



# CITY OF MILWAUKIE

September 26, 2019

Land Use File(s): NR-2019-002

## NOTICE OF DECISION

This is official notice of action taken by the Milwaukie Planning Director on September 26, 2019.

<b>Applicant(s):</b>	Bobo Umemoto (B&G Excavation)
<b>Location(s):</b>	4684 SE Johnson Creek Blvd
<b>Tax Lot(s):</b>	1S2E30BB 00400
<b>Application Type(s):</b>	Natural Resource Review:
<b>Decision:</b>	Approved
<b>Review Criteria:</b>	Milwaukie Zoning Ordinance: <ul style="list-style-type: none"><li>• MMC Subsection 19.402.15 Boundary Verification and Map Administration</li><li>• MMC Section 19.1005 Type II Review</li></ul>
<b>Neighborhood(s):</b>	Lewelling

**Appeal period closes: 5:00 p.m., October 11, 2019**

This notice is issued in accordance with Milwaukie Municipal Code (MMC) Section 19.1005 Type II 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 Brett Kolver, Associate Planner, at 503-786-7657 or [kolverb@milwaukieoregon.gov](mailto:kolverb@milwaukieoregon.gov), if you wish to view this case file or visit the project webpage at [www.milwaukieoregon.gov/planning/nr-2019-002](http://www.milwaukieoregon.gov/planning/nr-2019-002).

**This decision may be appealed by 5:00 p.m. on October 11, 2019, which is 15 days from the date of this decision.**<sup>1</sup> (Note: Please arrive by 4:45 p.m. for appeal payment processing.) Any person who is adversely affected or aggrieved by this decision may appeal the decision by filing a written appeal. An appeal of this decision would be heard by the Milwaukie Planning Commission 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](mailto:planning@milwaukieoregon.gov).

<sup>1</sup> As per MMC Section 19.1010, if the 15<sup>th</sup> day falls on a weekend or legal holiday, the end of the appeal period shall be extended to the end of the next business day.

Per MMC Subsection 19.1001.7.E, this land use approval expires unless the development utilizes its approvals within 4 years of land use approval. Extensions can be granted per MMC Section 19.908.

**Findings in Support of Approval**

The Findings for this application are included as Exhibit 1.

**Conditions of Approval**

None

**Other requirements**

None

**Director's Declaration of Impartiality**

I certify that neither I nor any member of my immediate family has a material, personal, or financial relationship with the applicant. I further certify that no other relationship, bias, or ethical conflict exists which would have prevented me from evaluating the land use application solely on its merits and in accordance with the Milwaukie Municipal Code.

**Decision**

- Approved
- Approved with Conditions
- Denied



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Dennis Egner, FAICP  
Planning Director

**Exhibits**

1. Findings in Support of Approval
2. Revised NR maps for subject property (showing revised HCA boundary, with and without aerial photo)

cc: Bobo Umamoto, applicant (4241 SE 136<sup>th</sup> Ave, Portland, OR 97236)  
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)  
NDA(s): Lewelling (via email)  
Interested Persons  
Land Use File(s): NR-2019-002

**EXHIBIT 1**  
**Findings in Support of Approval**  
**File #NR-2019-002**  
**Habitat Conservation Area (HCA) Boundary Verification**  
**4684 SE Johnson Creek Blvd**

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

1. The applicant, Robert Umemoto of B&G Excavation, has applied to adjust the Habitat Conservation Area (HCA) boundary shown for the subject property on the City's Natural Resource Administrative map (NR map). The subject property is 4684 SE Johnson Creek Blvd and is zoned Manufacturing (M). The land use application file number is NR-2019-002.
2. On the current NR Admin Map, the entirety of the subject property is designated as HCA. The entire site also falls within the 100-year floodplain, according to the City's flood mapping data. Noting the history of development on the site, the lack of significant tree canopy on the northern half of the site, and the more nuanced HCA boundaries shown on adjacent site, the applicant has proposed a detailed verification of the HCA boundary, subject to the Type II process established in MMC Subsection 19.402.15.A.2.b.
3. The proposal is subject to the following provisions of the Milwaukie Municipal Code (MMC):
  - MMC Subsection 19.402.15 Boundary Verification and Map Administration (Natural Resources)
  - MMC Section 19.1005 Type II Review

The application has been processed and public notice provided in accordance with MMC Section 19.1005 Type II Review, with a decision by the Planning Director. The application was submitted on July 8, 2019. The application was deemed complete and public notice was sent to properties within 300 ft of the subject property on July 23, 2019, as required.

4. MMC Subsection 19.402.15 Boundary Verification and Map Administration

Within MMC Section 19.402, which establishes the City's regulation of natural resources, MMC 19.402.15 provides standards for verifying the boundaries of Water Quality Resources (WQRs) and HCAs and for administering the City's NR map.

For HCAs, the City's NR map is assumed to be accurate with respect to location unless challenged by the applicant. MMC Subsection 19.402.15.A.1 provides a mechanism for making minor corrections to resolve simple incongruities or acknowledge existing legal development. MMC Subsection 19.402.15.A.2.b outlines the process for a more detailed verification of HCA boundaries, which includes a comprehensive and site-specific re-evaluation of the factors that were initially considered in designating HCAs across the city.

MMC Subsection 19.402.15.A.2.b(1) establishes submittal requirements for detailed boundary verifications, including a report prepared by a qualified natural resource professional. The report should include a detailed property description with existing conditions, the latest available aerial photograph of the property, and information that addresses each of the approval criteria.

MMC Subsection 19.402.15.A.2.b(2) provides the criteria for approval of detailed HCA boundary verifications, which are based on a three-step process: (1) verifying the boundaries of inventoried riparian habitat and determining its classification, (2) determining the property's urban development value, and (3) cross-referencing the habitat class with urban development value. MMC Table 19.402.15.A.2.b(2)(c) establishes the method for cross-referencing habitat class with urban development value to identify HCAs.

*The applicant has also proposed a detailed verification of the mapped HCA on the subject property and has submitted all information required by MMC 19.402.15.A.2.b, including a technical report prepared by a biologist and professional wetland scientist through Pacific Habitat Services, an environmental consulting firm. The technical report provided an assessment of existing conditions, an aerial photograph of the site, an overlay of the current HCA designation from the City's NR map, and an assessment of forest canopy and other vegetation on the site.*

*The technical report walks through the 3 steps outlined as approval criteria for detailed HCA verifications, beginning with an inventory of the riparian habitat. The report locates the ordinary high water mark relative to Johnson Creek (also considered the bankful stage or top of bank) and confirms that the entire site is within the 100-year floodplain. The report notes the existence of forest canopy on the southern portion of the site near Johnson Creek; it concludes that the remaining herbaceous-dominated vegetation on the site does not qualify as "low structure vegetation or open soils" because it is less than one contiguous acre in size. The report uses MMC Table 19.402.15.A.2.b(2)(a)(iv) to verify that the area of forest canopy on the site near Johnson Creek qualifies as Class I riparian habitat.*

*The technical report uses the Metro Habitat Urban Development Value map to confirm that the subject property is within an area of low and medium urban development value. Using MMC Table 19.402.15.A.2.b(2)(c) to cross-reference the habitat value with urban development value, the report identifies the forest canopy area in the southern portion of the site near Johnson Creek as HCA (including the WQR, which is the area within 50 ft of the ordinary high water mark); no other areas on the site qualify as HCA. The report presents a revised map to show the verified HCA (and WQR) areas on the site, in accordance with the applicable procedures of MMC 19.402.15.A.2.b.*

*In response to a request from Planning Department staff to confirm the accuracy of the verified HCA boundary with respect to existing tree canopy, the applicant has provided updated maps (with and without aerial photo overlay) that improve the accuracy of the materials provided in the original technical report.*

*The Planning Director finds that the applicant's proposal to adjust the HCA boundary for the subject property is approvable as proposed (with the updated maps as noted above), as it is*

*consistent with the applicable procedures and standards established in MMC 19.402.15.A.2. The Planning Director finds that the as shown on the City's NR map shall be adjusted accordingly.*

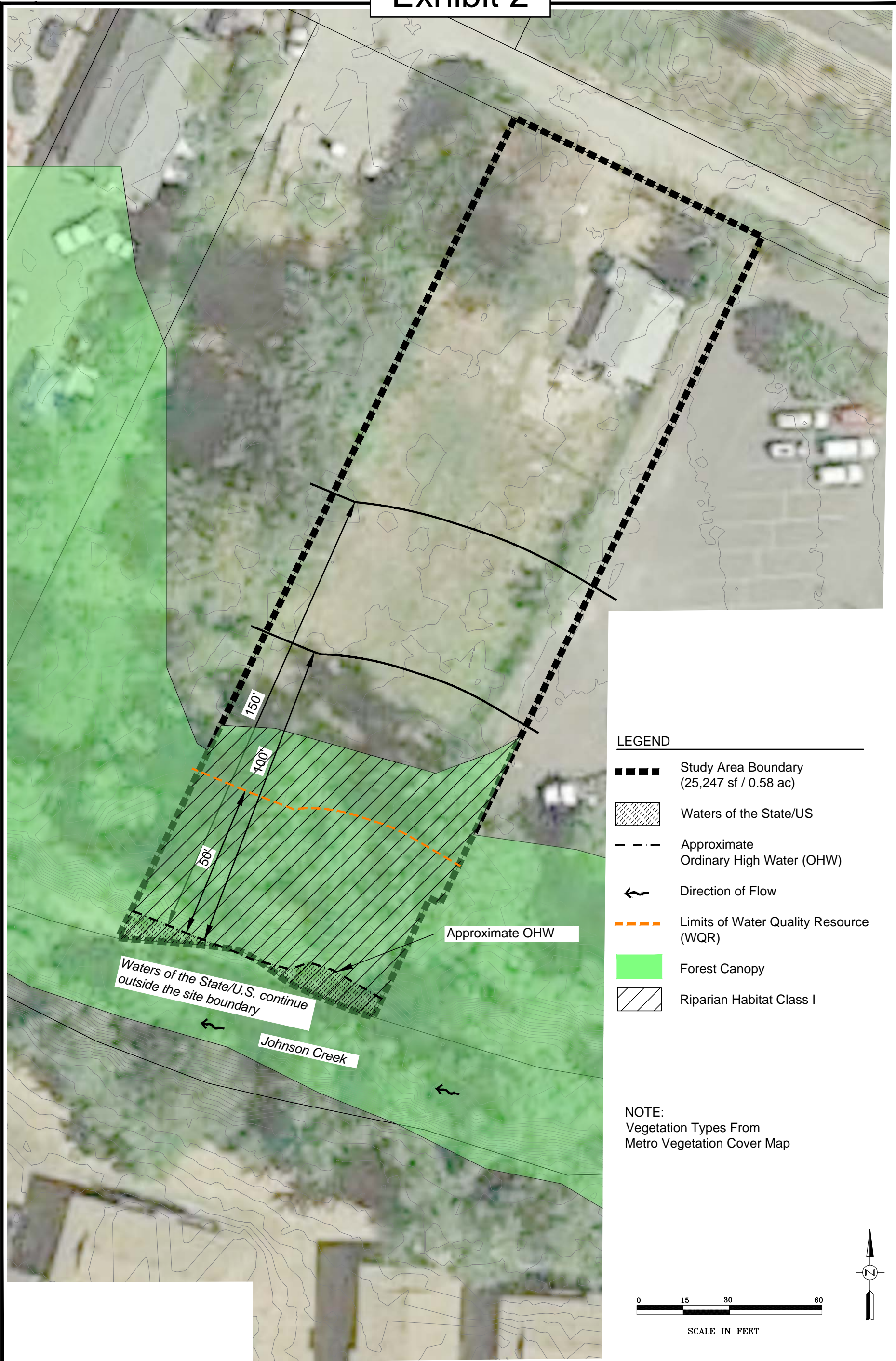
5. The application was referred on July 23, 2019, to the following departments and agencies:

- Milwaukie Building Department
- Milwaukie Engineering Department
- Milwaukie Police Department
- Milwaukie Public Works Department
- City Attorney
- Lewelling Neighborhood District Association (NDA), Chairperson and Land Use Committee (LUC)
- Clackamas Fire District #1 (CFD#1)
- Clackamas County Department of Transportation & Development (DTD)
- Metro
- TriMet
- NW Natural
- Oregon Department of Fish & Wildlife (ODFW)
- Oregon Department of State Lands (DSL)
- North Clackamas Parks & Recreation District (NCPRD)

In addition, public notice of the proposal was mailed to properties within 300 ft of the site on July 23, 2019. The following is a summary of the comments received:

- **Rob Bekuhrs, resident at Brookside Apartments, Brookside Dr:** Concern about the site's history of flooding and degradation of the riparian area by past development activity. Questions the appropriateness of the applicant's overarching proposal to use the site as a base for an excavation company (including storage of vehicles).

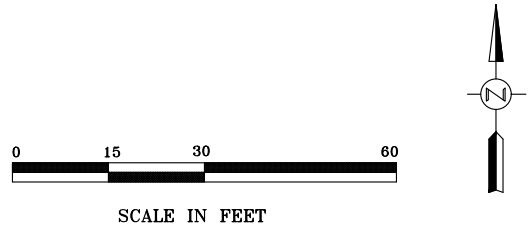
# Exhibit 2



**LEGEND**

- ■ ■ ■ Study Area Boundary (25,247 sf / 0.58 ac)
- ▨ Waters of the State/US
- · - · - Approximate Ordinary High Water (OHW)
- ← Direction of Flow
- - - Limits of Water Quality Resource (WQR)
- Forest Canopy
- ▧ Riparian Habitat Class I

NOTE:  
Vegetation Types From  
Metro Vegetation Cover Map



Vegetation Cover and Riparian Habitat Classification Map  
6484 SE Johnson Creek Boulevard - Milwaukie, Oregon

FIGURE  
**5**

9-6-2019

