



October 9, 2019

Land Use File(s): NR-2018-005; WG-2018-001; LC-2018-001;
VR-2018-014; VR-2018-015

NOTICE OF DECISION

This is official notice of action taken by the Milwaukie Planning Commission on October 8, 2019.

Applicant(s): Gillis Properties, LLC

Location(s): 12205 – 2225 SE 19th Ave

Tax Lot(s): 11E35DD 03200 & 03300

Application Type(s): Natural Resources; Willamette Greenway Conditional Use; Lot Consolidation; Variances

Decision: Denied

Review Criteria: Milwaukie Municipal Code:

- MMC 12.16 Access Management
- MMC 12.24 Clear Vision at Intersections
- MMC 18.04 Flood Hazard Area

Milwaukie Land Division Ordinance:

- MMC 17.12 Application Procedures and Approval Criteria
- MMC 17.16 Application Requirements and Approval Criteria
- MMC 17.28 Design Standards

Milwaukie Zoning Ordinance:

- MMC 19.301 Low Density Residential Zones
- MMC 19.401 Willamette Greenway Zone
- MMC 19.402 Natural Resources
- MMC 19.504 Site Design Standards
- MMC 19.505 Building Design Standards
- MMC 19.600 Off-Street Parking and Loading
- MMC 19.700 Public Facility Improvements
- MMC 19.911 Variances
- MMC 19.1006 Type III Review

Neighborhood(s): Island Station

Appeal period closes: 5:00 p.m., October 24, 2019

This notice is issued in accordance with Milwaukie Municipal Code (MMC) Section 19.1006 Type III Review. The complete case file for this application is available for review by appointment between 8:00 a.m. and 5:00 p.m. on regular business days at the Planning Department, Johnson Creek Facility, 6101 SE Johnson Creek Blvd. Please contact Vera Koliass, Associate Planner, at 503-786-7653 or koliassv@milwaukieoregon.gov, if you wish to view this case file.

This decision may be appealed by 5:00 p.m. on October 24, 2019, which is 15 days from the date of this decision. (Note: Please arrive by 4:45 p.m. for appeal payment processing.) Only persons who submitted comments or made an appearance of record at the public hearing have standing to appeal the decision by filing a written appeal. An appeal of this decision would be heard by the Milwaukie City Council following the procedures of MMC Section 19.1010 Appeals. This decision will become final on the date above if no appeal is filed during the appeal period. Milwaukie Planning staff can provide information regarding forms, fees, and the appeal process at 503-786-7630 or planning@milwaukieoregon.gov.

Findings in Support of Denial

The Findings for this application are included as Exhibit 1.



Dennis Egner, FAICP
Planning Director

Exhibits

1. Findings in Support of Denial

cc: Matthew Gillis (Gillis Properties, LLC, 11650 SW 67th Ave #210, Tigard, OR 97223)
Michael C. Robinson (Schwabe, Williamson & Wyatt, 1211 SW 5th Ave, Suite 1900, Portland, OR 97204)
Planning Commission (via email)
Leila Aman, Community Development Director (via email)
Justin Gericke, City Attorney (via email)
Steve Adams, City Engineer (via email)
Engineering Development Review (via email)
Samantha Vandagriff, Building Official (via email)
Stephanie Marcinkiewicz, Inspector/Plans Examiner (via email)
Harmony Drake, Permit Technician (via email)
Tim Salyers, Code Compliance Coordinator (via email)
Mike Boumann and Izak Hamilton, CFD#1 (via email)

Sarah Hartung, Senior Biologist, ESA Associates (819 SE Morrison St, Suite 310, Portland, OR 97214)

NDA(s): Island Station (via email)

Interested Persons

Land Use File(s): NR-2018-005 (master)

**Recommended Findings for Denial
File #NR-2018-005, Elk Rock Estates**

Sections of the Milwaukie Municipal Code not addressed in these findings are found to be inapplicable to the decision on this application.

1. The applicant, Matthew Gillis of Gillis Properties LLC, has applied for approval of a natural resources cluster development at 12205-12225 SE 19th Ave. This site is in the R-5 Zone. The land use application file number is NR-2018-005.
2. The applicant seeks approval for a Natural Resources Cluster Development with a total of 12 single family detached homes (10 new and 2 existing homes to be remodeled) on a site located between 19th Ave and the Willamette slough adjacent to Elk Rock Park. The site includes 100-yr floodplain, mapped natural resource areas, and the Willamette Greenway. Variances are requested to a side yard setback, a front yard setback, building height for the homes not adjacent to 19th Ave, and to allow garage doors to exceed 50% of the building width.
3. The proposal is subject to the following provisions of the Milwaukie Municipal Code (MMC):
 - MMC 12.16 Access Management
 - MMC 12.24 Clear Vision at Intersections
 - MMC 18.04 Flood Hazard Area
 - MMC 19.301 Low Density Residential Zones
 - MMC 19.401 Willamette Greenway Zone
 - MMC 19.402 Natural Resources
 - MMC 19.504 Site Design Standards
 - MMC 19.505 Building Design Standards
 - MMC 19.600 Off-Street Parking and Loading
 - MMC 19.700 Public Facility Improvements
 - MMC 19.911 Variances
 - MMC 19.1006 Type III Review

Only the sections relevant to the decision for denial of the application are addressed below.

4. The application has been processed and public notice provided in accordance with MMC Section 19.1006 Type III Review. Public hearings were held on July 23, September 10, and October 8, 2019 as required by law.
5. MMC 18 Flood Hazard Regulations
 - a. MMC 18.04 provides standards intended to minimize public and private losses due to flood conditions in specific areas. The regulations established in MMC Title 18 do this in part by controlling the alteration of natural floodplains, stream channels, and natural protective barriers, which help accommodate or channel flood waters; controlling filling, grading, dredging, and other development that may increase flood

damage; and preventing or regulating the construction of flood barriers that will unnaturally divert flood waters or which may increase flood hazards in other areas. As per MMC Section 18.04.100, a development permit is required prior to any construction or development within the flood management area.

The project site is located in an area of “special flood hazard” – an area subject to a 1% or greater chance of flooding in a given year. The applicant states within the application materials that they acknowledge the inherent risks of building within the floodplain and will construct the project in accordance with current federal and local requirements for construction of homes within a floodplain through obtaining all relevant permits. The Planning Commission notes that evidence has not been provided demonstrating that all permits can be obtained.

The Planning Commission finds that MMC 18 applies to the proposed development.

(1) MMC 18.04.150 General Standards

MMC 18.04.150 establishes the required standards for development in a flood hazard area.

(a) Anchoring

- (i) All new construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure.
- (ii) All manufactured homes shall be anchored to resist flotation, collapse, or lateral movement to the structure, and shall be installed using methods and practices that minimize flood damage. Anchoring methods may include, but are not limited to, over-the-top and frame ties to ground anchors (reference FEMA’s “Manufactured Home Installation in Flood Hazard Areas” guidebook for additional techniques).

The applicant proposes that all new structures in this development will be securely anchored to properly designed foundations to prevent flotation, lateral movement or collapse in accordance with accepted engineering practices. The Planning Commission notes that it is unclear, based on a lack of definitive data related to the velocity of floodwater, what standards will apply for the foundation design.

Additionally, the applicant must meet these requirements for structures that are substantially improved.

(b) Construction Materials and Methods

- (i) All new construction and substantial improvements shall be constructed with materials and utilize equipment resistant to flood damage.

- (ii) All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.
- (iii) Electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities shall be designed and/or otherwise elevated or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

The applicant proposes that all new structures would be constructed with concrete foundations extending above the 100-year flood elevation with flood vents to allow for unrestricted flow of flood water. Electrical, heating, ventilation and plumbing systems would be elevated above flood elevation or designed to be watertight per local and federal design guidelines for “floodproof” construction. These standards must also apply to substantially improved structures.

The proposed development is in an area of likely high flood velocity. The applicant has insisted in communication with city staff on utilizing foundation designs that are discouraged by federal guidance. The applicant did not consider minimizing flood damages through utilizing pier, post, or piling foundations. The applicant is not proposing these foundation types, even though they are preferred by FEMA guidance and are approved alternatives for minimizing disturbances in natural resource areas (MMC 19.402.12.B.1.b.(2).(a)).

(c) Utilities

- (i) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system;
- (ii) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharge from the systems into floodwaters; and
- (iii) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

The applicant proposes that all new water supply and sanitary sewer systems would be designed to minimize or eliminate infiltration of floodwaters. The Planning Commission notes that there is an inherent risk associated with locating water supply and sanitary sewer systems in areas that are susceptible to flooding.

(d) Subdivision Proposals

- (i) All subdivision proposals shall be consistent with the need to minimize flood damage.

- (ii) All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize or eliminate flood damage.
- (iii) All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage.
- (iv) Base flood elevation data shall be provided for subdivision proposals and other proposed development which contain at least fifty (50) lots or five (5) acres (whichever is less).

No subdivision is proposed with this application. This application is for a 12-unit condominium development. This criterion does not apply.

(e) Review of Building Permits

Where elevation data are not available, applications for building permits shall be reviewed to assure that proposed construction will be reasonably safe from flooding. The test of reasonableness is a local judgment and includes use of historical data, high water marks, photographs of past flooding, etc., where available. Failure to elevate at least two (2) feet above grade in these zones may result in higher insurance rates.

Federally established flood elevation data is available for the site. The applicable Flood Insurance Rate Map (FIRM) is 41005C0017D. The flood elevation of the 1996 areas of inundation has been established by MMC 18.04.030.

(f) Balanced Cut and Fill

The displacement of flood storage area by the placement of fill or structures (including building foundations) shall conform to the following standards for balanced cut and fill:

- (i) The placement of fill or structures that displaces ten (10) cubic yards or less of flood storage area is exempt from the requirements of subsection 2 below.
- (ii) The placement of fill or structures that displaces more than ten (10) cubic yards of flood storage area shall comply with the following standards:
 - 1. No net fill in any floodplain is allowed.
 - 2. All fill placed in a floodplain shall be balanced with at least an equal amount of soil material removal.
 - 3. Any excavation below bankfull stage shall not count toward compensating for fill.
 - 4. Excavation to balance a fill shall be located on the same parcel as the fill unless it is not reasonable or practicable to do so. In such cases, the excavation may be located in the

same drainage basin and as close as possible to the fill site subject to the following:

- a. The proposed excavation and fill will not increase flood impacts for surrounding properties as determined through hydrologic and hydraulic analysis;
- b. The proposed excavation is authorized under applicable municipal code provisions including Section 19.402 Natural Resources; and
- c. Measures to ensure the continued protection and preservation of the excavated area for providing balanced cut and fill shall be approved by the City.

The applicant proposes each new building will have a flow through below grade foundation to act as floodplain storage. The applicant provided a letter that estimated the average cut for each new building will be 40 cubic yards. This assumed that each new building will have a stem wall foundation for the entire first floor (approximately 800 sqft). This is likely an overestimation. It would be more typical for the portion of the first floor that is a garage to have a slab on grade foundation, which would not provide flood storage or cut.

Even with the over estimation, it has not been established that enough cut is possible to offset the required fill for grading the private street to one foot above base flood elevation.

Additionally, it has not been sufficiently proven that the proposed foundation type is feasible to use in this floodplain zone. Crawlspace below grade on all sides are considered basements by the National Flood Insurance Program (NFIP) and must be raised one foot above the Base Flood Elevation (BFE).

5. Temporary fills permitted during construction shall be removed at the end of construction.

Any temporary fills needed for construction will need to be removed at the end of construction. No temporary fills have been proposed.

6. New culverts, stream crossings, and transportation projects shall be designed as balanced cut and fill projects or designed not to significantly raise the design flood

elevation. Such projects shall be designed to minimize the area of fill in flood management areas and to minimize erosive velocities. Stream crossings shall be as close to perpendicular to the stream as practicable. Bridges shall be used instead of culverts wherever practicable.

No new culverts, stream crossings or transportation projects are proposed. This criterion does not apply.

7. Excavation and fill required for the construction of detention facilities or structures, and other facilities, shall be designed to reduce or mitigate flood impacts and improve water quality. Levees shall not be used to create vacant buildable lands.

A stormwater facility has been proposed inside the area that is being excavated. It is intended to balance floodplain cut and fill. No levees have been proposed.

(g) Crawlspace Construction

Below-grade crawlspaces are allowed subject to the following standards as found in FEMA Technical Bulletin 1101, Crawlspace Construction for Buildings Located in Special Flood Hazard Areas.

- (i) The building must be designed and adequately anchored to resist flotation, collapse, and lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy. Hydrostatic loads and the effects of buoyancy can usually be addressed through the required openings stated in Section B of FEMA Technical Bulletin 1101. Because of hydrodynamic loads, crawlspace construction is not allowed in areas with flood velocities greater than five (5) feet per second unless the design is reviewed by a qualified design professional, such as a registered architect or professional engineer. Other types of foundations are recommended for these areas.

The proposed development is in FEMA zone AE where high flow velocities are likely. The development is intersected by mapped floodplain cross section E of Flood Insurance Study (FIS) number 41005CV001A. Table 5 of the study lists a mean flooding velocity of 5.9 ft/s at the floodway located at cross section E. The applicant proposes that all new structures would be constructed with flow through, enclosed foundations with crawl spaces or garages below the BFE. The applicant is required to have all enclosed areas below the BFE reviewed by a design professional for hydrodynamic loading. Design documentation has not been provided.

Additionally, the applicant must meet these requirements for structures that are substantially improved.

- (ii) The crawlspace is an enclosed area below the base flood elevation (BFE) and, as such, must have openings that equalize hydrostatic pressures by allowing the automatic entry and exit of floodwaters. The bottom of each flood vent opening can be no more than one (1) foot above the lowest adjacent exterior grade.

The applicant has proposed all crawlspaces and garages located below the BFE will have appropriately sized automatic flood vents properly installed. Hydrodynamic forces in addition to hydrostatic forces are expected in high velocity floodzones. Additional design review is required by a licensed professional to verify the feasibility of using crawlspaces in this floodzone. A crawlspace below grade on all sides is considered a basement by the NFIP. All basements must be raised one foot above BFE.

Additionally, the applicant must meet these requirements for structures that are substantially improved.

- (iii) Portions of the building below the BFE must be constructed with materials resistant to flood damage. This includes not only the foundation walls of the crawlspace used to elevate the building, but also any joists, insulation, or other materials that extend below the BFE. The recommended construction practice is to elevate the bottom of joists and all insulation above BFE.

The applicant proposes that all wood joists, insulation and other building components would be located above the BFE. The applicant proposes garages and building entry areas located below BFE will have concrete floors and walls.

Additionally, the applicant must meet these requirements for structures that are substantially improved.

The applicant's proposed design relies on the absence of hydrodynamic loads that are likely in this flood zone. The flood-hazard data on file with the city indicates hydrodynamic loads are likely.

- (iv) Any building utility systems within the crawlspace must be elevated above BFE or designed so that floodwaters cannot enter or accumulate within the system components during flood conditions. Ductwork, in particular, must either be placed above the BFE or sealed from floodwaters.

The applicant has proposed that all building utility systems within the crawlspaces of the proposed homes would be designed so that floodwaters cannot enter the systems. The applicant proposes all ductwork and HVAC units would be located above the BFE.

Additionally, the applicant must meet these requirements for structures that are substantially improved.

Utility systems not located above the BFE, such as water or wastewater lines, would be inundated during the 100-year flood. The development is proposed in a high velocity flood zone. These utilities would be susceptible to significant hydrodynamic forces.

- (v) The interior grade of a crawlspace below the BFE must not be more than two (2) feet below the lowest adjacent exterior grade.

The applicant proposes that all crawlspaces would be less than two feet below lowest adjacent grade to allow for drainage.

Additionally, the applicant must meet these requirements for structures that are substantially improved.

- (vi) The height of the below-grade crawlspace, measured from the interior grade of the crawlspace to the top of the crawlspace foundation wall, must not exceed four (4) feet at any point. The height limitation is the maximum allowable unsupported wall height according to the engineering analyses and building code requirements for flood hazard areas.

The applicant proposes that no crawlspace foundation walls would have more than 4 feet of unbalanced fill as proposed. The applicant has not established the feasibility of crawlspaces within this flood zone.

Additionally, the applicant must meet these requirements for structures that are substantially improved.

- (vii) There must be an adequate drainage system that removes floodwaters from the interior area of the crawlspace. The enclosed area should be drained within a reasonable time after a flood event. The type of drainage system will vary because of the site gradient and other drainage characteristics, such as soil types. Possible options include natural drainage through porous, well-drained soils and drainage systems such as perforated pipes, drainage tiles or gravel or crushed stone drainage by gravity, or mechanical means.

No specific drainage system has been proposed by the applicant.

- (viii) The velocity of floodwaters at the site should not exceed five (5) feet per second for any crawlspace. For velocities in excess of five (5) feet per second, other foundation types should be used.

The development is in flood zone AE where FEMA considers high velocity floods as likely. The FIS table for the nearest cross-section lists 5.9 ft/s as the mean flood velocity. The FIS must be revised in order to allow crawlspace

construction. The applicant has not demonstrated that proposed foundation types are feasible.

The Planning Commission finds that the standards in MMC 18.04.150 are not met.

(2) 18.04.160 Specific Standards

MMC 18.04.160 establishes specific required provisions and standards for development in special flood hazard and flood management areas where base flood elevation data has been provided.

(a) Residential Construction

New construction and substantial improvement of any residential structure shall have the lowest floor, including basement, elevated one (1) foot above base flood elevation.

The applicant proposes that all new structures would be constructed with concrete foundations extending above the 100-year flood elevation with finished floors at least one foot above the BFE. The applicant must also meet these requirements for substantial improvements of the existing buildings. The NFIP defines a "basement" as any area that is below-grade on all sides. The regulations do not allow basements to extend below the BFE.

(b) Miscellaneous Provisions

(i) For all new construction and substantial improvements, fully enclosed areas below the lowest floor that are subject to flooding are prohibited or shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria:

- (i) A minimum of two (2) openings having a total net area of not less than one (1) square inch for every square foot of enclosed area subject to flooding shall be provided.
- (ii) The bottom of all openings shall be no higher than one (1) foot above grade.
- (iii) Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

The applicant proposes that automatic flood vents would be installed at all areas below the BFE. These flood vents may not appropriately address the expected hydrodynamic loadings. The applicant is proposing extensive closed space in a high velocity flood zone.

Additionally, the applicant must meet these requirements for structures that are substantially improved.

(3) MMC 18.04.170 Floodways

MMC 18.04.107 establishes the standards and requirements for development in floodways, which are areas located within areas of special flood hazard. These standards are established since the floodway is an extremely hazardous area due to the velocity of floodwaters.

The applicant has proposed a dock in the floodway. This will require state authorization after city planning approval is obtained. The applicant will need a no rise certificate for work in the floodway.

As proposed, the Planning Commission finds that the development does not meet MMC 18.

6. MMC 19.400 Overlay Zones and Special Areas

a. MMC 19.402 Natural Resources

Note: ESA, the City's environmental consultant, reviewed the applicant's technical report and presented its assessment to the City in a summary memo, which informs this portion of the findings.

MMC 19.402 establishes regulations for designated natural resource areas. The standards and requirements of MMC 19.402 are an acknowledgment that many of the riparian, wildlife, and wetland resources in the community have been adversely impacted by development over time. The regulations are intended to minimize additional negative impacts and to restore and improve natural resources where possible.

(1) MMC Subsection 19.402.3 Applicability

MMC 19.402.3 establishes applicability of the Natural Resource (NR) regulations, including all properties containing Water Quality Resources (WQRs) and Habitat Conservation Areas (HCAs) as shown on the City's Natural Resource (NR) Administrative Map.

The project site is bisected by the Willamette Slough. The City's NR Administrative Map shows WQR and HCA designations on the majority of site and portions of these natural resource areas will be disturbed by the proposed development.

As presented in the applicant's submittal materials, the proposed development will temporarily or permanently disturb approximately 38,500 sq ft of WQR and/or HCA area. At that scale, the proposed activity is not listed as exempt according to the standards outlined in MMC 19.402.4.

The Planning Commission finds that the requirements of MMC 19.402 are applicable to the proposed activity.

(2) MMC Subsection 19.402.8 Activities Requiring Type III Review

MMC 19.402.8 establishes that certain activities within a designated WQR and/or HCA are subject to Type III review in accordance with MMC 19.1006. As per MMC 19.402.8.A.1, this includes activities allowed in the base zone that are not otherwise exempt or permitted as a Type I or II activity.

The level of disturbance proposed within the designated WQR and HCA areas on the subject property exceeds the levels allowed by Type I and II review, as provided in MMC 19.402.6 and 402.7, respectively. As such, the activity is subject to Type III review and the discretionary process established in MMC 19.402.12.

Further, the applicant has elected to propose a residential cluster development subject to MMC 19.402.14.C, a discretionary review process. This section establishes the standards for developments that are clustered so that land can be developed at allowed densities while avoiding or minimizing impacts to WQRs or HCAs. The intent of a residential cluster development is to encourage creative and flexible site design to protect environmentally sensitive areas and preserve open space and natural features. It also permits single-family attached dwellings, multifamily dwellings, and townhouses that might not otherwise be permitted in order to avoid or minimize impacts to mapped natural resources. 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. Because the applicant has chosen a discretionary pathway rather than one of the clear and objective pathways provided by the city, discretionary criteria were applied to this application for a residential cluster development.

The Planning Commission finds that the proposed activity is subject to Type III review.

(3) MMC Subsection 19.402.12 General Discretionary Review

MMC 19.402.12 establishes the discretionary review process for activities that substantially disturb designated natural resource areas.

(a) Impact Evaluation and Analysis

MMC Subsection 19.402.12.A requires an impact evaluation and alternatives analysis in order to determine compliance with the approval criteria for discretionary review and to evaluate alternatives to the proposed development. A technical report prepared by a qualified natural resource professional is required and should include the following components:

(i) Identification of ecological functions

The application concludes that the proposed development area is “degraded” based on the low cover of shrubs and trees and the high percentage of weeds in the groundcover. This characterization is assumed to meet the Class C “Poor” category per Table 19. 402.11.C. The application does not provide a detailed discussion of ecological functions of riparian habitat.

(ii) Inventory of vegetation

The applicant’s submittal materials include a technical report prepared by Environmental Technology Consultants, a private firm providing a range of environmental consulting services including natural resource assessment, wetland delineation, and environmental restoration. The technical report includes an impact evaluation and alternatives analysis, as well as an inventory of existing vegetation. The natural resource documentation concludes that the WQR of the slough is “degraded,” which appears accurate based on the lack of shrub and tree cover on-site. An assessment of the condition of the natural resources west of the slough was also provided.

(iii) Assessment of water quality impacts

Four sample plots were established by the applicant to characterize vegetation and investigate the presence of potential wetlands (no wetlands were found). ESA agrees with the determination that no wetlands conditions occur in the proposed mitigation area, although the area is presumed to experience flooding during high flows of the Willamette River.

(iv) Alternatives analysis

The application materials consider various alternatives to the proposed development: an alternative with 23 dwelling units, an alternative with 18 units, and two alternatives with 16 dwelling units. These alternatives would result in significantly more disturbance to the WQR and HCA. The applicant’s materials conclude that the proposed development is the most practicable alternative that results in the least impact to designated natural resources on the site. Retaining the two existing structures (buildings 10 and 12) at the east end of the project site also limits layout and roadway options.

<i>Alternative</i>	<i>WQR/HCA impacts (combined)</i>	<i>Wetland fill</i>	<i>Below OHWM of the Willamette River</i>
<i>Preferred – 12 units</i>	<i>38,500 ft²</i>	<i>0</i>	<i>Repair to existing dock, no new structure</i>
<i>#2 – 23 units</i>	<i>57,213 ft²</i>	<i>3,363 ft²</i>	<i>Proposed Dock plus possible additional fill</i>
<i>#3 – 16 units</i>	<i>>38,500 ft²: less impact than #2 but more than #4 and the preferred because the private drive would extend further south into the buffer of Wetland A.</i>	<i>0</i>	<i>Proposed Dock</i>
<i>#4 – 18 units</i>	<i>>38,500 ft²</i>	<i>0</i>	<i>Proposed Dock</i>

#5 – 16 units ¹	Unknown – includes units on the “island” west of the slough and an access bridge	unknown	Proposed Dock
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In addition to the alternatives presented above, ESA suggested that the applicant consider a proposal that clustered units closer to 19th Ave. The applicant dismissed the suggestion in an email stating that ESA’s suggestion was below minimum density and did not provide adequate parking. The ESA proposal was merely a suggested concept to allow the applicant to develop and consider an alternative that was a serious attempt at avoiding the HCA to the extent practicable and clustering development close to 19th Ave. The applicant did not generate such an alternative.

Based on the alternatives presented, it is unclear if the preferred design impacts the least amount of natural resources because the materials do not include an alternative, or alternatives, that emphasizes fewer homes, duplexes, or multifamily units clustered in a way that attempts to avoid impacts to the HCA. A set of duplexes or triplexes fronting on 19th Ave with parking tucked underneath via a common driveway in the Sparrow St ROW may offer a viable option for minimizing impacts to the HCA and the floodplain. An alternative, or alternatives, that emphasizes fewer homes, duplexes, or multifamily units outside of the HCA/WQR was not provided and should have been considered.

The Planning Commission finds that the applicant’s impact evaluation and alternatives analysis is not sufficient for purposes of reviewing the proposed activity against the approval criteria provided in MMC 19.402.12. This standard is not met.

- (v) Demonstration that no practicable alternative method or design exists that would have a lesser impact on the resource and that impacts are mitigated to the extent practicable

As identified above, the Planning Commission finds that the applicant’s impact evaluation and alternatives analysis is not sufficient for purposes of reviewing the proposed activity against the approval criteria provided in MMC 19.402.12. This standard is not met.

- (vi) Mitigation plan

The applicant’s submittal materials include a mitigation plan for permanent and temporary impacts to the WQR and HCA.

¹ Alternative #5 submitted as a site plan on July 12, 2019 to illustrate another development alternative. No mitigation, floodplain evaluation, etc. was provided for this alternative.

ESA has evaluated the proposed mitigation plan and concluded that it is sufficient. The applicant proposes to mitigate for natural resource impacts in the western portion of the parcels west of the slough. The overall concept is to plant a wide variety of native shrubs, trees and groundcover with the aim that suitable species will establish and others may not. As noted by ESA, the proposed mitigation site appears suitable but is anticipated to be challenging because of its position in the Willamette River floodplain, periodic flooding, the existing extent of weeds, and presence of shallow bedrock in some areas. Despite the potential challenges, several of the native shrubs and trees are anticipated to establish given adequate irrigation and maintenance.

The soils seem suitable on-site, although site preparation and weed control will need to be thorough and will require several site visits and treatments. The fact that there are Oregon ash and black cottonwood saplings/trees on-site means that there are suitable conditions for these native plants. Floodplains can support wooded areas and the species that generally thrive in floodplains include Oregon ash, black cottonwood, willows, and red alder. Oak trees can also handle winter flooding as long as the soils dry out in the summer. Some plant loss and mortality should be expected due to flooding and would be part of the 80% survival criterion.

As identified above, the Planning Commission finds that the applicant's impact evaluation and alternatives analysis is not sufficient for purposes of reviewing the proposed activity against the approval criteria provided in MMC 19.402.12. This standard is not met.

(b) Approval Criteria

MMC Subsection 19.402.12.B provides the approval criteria for discretionary review as follows:

Note: ESA reviewed the applicant's technical report and presented its assessment to the City in a summary memo, which informs this portion of the findings.

- (i) Avoid – The proposed activity avoids the intrusion of development into the WQR and/or HCA to the extent practicable, and has less detrimental impact to the natural resource areas than other practicable alternatives.

The Willamette Slough bisects the site and the 100-year floodplain covers nearly all of the site, resulting in significant areas of designated WQR and HCA. Site development that avoids any impacts to the WQR and HCA at permitted densities is not possible. The applicant has proposed a development of 12 single family homes and a private drive for access and concentrates impacts in the eastern portion of the site. However, the buildings and associated roadway and stormwater facilities would intrude into the WQR and HCA and disturb approximately 0.88 acres of natural resource area. As

noted in the discussion of alternatives noted in Finding 6-f(1) above, consideration must be given to an alternative that makes a serious attempt to avoid impacts to the HCA by clustering development near 19th Ave.

- (ii) Minimize – If the applicant demonstrates that there is no practicable alternative to avoid disturbance of the natural resource, then the proposed activity shall minimize detrimental impacts to the extent practicable.

As noted in the above discussion of avoiding impacts, there must be serious consideration given to an alternative that truly minimizes impacts. The preferred alternative impacts the entire site with development of the portion east of the slough and intensive site work to prepare the area west of the slough for mitigation plantings.

- (iii) Mitigate – If the applicant demonstrates that there is no practicable alternative that will avoid disturbance of the natural resource, then the proposed activity shall mitigate for adverse impacts to the resource area. The applicant shall present a mitigation plan that demonstrates compensation for detrimental impacts to ecological functions, with mitigation occurring on the site of the disturbance to the extent practicable, utilization of native plants, and a maintenance plan to ensure the success of plantings.

As noted in Finding 6-b(5), the applicant's submittal includes a mitigation plan for the WQR and HCA disturbance that will accompany the proposed development. The applicant has proposed to plant 385 native trees and 1,925 native shrubs and to remove nuisance plants and noxious material and debris. The proposed mitigation appears to meet the code requirements with significant management.

Although, the proposal may be able to meet code requirements for mitigation, the Planning Commission finds that the proposed development does not meet the approval criteria for discretionary review as established in MMC 19.402.12.B.

The Planning Commission finds that the proposed development does not meet the applicable discretionary review standards of MMC 19.402.12.

7. The application was referred to the following departments and agencies on February 28, 2019:
- Milwaukie Building Division
 - Milwaukie Engineering Department
 - Milwaukie Public Works Department
 - Clackamas County Fire District #1

- Island Station Neighborhood District Association Chairperson and Land Use Committee
- Oregon Marine Board
- Oregon Department of Fish and Wildlife
- Division of State Lands – Wetlands and Waterways
- Oregon Parks and Recreation Department
- North Clackamas Parks and Recreation District

In addition, notice of the public hearing was mailed to owners and residents of properties within 300 ft of the subject property on May 8, 2019.

The public hearing was opened on July 23, 2019 for the staff report, applicant's presentation, and public testimony; the Commission did not deliberate. The Commission closed the public hearing but left the written record open as follows:

1. until August 6 for anyone to submit argument and evidence;
2. until August 13 for anyone to rebut the first open record period submittals; and
3. until September 3 for applicant only to submit final written argument without new evidence.

Agency and NDA comments received are summarized as follows:

- **Chris Stevenson, Jurisdiction Coordinator, Oregon Department of State Lands:**
The Department concurs with the wetland and waterway boundaries as mapped for the site. The letter included information regarding permitting for fill or removal of material from the site.
- **Sarah Hartung, Senior Biologist, ESA (City's on-call Natural Resource consultant):**
ESA has provided three memos serving as peer review of the applicant's Natural Resource Review report.
- **Dalton Vodden, Associate Engineer, City of Milwaukie Engineering Department:**
Comments related to the proposal's compliance with MMC Title 12 Streets, Sidewalks, and Public Places; MMC Chapter 13.14 Stormwater Management; MMC Title 18 Flood Hazard Regulations; and MMC Chapter 19.700 Public Facility Improvements.
- **Izak Hamilton, Fire Inspector, CFD#1:** Standard comments related to fire access and water supply.
- **Island Station NDA Land Use Committee:** comments related to the impacts on views, traffic on 19th Ave, provide additional on-street parking in the development, and concern that the proposed development not be gated.

The following individuals submitted comments in opposition to the project:

- Christopher Roberts
- Kary King
- Jana Tracy
- Steve Gerken

- Joanne Tracy
- Mary Neustadter
- Theresa Silver
- Michele Bertaus-Zabaglio
- John Clinton
- Charlene Toman
- Tienneke Pavesic
- Lura Lee
- Carol Timper
- Serafine Lilien
- Beth Mills
- David Peters
- Victoria Mendez
- Marco Clark
- Rebecca Banyas
- Robert Murakami
- Howard Lanoff
- Kate Morrison
- Priscilla Elliott
- Gavin Bondy
- Sean Garmire
- Douglas Musgrove
- Mary Weick
- Beth Lorio
- Sharon Smith
- Carla Maria Buscaglia
- Mary Weick

The submitted comments can be reviewed here:

<https://www.milwaukieoregon.gov/planning/nr-2018-005>.