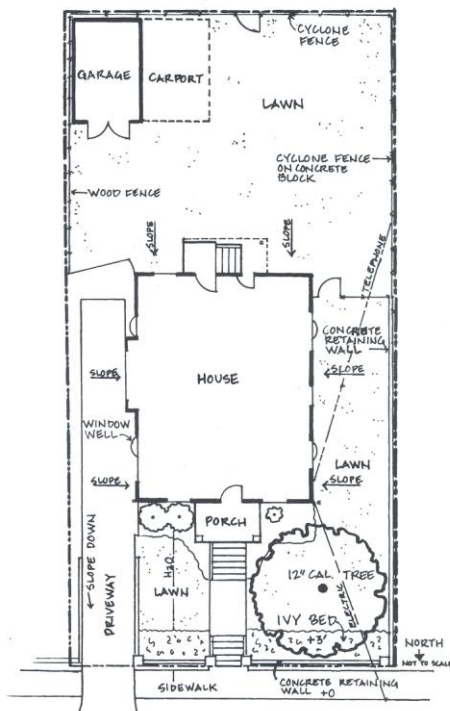
It is important to map the existing conditions of your yard, that is, to inventory the features and uses of your land.

You can print out a base image of your property from the **Web Soil Survey**, a free online natural resource information system. Web Soil Survey is available to the public at:

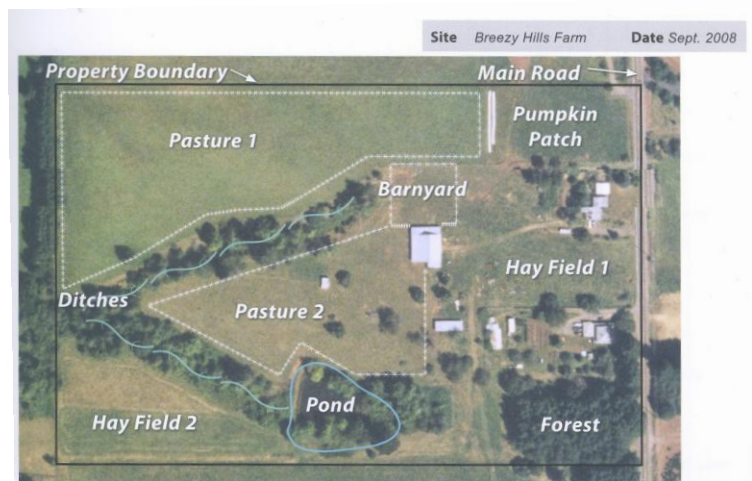
<http://websoilsurvey.nrcs.usda.gov/app/>

To create your map, download an aerial image from the Web Soil Survey or another map source as your base. Or, you can sketch a basic hand drawing of the property's main features on the following page. Then draw your house and other buildings, water bodies, land forms/slopes, existing trees, problem areas, impervious areas (driveways, sidewalks, walls, etc.) and other notable features.

This map will be your reference point for planning future activities, such as removal of invasive species or placement of a rain garden. This map will be a record of your starting point. Below are two examples of maps.



EXISTING CONDITIONS FOR 50'x100' URBAN LOT



[www.or.nrcs.usda.gov](http://www.or.nrcs.usda.gov)



## **Your Existing Conditions Map**

### **Set Conservation Goals & Objectives**

First, create your vision for the land in 5 to 10 years. Visualize what you want the property to look like and how you plan to use the areas of your property.

Then, identify the specific land conservation goals that relate to your vision. Implementing these goals will help you reach your vision. Some of these goals may overlap and there may be others not listed that you would like to include.

Goals	Possible Outcomes
<input type="checkbox"/> <b>Improve the health of the watershed, by reducing stormwater runoff</b>	<ul style="list-style-type: none"> <li>▪ A disconnected downspout leads to a raingarden with beautiful native plantings.</li> <li>▪ A bioswale collects, absorbs and conveys water adjacent to the street.</li> <li>▪ Pervious pavers replace the impervious pavement in the driveway and/or sidewalks.</li> <li>▪ An ecoroof on the garden shed collects and absorbs rainfall as it falls.</li> <li>▪ Streambanks are protected from erosion with thick, diverse streamside vegetation.</li> <li>▪</li> <li>▪</li> </ul>
<input type="checkbox"/> <b>Increase and provide healthy wildlife habitat.</b>	<ul style="list-style-type: none"> <li>▪ Native and approved non-native plants at varying heights- groundcover, understory and overstory- provide for desired wildlife species.</li> <li>▪ Evergreen plants, deciduous plants and plants with thorns provide year-round cover and nesting places for wildlife.</li> <li>▪ Food and water sources are provided year-round.</li> <li>▪ Downed litter from trees and plants is kept on the ground and "dead-heads" are left on plants for wildlife.</li> <li>▪</li> <li>▪</li> </ul>
<input type="checkbox"/> <b>Remove invasive species and replant with native and non-invasive plants</b>	<ul style="list-style-type: none"> <li>▪ Invasive species are eradicated from the property and diverse communities of native plants now thrive.</li> <li>▪ A management plan is established to keep the invasive species from returning to the yard.</li> <li>▪ Little to no chemicals are used to remove</li> </ul>

the invasive plants, however, if needed, herbicides and pesticides are applied by a licensed applicator who keeps them out of and away from water bodies.

- 
- 

**Maintain healthy soil to support plants and wildlife as well as natural cycles and nutrient cycles**

- The soil is fertile and contains a healthy mix of organic matter to support plant growth.
- Healthy plant communities provide cover at the appropriate times of the year.
- Soil erosion is controlled.
- Native plant roots help to bind the soil together on steep slopes and if necessary erosion controls such as jute mats are used.

- 
- 

**Improve or maintain the aesthetic beauty of the property and quality of life**

- Healthy plant communities and a scenic landscape are maintained over time.
- Invasive plants and animal pests are controlled.
- Runoff does not convey contaminants to ground and surface waters

- 
- 

**Others**

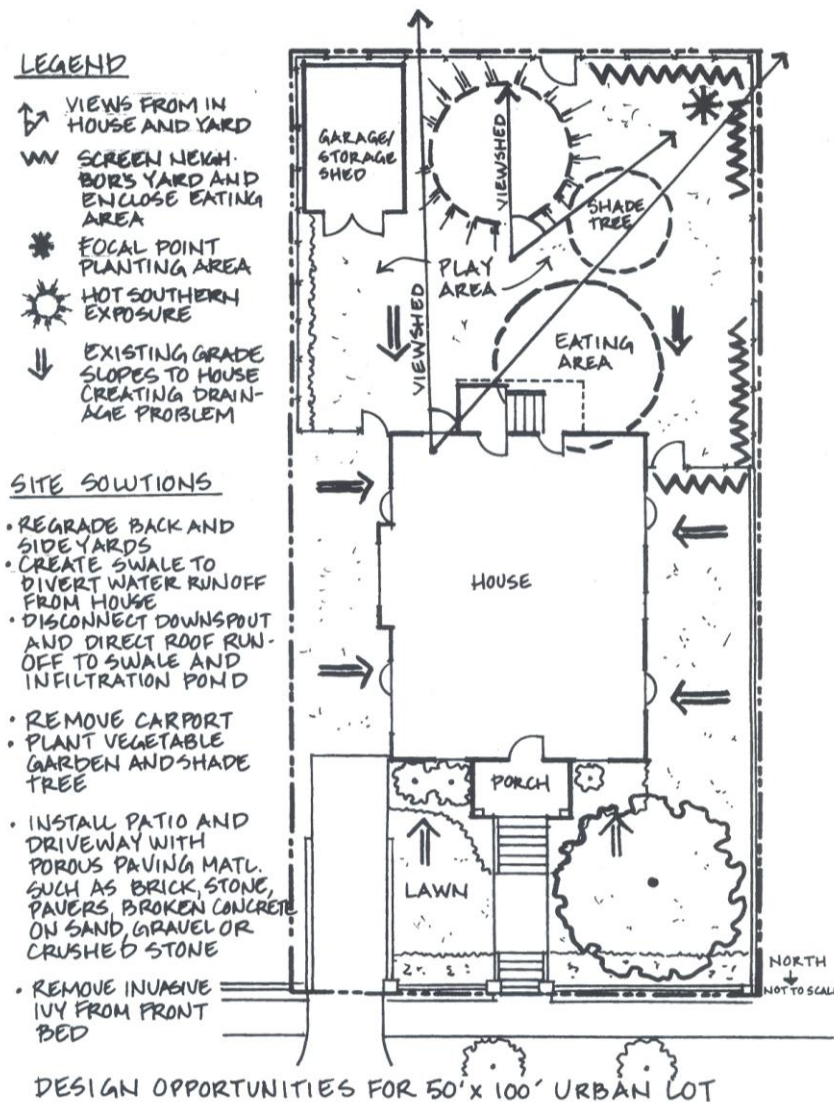
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## Inventory and Design Opportunities

Use the same map base you used for your existing conditions map for this opportunity map or sketch another quick one. Use this map, complete with a legend, to capture more detailed information about each distinct section of the property. This information could include land use (i.e., wildlife, play area, eating area, etc.), approximate size, soils, opportunities for specific plants, sun exposure, viewsheds (nice views you will not want to block), wind exposure, places to curtail erosion, and general observations.

You can look up your soil types online at the *Web Soil Survey* website at: <http://websoilsurvey.nrcs.usda.gov/app/>. While there you can take notes or print out the soil suitabilities, limitations, and properties.

Below is an example of such a map.



## Your Design/Planning Opportunities Map



# Clackamas Conservation Plan Summary

## *Lake Oswego United Church of Christ Parking Lot Rain Garden*

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### Contact Information

**Contact:** Monica Honegger & Cindy Ellison

**Address:** 1111 SW Country Club Rd., Lake Oswego, OR 97034

**Phone:**

**Email:**

**TRS/GPS:** T.2S R.1E Sec. 4

### Background

Mary Logalbo directed Monica and Cindy to me for assistance in March 2010.

Lake Oswego United Church of Christ is located in a headwaters area of the Tryon Creek Watershed. Much of the runoff from the church property is directed into the City of Lake Oswego stormwater system that connects directly to Nettle Creek, a significant tributary of Tryon Creek. Much of the surrounding area was developed before current stormwater standards and as such is conveyed to Nettle Creek through a variety of privately and publicly owned culverts and pipes with little or no detention. The increased runoff into Nettle Creek has resulted in channel incision and bank erosion. This in turn has degraded the water quality of Tryon Creek below the confluence.

The Church would like to improve drainage on its property in a way that will reduce the amount of direct runoff and pollutant loading into the stormwater system, thus reducing direct inflows into Nettle Creek and eventually Tryon Creek. In doing so, they hope to present a positive example of environmental stewardship to the community, and demonstrate what actions can be taken on a local level to improve environmental quality. Their high visibility along Country Club Road will help with this.

To accomplish its goals they are proposing a variety of stormwater improvements to the property. It was decided to divide the work into three phases. Phase I, funded with grant money from the Oregon Watershed Enhancement Board and monitored by West Multnomah Soil and Water Conservation District, directs the water runoff coming from upstream and behind the church into a french drain, with the overflow travelling by pipe to a rain garden and then to a larger bioswale paralleling Country Club Road. It was successfully completed in 2008. Phase II will redirect the parking lot runoff into a rain garden constructed by enlarging an existing planting strip. Then Phase III will involve redirecting roof runoff into the bioswale and rain gardens. This will be addressed after Phase II is completed.

This plan is for Phase II, the rain garden parking lot.

From the Nature in the Neighborhood grant:

This proposal is one of three phases of Lake Oswego United Church of Christ's Stormwater Management Plan, which will clean all of our stormwater before it enters the Tryon Creek Watershed. Phase II, the Parking Lot Rain Garden, is our current work for which we are applying for funding. We have several goals for this project: collect, filter and slow down all of our stormwater runoff from the large parking lot with a goal of eventually managing



all of LOUCC's stormwater before entering Nettle Creek; serve as a demonstration site and model for people to see how actions on private property can benefit watershed health; actively help other congregations become 'Earth Wise Congregations'; and educate and motivate the community at large, other faith communities, and our own congregation regarding watershed friendly practices, particularly stormwater management practices. The Parking Lot Rain Garden project entails: removing approx. 440 ft<sup>2</sup> of asphalt from the parking lot (approx. 15,500 ft<sup>2</sup> lot); digging out a planting strip of approx. 360 ft<sup>2</sup>; installing a 3.5 ft deep rain garden with overflow pipes, drain rock, and amended soil; planting with native plants; creating asphalt berms to direct parking lot runoff into the rain garden; and connecting the overflow to the existing catch basin. Stormwater runoff from the large parking lot will be collected, filtered and cooled by a 775 ft<sup>2</sup> rain garden. Lake Oswego's average annual precipitation is 45 inches, so the rain garden will be cleaning over 430,000 gallons of water per year before it flows into Nettle Creek and the Tryon Creek Watershed (approx. 7.5 gallons of water in 1 cubic foot). The number of native plants to be installed is calculated using the Portland Stormwater Manual based on two different zones (Zone A- wet and can be inundated, Zone B- slope with moist soils) and required spacing densities (herbaceous plants and groundcover are to be planted 1' on center). The plan calls for 710 herbaceous plants, 38 small shrubs, and 12 large shrubs – transforming an otherwise large black field of asphalt into a rain garden positioned to collect most of the parking lot's stormwater runoff. We will directly involve as many community members as we can throughout the creation of the rain garden. With Depave's help, we will hold a community event to remove the asphalt and gravel in order to place the rain garden. We expect at least 25 community members (more likely around 50) of all ages at this day-long event. We will hold three separate planting events, which will enable us to include more community members as well as ensure plant health and plant replacement if needed. At two of the planting events we expect at least 25 people, mainly adults, who will learn the ins-and-outs of rain gardens and plant natives. The other planting event is in collaboration with Beit Haverim congregation and will involve the youth from both congregations, expecting 25 attendees who will get hands-on experience planting the rain garden. After the rain garden is created, we will continue, along with our partners, holding workshops about greening churches, low impact development, and installing an actual rain garden. Through these workshops we hope to reach at least 150 more community members, focusing on how personal actions can affect watershed health and creating more rain gardens in our watershed.

We have garnered a lot of support and have made many partnerships through our efforts to help clean the watershed. Otak, Inc. a local architecture and engineering firm, has been involved from the beginning stages of our stormwater plan. A senior engineer and a principal at the firm are both donating time to create the construction drawings and specifications and will provide a professional engineer stamp to all final drawings. Clackamas County Soil and Water Conservation District (CCSWCD) is a close partner in planning the project, creating a planting plan and maintenance schedule, and presenting workshops on rain gardens and low impact development methods. Thompson Tanks and Soils is donating time and will help construct the rain garden at a discounted rate. The City of Lake Oswego is helping with the permitting process. The non-profit Depave is helping us with an asphalt removal event, providing expertise, tools, insurance, and will help recruit community volunteers. The Beit Haverim congregation will assist with a native planting event. Ecumenical Ministries of Oregon (EMO) will help promote the LOUCC workshop on "Greening Your Church." Both the Friends of Tryon Creek and Tryon Creek Watershed Council are lending us educational materials and helping mobilize and educate volunteers. The church has a large volunteer base for the project as well. At LOUCC, we have the Green Team, which consists of seven core members who will:



volunteer at the Depave event; document the construction work for instructional videos; volunteer at planting events; create and present workshops; and maintain the rain garden. The rest of the LOUCC congregation is very supportive of these efforts and will volunteer when able during and after construction of the rain garden.

There are many long-term benefits of this Parking Lot Rain Garden project. The rain garden will improve the water quality and overall health of the Tryon Creek watershed by: cooling the water for wildlife and fish before it enters Nettle Creek; filtering pollutants such as oil and grease with the use of plants and amended soil; helping recharge groundwater; and providing habitat for insects and birds. It will also reduce the quantity of water entering Nettle Creek during storm events. Water quantity is water quality -- reducing the quantity will help reduce erosion and alleviate flash flooding associated with impervious surfaces. Not only will this facility continue to benefit the health of the watershed, it is our goal to have facilities like this replicated throughout the watershed. This project is catalytic. We are creating short instructional videos documenting the entire process of building a rain garden. We will present these at our workshops, and post it on our website and our partners' websites. Through our ongoing events, tours, and workshops that link personal actions to watershed health, the concept of rain gardens as effective and versatile tools for managing stormwater will reverberate throughout the community. The rain garden will be monitored and maintained by the LOUCC property subcommittee and the Green Team. CCSWCD will help us develop a maintenance schedule, using publications like Seattle Public Utilities' "Practically Easy Landscape Maintenance" and "High Point Landscape Maintenance Guidelines" as templates. CCSWCD is part of a larger group in the Portland-Metro area working on an operations and maintenance manual for low-impact design facilities, so this smaller maintenance schedule will tie into the Metro-area plan. Success will be measured by: percent of native plant survival; efficacy of the facility during storm events; the number of inquiries we receive regarding the project; the number of workshops, tours, and work parties we have in the first two years and thereafter; the ability of church/community members to speak with knowledge about this project; and other watershed projects inspired by this one.

### Landowner Goals & Resource Concerns

- Clean all of the stormwater before leaving their property
- Help clean the Tryon Creek watershed
- Involve the community directly in the work itself of building the stormwater facilities, as well as share and build awareness of how these actions can benefit our watershed

### Management Concerns

Please check the box that best describes the resource concern being treated:

Water Quality       Water Quantity       Wildlife       Weeds

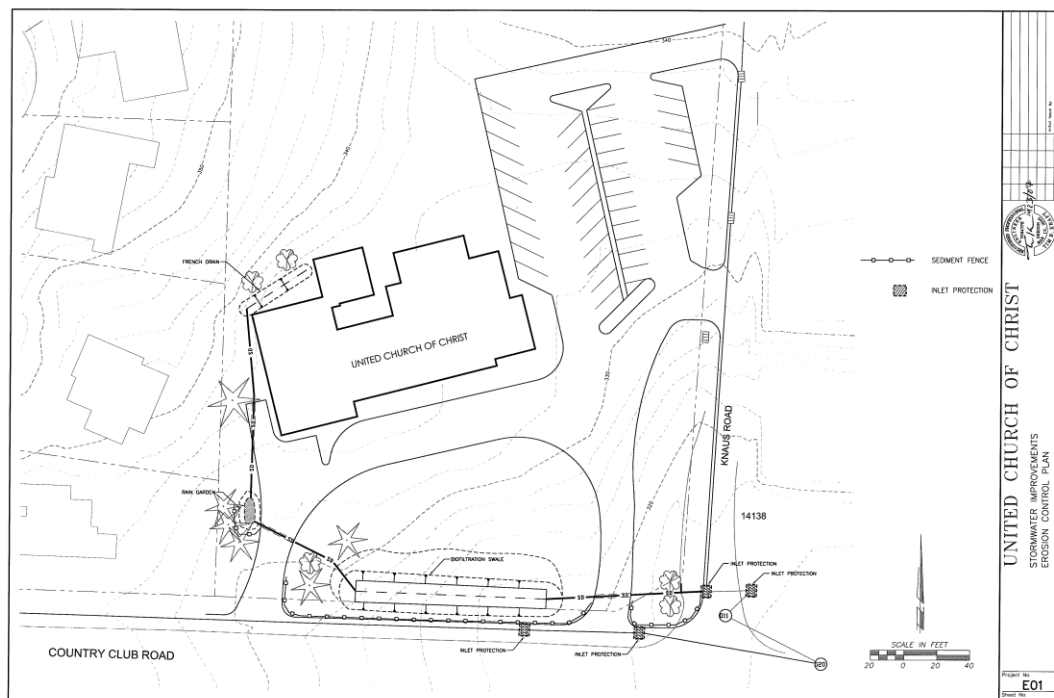
Currently, runoff from the east, large parking lot enters the stormwater system and is then conveyed directly into Nettle Creek and eventually Tryon Creek. During large rainstorms huge amounts of water muddy Nettle Creek, erode its banks, raise water temperatures and pollute the water from the parking lot. As well, some of the runoff from the parking lot flows down the steep grade along Knaus Road before entering a catch basin at the bottom of the hill, causing erosion along the road. During heavy rain storms





## Site description

### *Topography*



The church sits on a relatively steep incline that intercepts runoff from the hillside behind the church. Most of the site is between 3-8 percent slopes.

### *Soils*

The soils are urban complex- and used to be Cascade silt loam.

### *Hydrology*

The church property is located on a tributary to Nettle Creek. This small tributary is piped underneath the church parking lot and into the City stormwater system that runs along the east side of the church property (along Knaus Road). Therefore it is likely that wetlands along this small creek were destroyed when the church was built.

## Biological Assessment

### *Vegetation*

It is an asphalt parking lot. The planting strip which we are digging out for the rain garden is planted with junipers. There are several Giant Sequoia (*Sequoiadendron giganteum*) surrounding the parking lot. The northern part of the property is an Ash (*Fraxinus latifolia*) and Bigleaf Maple (*Acer macrophyllum*) community with several invasive plants species including English ivy (*Hedera helix*) and Himalayan blackberry (*Rubus armeniacus*). The other rain garden and the front bioswale are planted with native plants including various rushes and sedges.



***Wildlife (landowner and planner)***

The typical urban wildlife- mainly birds, including: Black-capped chickadees, European starlings, American crows, sparrows, House finches and Dark-eyed juncos.

***Invasive species***

English ivy (*Hedera helix*), Himalayan blackberry (*Rubus armeniacus*) and European Starling (*Stumus vulgaris*)

***Threatened and Endangered***

None documented

**Resource Analysis**

A small pit percolation test (2' x 2') was done which showed poorly draining soils (<.5"/hour), which is why the engineers specified a deeper rain garden (3.5' deep) and for a partial infiltration facility (a perforated pipe runs the length of the facility). See engineering drawings.

**Recommendations**

A Parking Lot Rain Garden that entails: removing approximately 440 ft<sup>2</sup> of asphalt from the parking lot (~1500ft<sup>2</sup> lot); digging out a ~360ft<sup>2</sup> planting strip; installing a 3.5ft-deep rain garden with overflow pipes, drain rock, and amended soil; planting with native plants; creating asphalt berms to direct parking lot runoff into the rain garden; and connecting the overflow to the existing catch basin. Please see engineering drawings.



## Timeline

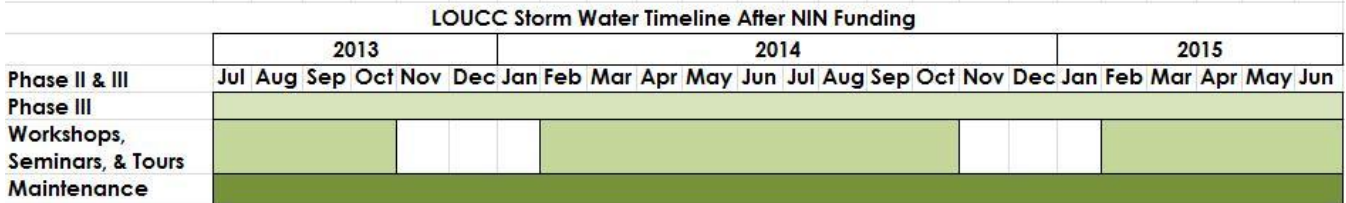
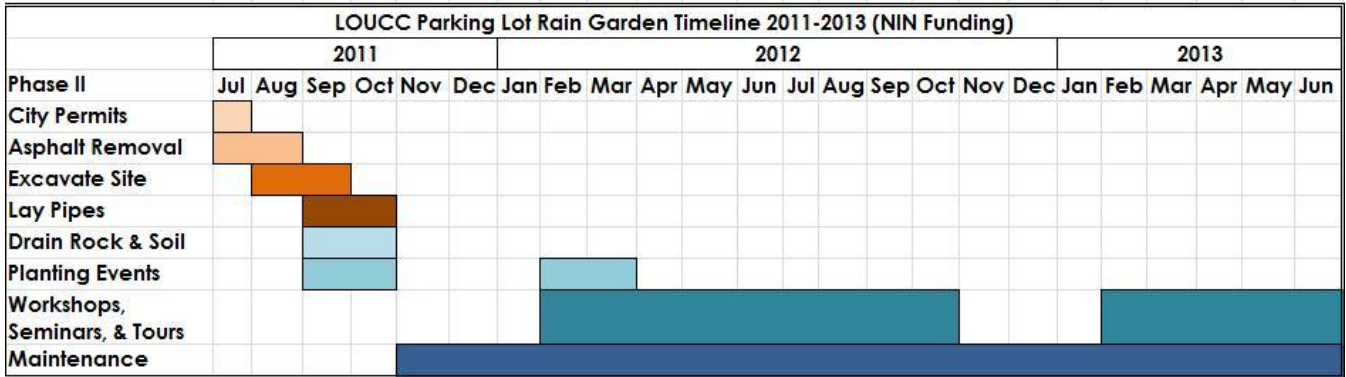
### General Timeline

#### LOUCC Stormwater Initiative (to clean all stormwater on their property!)

##### LOUCC Parking Lot Rain Garden Timeline Prior to NIN Funding

**Phase I Completed** in November 2008 which included a french drain behind the church leading to a rain garden and then eventually to a bioswale in the front of the property. These facilities treat the runoff from behind the church and were accomplished with an OWEB grant.

**Phase II- Preliminary Design Concept** was completed by OTAK at the same time as Phase I. Preliminary Re-Design was completed by OTAK in December 2010 and January 2011. Planning has been ongoing since March 2010.



## Budget

Activity	Current Request (NIN funds)	Matching Funds	In-kind contributions	Contributors (list name and amount)	Total
Personal Services					
Volunteer Labor (calculate value at \$20.85/hour – note estimated hours)			# of hours: 690 X \$20.85/hr. \$14,386.50		\$14,386.50
Professional Services (include service sources, rates and hours)	Excavator \$3,000.00 Asphalt Removal, \$625.00 Asphalt Curbing & Inlets, \$1,000.00		Project planning \$6,976.95; Engineering \$4,000.00		\$15,601.95



Materials and Supplies (list items, quantities, prices)	Amended soil: 45 yd <sup>3</sup> , \$1,300.00. Mulch: 7.5 yd <sup>3</sup> , \$350.00. Drain rock: 13 yd <sup>3</sup> , \$300.00. 8" Perforated pipe: 45 ft., \$450.00. 8" CPP storm pipe: 40 ft., \$400.00. Native plants: 710 herbaceous plants, 38 medium shrubs, 12 large shrubs, \$2,200.00 total. Interpretive signage: \$1,000.00.				\$6,000.00
Transportation or travel costs (itemize)	\$0.00				\$0.00
Overhead costs (List included costs)	\$1,100.00				\$1,100.00
Other (Itemize)	City of Lake Oswego Permits \$404.00				\$404.00
<b>TOTALS</b>	\$12,129.00		\$25,363.45		\$37,492.45

## BUDGET NARRATIVE

**Volunteer Labor:** This is an estimate, with actual hours expected to be even more (not including some partners' volunteer time, maintenance, etc.).

**Planting Events:** 25 volunteers x 4 hours x 3 events= **300 hours**

**Depaving Event:** 25 volunteers x 8 hours= **200 hours**

### **LOUCC Workshops & Resources:**

Earth Day Celebration - 3 meetings x 2 hours x 7 Green Team members, + 7 x 2 hour presentation= **56 hours**

Greening Your Church Workshop - 5 meetings x 2 hours x 7 volunteers, + 7 x 4 hours presentation= **98 hours**

Taping & Editing Videos of Rain Garden Construction/Process = at least **36 hours**      Total=**690 vol. hours**

### **Professional Services (activity/amount):**

**Excavator** - Excavator and Operator at \$125/hour x 8 hours= **\$1,000**; Helper at \$65/ hour x 8 hours= **\$520**;

Dump Truck and driver \$85 per hour x 4 hours= **\$340**; Disposal \$50 per load x 2 loads= **\$100**; Gravel \$ 35/ ton x 6 tons= **\$210**; Connect pipe to vault \$75/ hour x 5-6 hours= **\$425**; 15% contingency= **\$390**    **Total ~\$3,000.00**

**Asphalt Removal** - Depave will help us. Budget = Depave insurance **\$200.00** + Drop box **\$225.00** + Concrete saw rental **\$100** + wear and tear on tools **\$100.00**    **Total = \$625.00**

**Asphalt Curbing & Inlets** - Cost estimates for four asphalt parking bumps in the parking lot and some reshaping around the rain garden to redirect the water into the rain garden, as well as creation of inlets into the rain garden with river rock to dissipate the energy = **\$1,000.00**

**Project Planning** - CCSWCD's Urban Conservation Planner, Nikki Cerra is contributing the following:

Creating the maintenance schedule \$36.15/hr. x 20 hrs= **\$723.00**,



Teaching workshops: 4 workshops = 43 hours presentation + 10 hours preparation x \$36.15/hr.= **\$1915.95**  
and Planning, including: project budget 10 hrs; project timeline 10 hrs; planting plan 40 hrs; and general oversight 60 hrs x \$36.15/hr. for 120 hours = **\$4,338.00 Total = \$6,976.95 in kind**

**Engineering** - OTAK, Inc., a private architecture/engineering firm is donating their time, including: finalizing the design concept, developing engineering drawings sufficient for the necessary permits and for construction, and some level of construction oversight. \$100.00/hr. for 40 hours= **\$4,000.00 in kind**

**Materials and Supplies:** Based on 2-3 informal bids for each item, except for signage (to be obtained).

**Amended soil** - Cost estimates for approximately 45 yd<sup>3</sup> of amended soil to the City of Portland's specifications = **\$1,300.00**

**Mulch** - Cost estimates for approximately 7.5 yds<sup>3</sup> (3" layer) of mulch = **\$350.00**

**Drain rock** - Cost estimates for approximately 13 yds<sup>3</sup> of drain rock = **\$300.00**

**8" CPP perforated pipe** - Cost estimates are \$10.00/ft. at 45 ft = **\$450.00**

**8" CPP pipe** - Cost estimates are \$8.00/ft. at 50 ft = **\$400.00**

**Native plants** -Number of plants calculated from Portland Stormwater Manual based on two different zones (Zone A- wet can be inundated, Zone B- slope, moist soils) and spacing specifications - 710 herbaceous plants, 38 1-gallon shrubs, 12 3-gallon shrubs. Total cost = **\$2200.00**

**Interpretive signage** - One large sign describing stormwater management in general, with our partners' logos & smaller, simpler signs/sculptures for each facility = **\$1,000.00**

**Transportation/Travel:** = **\$0.00**

**Overhead Costs (utilities, rent, telephone, fiscal administration):**

Fiscal Agent- LOUCC is acting as their own fiscal agent so this 10% will cover the costs for the bookkeeping involved. = **\$1,100.00**

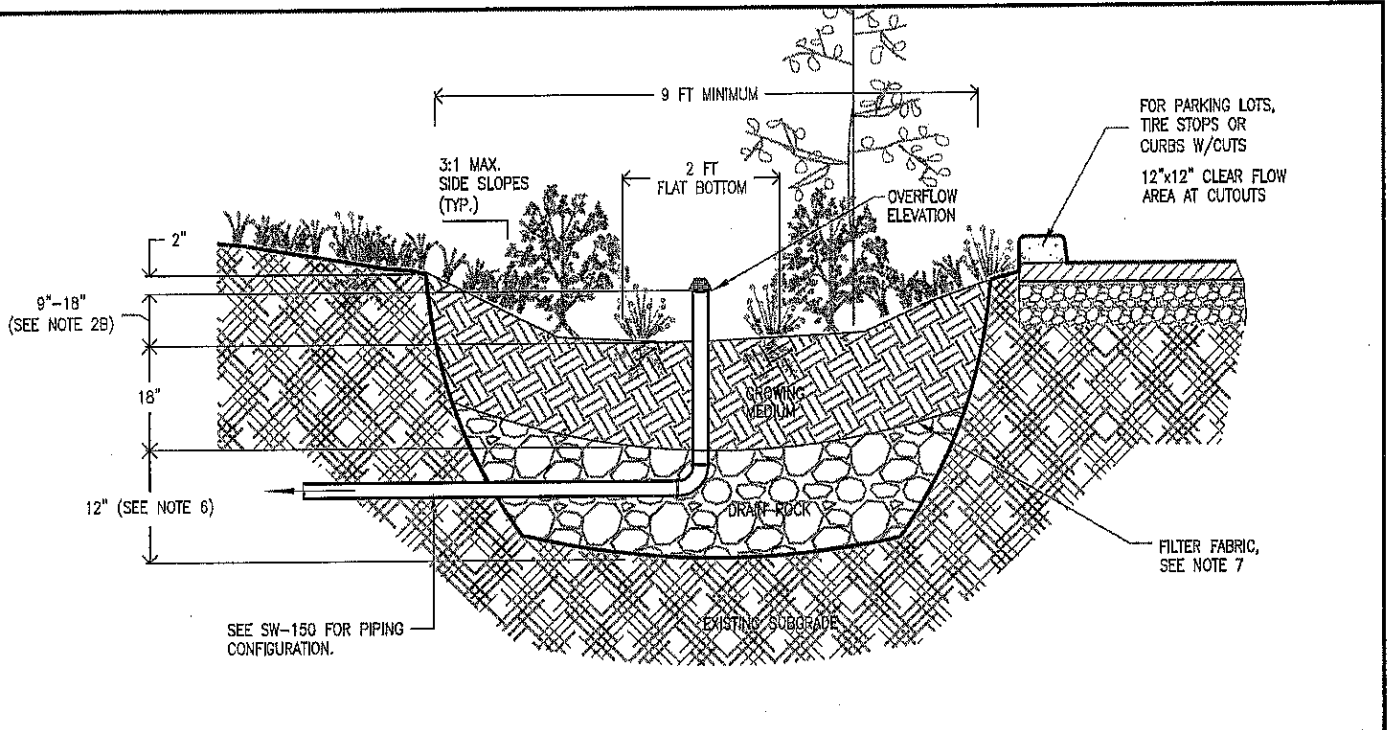
**Other:**

**City of Lake Oswego Permits** - Two required permits: erosion control permit at **\$300.00** + a plumbing permit at **\$104.00** = **\$404.00**

## Appendices







1. Provide protection from all vehicle traffic, equipment staging, and foot traffic in proposed Infiltration areas prior to, during, and after construction.

2. Dimensions:

- a. Width of basin: 9' minimum.
- b. Depth of basin (from top of growing medium to overflow elevation); Simplified: 12", Presumptive: 9"-18".
- c. Flat bottom width: 2' min.
- d. Side slopes of basin: 3:1 maximum.

3. Setbacks (from midpoint of facility):

- a. Infiltration basins must be 10' from foundations and 5' from property lines.
- b. Flow-through swales must be lined with connection to approved discharge point according to SWMM Section 1.3.

4. Overflow:

- a. Overflow required for Simplified Approach.
- b. Inlet elevation must allow for 2" of freeboard, minimum.
- c. Protect from debris and sediment with strainer or grate.

5. Piping: shall be ABS Sch.40, cast iron, or PVC Sch.40. 3" pipe required for up to 1,500 sq ft of impervious area, otherwise 4" min. Piping must have 1% grade and follow the Uniform Plumbing Code.

6. Drain rock:

- a. Size for infiltration basin: 1½" - ¾" washed
- b. Size for flow-through basin: ¾" washed
- c. Depth for Simplified: 12"
- d. Depth for Presumptive: 0-48", see calcs.

7. Separation between drain rock and growing medium:

Use filter fabric (see SWMM Exhibit 2-5) or a gravel lens (¾ - ¼ inch washed, crushed rock 2 to 3 inches deep).

8. Growing medium:

- a. 18" minimum
- b. See Appendix F.3 for specification or use sand/loam/compost 3-way mix.

9. Vegetation: Follow landscape plans otherwise refer to plant list in SWMM Appendix F. Minimum container size is 1 gallon. # of plantings per 100sf of facility area):

- a. Zone A (wet): 115 herbaceous plants OR 100 herbaceous plants and 4 shrubs
- b. Zone B (moderate to dry): 1 tree AND 3 large shrubs AND 4 medium to small shrubs.

The delineation between Zone A and B shall be either at the outlet elevation or the check dam elevation, whichever is lowest.

10. Install washed pea gravel or river rock to transition from inlets and splash pad to growing medium.

11. Inspections: Call BDS IVR Inspection Line, (503) 823-7000, for appropriate inspections.

- DRAWING NOT TO SCALE -

## STORMWATER MANAGEMENT MANUAL TYPICAL DETAILS

- Simplified / Presumptive Design Approach -

### Basin

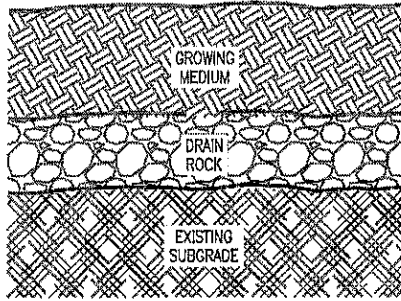
NUMBER

SW-140

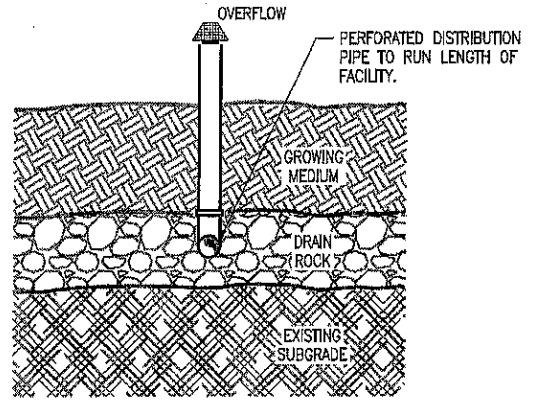


Bureau of Environmental Services

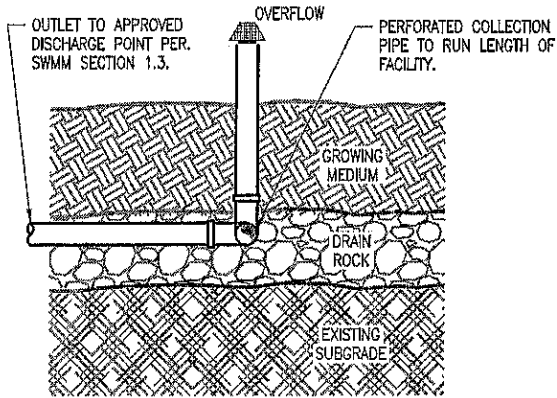




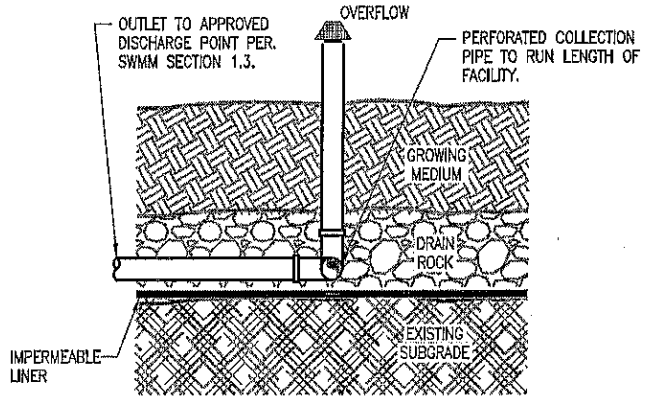
**INFILTRATION**  
STORMWATER HIERARCHY CATEGORY 1



**HYBRID**  
STORMWATER HIERARCHY CATEGORY 2  
OVERFLOW DIRECTED TO DRAIN ROCK. (SEE SW-151 AND SW-152 FOR MORE INFORMATION)

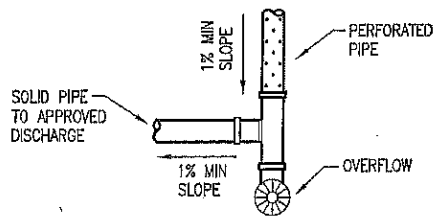


**PARTIAL INFILTRATION**  
STORMWATER HIERARCHY CATEGORY 3 or 4  
OVERFLOW AND UNDERDRAIN REQUIRED.  
SET UNDERDRAIN WITHIN DRAIN ROCK



**FLOW-THROUGH**  
STORMWATER HIERARCHY CATEGORY 3 or 4  
OVERFLOW AND UNDERDRAIN REQUIRED.  
SET UNDERDRAIN AT BASE OF DRAIN ROCK LINER.

NOTE:  
HYBRID FACILITIES MUST BE REGISTERED AS A UIC DESIGNED UNDER THE PRESUMPTIVE APPROACH.



**PLAN VIEW**  
PIPE W/ UNDERDRAIN & DISCHARGE POINT

- DRAWING NOT TO SCALE -

**STORMWATER MANAGEMENT MANUAL TYPICAL DETAILS**

- Simplified / Presumptive Design Approach -  
**Facility Overflow Configurations**

NUMBER

**SW-150**



Bureau of Environmental Services







**Presumptive Approach Calculator ver. 1.2**

Catchment ID: **A**

Run Time 1/5/2011 3:03:50 PM

Project Name: enter project name

Catchment ID: A

Date: 2/1/2010

imported file Basin.xls - 1/5/2011 3:03:53 PM

**Instructions:**

1. Identify which Stormwater Hierarchy Category the facility
2. Select Facility Type
3. Identify facility shape of surface facility to more accurately estimate surface volume, except for Swales and sloped planters that use the PAC Sloped Facility Worksheet to enter data.
4. Select type of facility configuration.
5. Complete data entry for all highlighted cells.

Catchment facility will meet Hierarchy Category: **3**

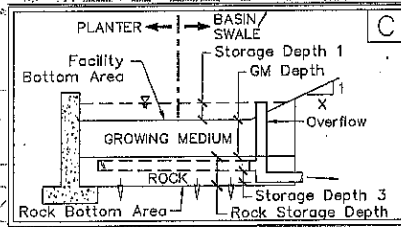
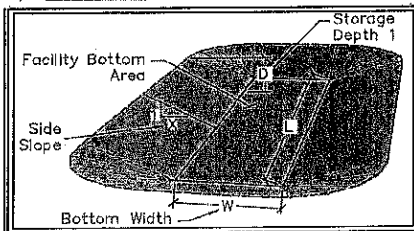
**Goal Summary**

Hierarchy Category	SWMM Requirement	RESULTS box below needs to display...	
		Pollution Reduction as a	10-yr (aka disposal) as a
3	Off-site flow to drainageway, river, or storm-only pipe system.	PASS	N/A

Facility Type = **Basin**

Facility Shape: **Rectangle/Square**

Facility Configuration: **C**



Calculation Guide  
Max. Rock Stor. Bottom Area  
404 SF

**DATA FOR ABOVE GRADE STORAGE COMPONENT**

Facility Bottom Area = **200** sf  
 Bottom Width = **10.0** ft  
 Facility Side Slope = **3** to 1  
 Storage Depth 1 = **12** in  
 Growing Medium Depth = **18** in  
 Freeboard Depth = **N/A** in

**BELOW GRADE STORAGE**

Rock Storage Bottom Area = **353** sf  
 Rock Storage Depth = **12** in  
 Rock Void Ratio = **0.3**  
 Storage Depth 3 = **6** in

Surface Capacity at Depth 1 = **302** cf  
 Infiltration Area at 75% Depth 1 = **353** SF  
 GM Design Infiltration Rate = **2.00** in/hr  
 Infiltration Capacity = **0.016** cfs

Rock Storage Capacity = **53** cf  
 Native Design Infiltration Rate = **1.00** in/hr  
 Infiltration Capacity = **0.008** cfs

RESULTS		Overflow Volume	
Pollution Reduction	<b>PASS</b>	0 CF	<b>30%</b> Surf. Cap. Used
			<b>100%</b> Rock Cap. Used
Output File			
	<b>2-yr</b>	<b>5-yr</b>	<b>10-yr</b> <b>25-yr</b>
Peak cfs	0.204	0.250	0.297   0.344

Current data has been imported:

Basin.xls      1/5/2011 3:03:53 PM

FACILITY FACTS	
Total Facility Area Including Freeboard =	<b>#VALUE!</b>
Sizing Ratio (Total Facility Area / Catchment Area) =	<b>#VALUE!</b>

From: christopherburkett@comcast.net  
Sent: Monday, April 25, 2011 10:50 AM  
To: Kelter, Brett  
Subject: Fwd: Follow up on questions regarding WQR/HCA stream bank erosion control

Brett,

Will you be able to answer these questions before the next Planning Commission meeting tomorrow?

Regardless, have these questions been forwarded to the Planning Commissioners for their review?

Thank you,  
Christopher Burkett

----- Forwarded Message -----

From: christopherburkett@comcast.net  
To: KelterB@ci.milwaukie.or.us  
Sent: Wednesday, April 20, 2011 5:08:24 AM  
Subject: Follow up on questions regarding WQR/HCA stream bank erosion control  
Brett,

Have you been able to find the answers to the questions I asked below on April 11?

The answers to these questions are of importance as we continue our deliberations on our "Issues for Further Discussion," and specifically relate to items 1, 4 and 7.

Thank you,  
Christopher Burkett

----- Forwarded Message -----

From: christopherburkett@comcast.net  
To: "Brett Kelter" <KelterB@ci.milwaukie.or.us>  
Sent: Monday, April 11, 2011 1:54:34 PM  
Subject: WQR/HCA and stream bank erosion control  
Brett,

I am concerned about controlling stream bank erosion, since this appears to be the biggest contributor to making Kellogg Creek look like milk chocolate after heavy rains. Controlling erosion to improve water quality is the stated rationale for many parts of the new WQR/HCA ordinance, so I am puzzled why it's inexplicable silent on the topic of stream bank protection. I believe the turbidity in the creek is not caused by a thousand little home gardeners pecking away in their backyards, it's caused almost entirely from stream bank erosion.

Does Metro plan to allow streams to meander at will over private property, creating new stream channels and in the process stripping away tons of soil and reducing the size of the homeowner's property? If not, what does Metro recommend we do to protect the stream bank from erosion?

1. What are homeowners specifically allowed to do to protect their stream banks from erosion?
2. What are homeowners specifically prohibited from doing to their stream banks?

3. Are homeowners allowed to add hardened physical protection, such as a mortared rock wall, to their stream banks? Will this be classified and handled as an "impervious surface"?
4. If a stream bank already has a mortared rock wall, can it remain in place and be maintained and repaired as needed? If so, what type of permit will be required to replace one stone? To repair 5' of wall that is damaged by a natural event, such as a tree falling? To increase its height by 6" or its length by 5'?

If we are not allowed to protect our property from erosion, the new ordinance may negatively impact the maintenance and care of our landscaped home property in a fundamental way.

Thank you,

Christopher Burkett

From: christopherburkett@comcast.net  
Sent: Friday, April 29, 2011 1:40 PM  
To: Kelter, Brett  
Cc: Mangle, Katie; Hall, Damien  
Subject: Prohibition philosophy of the code

Brett,

Thank you for the speedy and detailed response to my question.

I understand your examples but I believe there's a profound difference between regulating the permitted types of uses of a building, (which the zoning codes refer to), and prohibiting the activities of homeowners.

The first describes the use of a building, the second the personal actions of the individuals. It is the inclusion of the single word "activity" which causes the clause to encompass a vast, undefined area that could be used to prohibit practically anything a person would want to do.

A non-smoking ordinance would be a better example. I presume a non-smoking ordinance describes where one can and can't smoke, rather than giving a list permitting us to brush our teeth, walk our dog, sit on the porch, etc. but if it's not on the list, then it's prohibited (thus precluding smoking).

My objection is that the inclusion of the word "activity" is so broad that it could be interpreted in ways that could be a violation of our civil liberties.

Simply removing the word "activity" would not change the "underlying prohibition philosophy of the code" but it would provide homeowners a bit more breathing room.

Thank you,  
Christopher Burkett

----- Original Message -----

From: "Brett Kelter" <KelterB@ci.milwaukie.or.us>  
To: christopherburkett@comcast.net  
Cc: "Katie Mangle" <MangleK@ci.milwaukie.or.us>, "Damien Hall" <Damien.Hall@jordanschrader.com>  
Sent: Friday, April 29, 2011 9:19:51 AM  
Subject: RE: Burkett naive question

Christopher,

Thanks for the note and question. It's a good chance to try to clarify the issue. I'll make a few references to the zoning code, which is available online for reference as you know (<http://www.gcode.us/codes/milwaukie/view.php?topic=19&frames=off>).

Zoning rules evolved from the acknowledged "police power" of government to protect the "health, safety, and general welfare" of the public by providing for orderly development in the community. (Over time, there have been many court cases that ground and clarify the extent and limits of this police power, including rulings on when regulations may go too far and constitute a "takings" that requires compensation to the affected property owner.) Zoning is largely about determining which types of uses can be allowed where in the

community and with what level of review. So the starting point is not that any activity is allowable anywhere, but rather that only certain activities will be allowed in certain areas. I'm not a legal scholar, so my understanding and explanation may be imprecise—it seems to me that zoning ordinances differ in this way from other types of laws that start from more of a premise that you are free to do whatever you want unless you see a law that prohibits it.

If you look at Section 19.201, for example, you see that it says, “A lot may be used and a structure or part of a structure constructed, reconstructed, altered, occupied, or used only as this title permits” (my emphasis). That section essentially says that if you don't see a permission for your proposed use in a particular zone, it means that use is not allowed there. Some of the specific zone sections also include short lists of specifically prohibited uses, but those lists are not intended to be exhaustive so much as to address particular uses that may generate common questions. For example, in the General Commercial (C-G) zone (Section 19.313), a wide range of retail activities and businesses are allowed ([http://www.gcode.us/codes/milwaukie/view.php?topic=19-19\\_300-19\\_313&frames=off](http://www.gcode.us/codes/milwaukie/view.php?topic=19-19_300-19_313&frames=off)). You can see that in Subsection 19.313.4, there is a specific prohibition on one type of retail or commercial activity: adult entertainment businesses. That may have been included because early questions often came up like, “Well, can I put a strip club in the C-G zone? It is a type of commercial activity, after all . . . ” But despite there being just that one prohibited activity listed, it is understood that there are other types of activities that are not allowed (i.e., prohibited) in the C-G zone, such as residential and industrial uses. You can't build a house or establish a factory in the C-G zone, and a specific prohibition on those uses is not necessary.

With that in mind, the specific “prohibition” language in the proposed NR code that is giving you fits is essentially an explicit statement of something that is understood throughout the zoning code—if a particular proposed activity or use is not identified in the various lists of exempt or approvable-with-review activities, then that activity is not allowed. Regarding the types of activities that you have expressed the strongest interest in, such as landscaping and tree removal, we have tried in the proposed code to clearly identify when (or at what intensity level) those activities are exempt or approvable with a particular type of review. Rather than changing the underlying “prohibition” philosophy of the code, I think it is probably more worthwhile to see if there are other particular activities that should be more specifically spelled out in the code to ensure that they do not unintentionally fall in to the de-facto prohibition category.

In a separate e-mail I will address a few of your specific questions about maintenance of the rip-rap along the streambank and dealing with that willow tree you mentioned in your earlier e-mail. And we are continuing to discuss some of the other particular activities you have expressed concern about, such as removing certain types of trees and whether there should be exemptions for minimal disturbances and new impervious surfaces on existing residential lots. It's helpful to have these specific examples to “test” the proposed code and see if it will indeed have the intended effect without unintended consequences.

Does this help address your concern?

-Brett Kelter  
Associate Planner  
City of Milwaukie

From: christopherburkett@comcast.net [mailto:christopherburkett@comcast.net]  
Sent: Friday, April 29, 2011 8:16 AM  
To: Kelter, Brett  
Subject: Burkett naive question

Brett,

As we've discussed, one of my major concerns is the "whatever activity is not expressly permitted is prohibited" clause in the proposed HCA/WQR ordinance.

During the discussion by the Planning Commissioners on April 26, Damian Hall, the City Attorney, stated that the prohibition clause was nothing out of the ordinary, that code ordinances were written with those types of prohibitions.

Perhaps I'm naive about this type of wording..... can you please show me the same blanket prohibitions in other Milwaukie Code Ordinances?

I am interested in knowing the answer to this question. If there are other references which are as restrictive, then the current clause fits in with current code methodology, (however much I find it repugnant). If not, then it begs the question of its necessity or appropriateness.

Thank you,  
Christopher Burkett

**PUBLIC RECORDS LAW DISCLOSURE:** This e-mail is a public record of the City of Milwaukie and is subject to public disclosure unless exempt from disclosure under Oregon Public Records law. This email is subject to the State Retention Schedule.

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

From: christopherburkett@comcast.net  
Sent: Sunday, May 01, 2011 8:28 PM  
To: Kelter, Brett  
Cc: Mangle, Katie; Hall, Damien  
Subject: Re: Prohibition philosophy of the code

Brett,

My primary objection to these regulations is the intrusion of government into the personal and private aspects of my life.

I am dismayed that during the last 45 years, at the same time as we were fighting to achieve equality and freedom for all people in this country, our property rights were being taken from us. We have gained the one and lost the other. Personal freedom is valued and protected, unless it pertains to living on your own land. Have we not learned that oppressing the basic rights of individuals can never benefit society?

We maintain our property in a cohesive, holistic way, with an understanding of the local micro ecosystems, working day-by-day to improve the health, vitality and beauty of every square inch. What crimes have we committed which now compels the state to claim ownership and micro-manage our home property? Just who are these people who come onto our land, shoving us aside and claiming perpetual sovereignty over our meticulously landscaped gardens? In the name of "shared community resource," they presume to know more about what's good for our gardens and landscape than we do.

It was hard listening to Mr. Hall state that planning departments can place severe restrictions and limitations on 90% of someone's property without it legally being considered a "taking." It was even harder listening to the eagerness with which many of the planning commissioners embraced that fact and were willing to run with it. Have we not learned that just because something is legal does not make it right nor morally justifiable?

We can protect the environment without crushing the hopes and dreams of property owners who are doing the right job. There must be a way for the regulations to give working room for people who are already behaving responsibly. Can you please help us find a way to allow this to happen?

We are simply asking to be left undisturbed on our property, so that we may live at peace with our neighbors and in harmony with nature.

Thank you,  
Christopher Burkett

----- Original Message -----

From: "Brett Kelter" <KelterB@ci.milwaukie.or.us>  
To: christopherburkett@comcast.net  
Cc: "Katie Mangle" <MangleK@ci.milwaukie.or.us>, "Damien Hall" <damien.hall@jordanschrader.com>  
Sent: Friday, April 29, 2011 2:00:14 PM  
Subject: RE: Prohibition philosophy of the code

I see your point, Christopher. I hadn't quite made the jump to a concern about the language extending beyond zoning or use types of activities, so let me check that out a bit more on this end before responding again. We will make sure the language is not restrictive in a civil liberties kind of way.

I still have in mind that your original concern seemed to be about which of the normal landscaping-type of activities the proposed code might be subjecting to review (like, where does laying down a paver pathway get categorized, or pruning an existing tree?), and on that front I think we want to be sure we're being clear enough and appropriate with the code's categorization of those various types of activities.

-Brett Kelter  
Associate Planner  
City of Milwaukie

From: Pat Russell <flanagan112@hotmail.com>  
Sent: Wednesday, May 04, 2011 9:37 AM  
To: Kelter, Brett  
Subject: RE: update on PC hearing for Natural Resource code amendments

Brett,

Many thanks for the updates and I am glad to see the PC taking time to think about some of these issues.

For me, the litmus test of Natural Resource policy is pretty simple, but focused upon one species, salmon.

If habitat in the Kellogg/Mt. Scott Watershed [within the city of Milwaukie] can be protected and enhanced so that its a sustainable habitat, then the city is contributing significantly to the continued population of the species in our Portland urban region. Sustainability is a complex concept. But all levels of government and business interests within the watershed must be sharing the same values and level of commitment. So far, in my view, this is not happening. The level of focus on economic development and jobs and road building has left salmon far behind--sort of sacrificing one's young in the short term and lack of vision and commitment for future generations.

Part of the problem, as we all know right now, is that salmon cannot even enter the seriously degraded watershed properly to migrate, spawn and its off-spring grow and return to sea. The city is making some progress on the restoration of the mouth and its estuary, but the time its taking is also taking a toll on the potential return of the fish to the watershed. Of course, that's all speculation because science doesn't have all the answers. But its clear that something is wrong for the lack of salmon.

Once salmon's access to the watershed is reasonably restored, then salmon will begin to tell us whether the watershed will be a place they will re-inhabit successfully. This may still be decades off. However, recent dam removals in the Pacific NW have revealed that salmon may be opportunists! Right now this place may, in my view, be rather hostile to salmon in many ways I won't get into in this discussion because we all know the difference between the watershed of 1840 and today.

News of periodic salmon sightings and recently-sighted lamprey in Happy Valley Park does give some hope for a better watershed. However, the proof will be in the actions of individuals and government and business on the ground, not the politics, regulations and promises.

So the question to all and myself: are we doing enough to encourage salmon to return to the Kellogg-Mt. Scott Watershed?

Many won't even concern themselves with the question. Others will question the right of government to regulate their ownership and activities on their land. Others will quietly try to do their part for the environment, for they realize that its not about us, humans, but maybe what we humans are doing to other species in our community, our state, our nation and world. The world will continue to evolve, even with a projected 10 BILLION people by the end of the century (2100). But if we humans survive, will it be a world we want to live in and pass on to our children?

So the debate is more about our future, not so much the fish. But as the fish goes as an indicator species, so goes our environment and survival. Some feel there is plenty out there. I am not so sure.



Milwaukie planners have professed their commitment to see salmon in the Kellogg-Mt. Scott watershed (maybe in their lifetime?). Is this proposed policy a myth or will it enable sustainable restoration of a rather depleted habitat for salmon? What other investments, both public and private, are being applied to the watershed's recovery? Is it enough?

My suggestion for a simple solution is to set the bar high and insist upon native habitat (i.e. landscape improvements) within 200 feet, minimum, of the recognized high water mark (up to 400 feet in sloped areas). This has been the suggested measure among scientists looking at the health of streams in the Pacific NW. Granted much of the research has been more focused upon forest lands and non-urban areas. However, if that's the limit for success in somewhat more natural areas, it certainly speaks for a major need in the urban area. We don't know what fish will accept, except for in-stream conditions, for the most part, based upon scientific observation over the decades.

I also advocate that the city shouldn't wait for other policy makers or just try to meet the minimum expected of an agency higher up. We all know of the serious compromise at the Metro level during the development and decision-making for Title 13. Title 13 doesn't cut it for salmon recovery as a political compromise. Ask the fish. Time will tell.

Finally, in 1840 most of Milwaukie was covered by forest, wetlands and water. We may not be able to get back to that condition. However, the city should prioritize the re-establishment of "forest" in our neighborhoods and support the planting of large-growing tree species that used to dominate the area, namely a lot of Douglas Fir, Cedar, White Oak and riparian trees such as Big Leaf Maple, Oregon Ash, Alder, etc. These trees need to be everywhere, not just in the designated riparian corridors.

As I look out my window on the edge of Milwaukie, I am hopeful that the clear-cutting of the mid to late 1800's has ended and the resulting second and third growth will be encouraged and protected to create a more natural, complex tree canopy that supports the biological community tied to salmon.

And while we are at it, how about the city buying a bunch of frozen salmon and have a planting party this fall in the upland areas to help replenish nutrients that have migrated out of the watershed over the last 150 years because of the lack of a sustained salmon population in the community.

Thank you for listening. Keep up the efforts.

Pat Russell  
15989 SE Bilquist Circle, Milwaukie, OR 97267 [unincorporated]  
Phone Messages (503) 656-9681  
Pat's CELL 503-317-6456  
Email: [flanagan112@hotmail.com](mailto:flanagan112@hotmail.com)

From: christopherburkett@comcast.net  
Sent: Wednesday, May 18, 2011 7:50 AM  
To: Kolver, Brett  
Subject: Explanatory chart

Brett,

I'm glad you made the explanatory chart for the proposed ordinance, although I would also like to see another chart showing the differences between Metro's Model Ordinances and Milwaukie's, with specific reasons given for the differences. There needs to be complete transparency to the process. How else will the Planning Commissioners be aware of the facts so that they can make informed decisions?

It would also be very good to have a chart showing the actual costs to homeowners for compliance, including the estimated range of costs which will be involved when hiring qualified professionals to provide necessary documentation. The specific burden to homeowners should be part of the discussion.

As you might imagine, I was disappointed that more changes were not proposed on your chart, especially not including the exemption for existing homesites nor eliminating the "all activities are prohibited" clause. But at least the chart should help clarify discussion and decision making.

Thank you,  
Christopher Burkett

From: christopherburkett@comcast.net  
Sent: Tuesday, May 31, 2011 4:14 AM  
To: Kelter, Brett  
Cc: Mangle, Katie  
Subject: "The Process"

Hello Brett,

Within the next couple of days you may receive some inquiries regarding issues I've raised in a letter to some property owners who will be affected by your new WQR/HCA ordinance. I kept my letter as factual as possible, given the limitations of only writing one page. While several items are still under discussion, it is quite uncertain if there will be any changes, so my letter had to be based upon how the ordinance is currently written.

Some of the Planning Commissioners have openly stated that anything I have to say, (no matter the merit of the argument nor the accuracy of the facts) will be completely disregarded, since they write me off as "The Lone Complainer." It remains to be seen if a showing of numerous upset homeowners will make any difference to the outcome.

The Milwaukie Planning Department has modified the Metro Model Ordinance to fit certain socialistic concepts of social, economic and environmental equality. Many of the Planning Commissioners appear willing to embrace that philosophy and whole-heartedly approve of your taking of private property.

The changes you have made to the Metro Ordinance were not in response to any citizen input nor scientific rationale. They were never even discussed with the Citizens Advisory Group. Despite repeated requests, I have never received any rational justification for your changes. Because you can, you will.

The Milwaukie lawyer advised the Planning Commissioners that they can take 90% of the value of people's personal home property without having to provide any compensation. He also told them that they don't need to base any decisions upon facts nor any testimony given by the public; it is legally OK for them to be flagrantly biased in legislative matters. Because they can, they will.

What more is there to discuss?

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Christopher Burkett