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memorandum

date October 13, 2019

to Mary Heberling, AICP

from Sarah Hartung, Senior Biologist

subject Natural Resource Review for Railroad Ave Subdivision

This memorandum summarizes ESA's technical review of land use application materials relating to site natural resources regulated by Milwaukie's Municipal Code, including Habitat Conservation Areas (HCAs) and Water Quality Resources (WQRs). Responses to specific technical review tasks are identified in *italics*.

1. Conduct a site visit to assess existing conditions and generally corroborate the figures and narrative provided in the application submittal.

Response: ESA personnel visited the project site on October 9, 2019 to confirm the description of existing site conditions. Existing conditions are generally as described in the application. The wetland/stream delineation is accurate and has received concurrence from the Department of State Lands (DSL) on August 22, 2017; the concurrence is valid for five years. The unnamed stream is considered intermittent with a 15-foot buffer and is consistent with site observations. No water was in the stream channel during the field visit. The wetlands and stream do not extend off-site and no floodplains are mapped for the property. A vegetated corridor is present along the unnamed stream and consists of mature Oregon ash trees, black cottonwood, and Oregon white oak (off-site to the east) over a disturbed understory of ash and cottonwood saplings, Himalayan blackberry, and pasture grasses and weedy forbs.



Photo 1: Looking southeast at the vegetated corridor along the unnamed stream.

2. Review the Natural Resource materials prepared by the applicant. Assess and comment on the applicant's responses to the following requirements:
 - a. WQR & HCA Boundaries:
 - Confirm the applicant's assessment of the WQR as well as the WQR classification (i.e., Good, Marginal, or Poor).

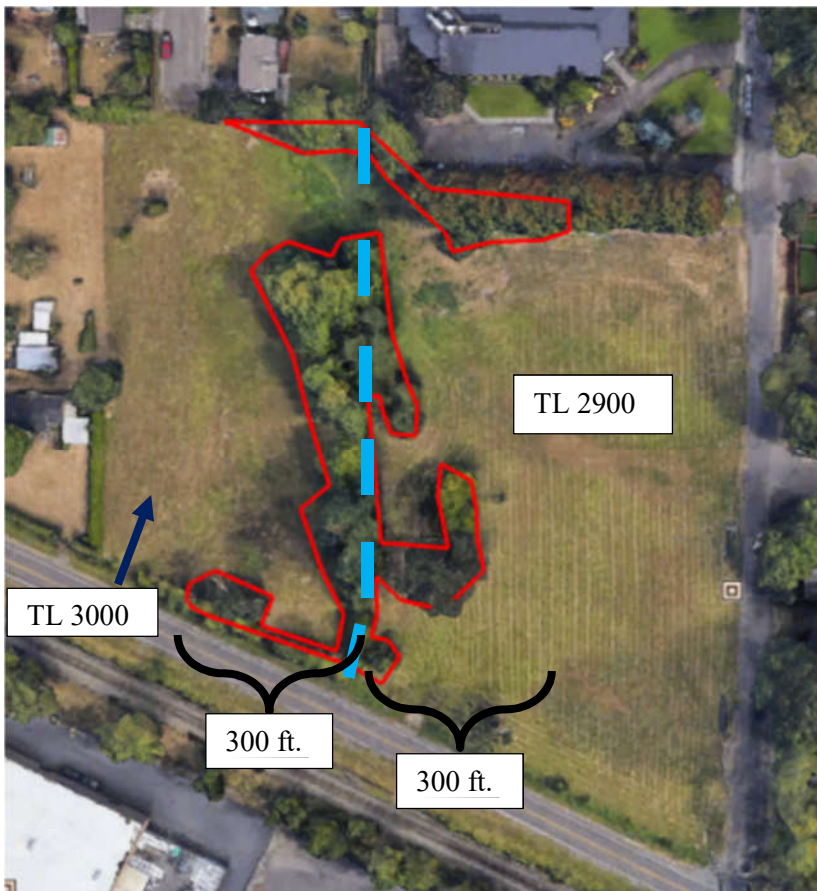
Response: The applicant's assessment of the types of protected features (i.e. primary or secondary) appears accurate and is consistent with Table 19.402.15. There did not appear to be an assessment of WQR condition in the application, but the WQR of the wetlands would be considered either "marginal" or "poor" because of low woody cover. The WQR condition adjacent to the unnamed stream would qualify as "good condition" because the multiple canopy layers (tree, shrub, and groundcover) have 80 percent cover and the tree cover is at least 50 percent.

- Review the applicant's detailed boundary verification for the HCA as additional information to why development in the currently mapped HCA should be allowed. It is not complete enough to be a boundary verification proposal nor do the applicants want to pursue this option anymore.

Response: The application inaccurately concludes that the property outside of the WQR does not meet the definition of an HCA and is incorrectly mapped. Chapter 19.402.13 directs the applicant to verify

WQR and HCA boundaries according to 19.402.15, which in turn states that, “with respect to HCA locations, the NR Administrative Map is assumed to be correct unless demonstrated otherwise.” The applicant has not demonstrated that the HCA should be mapped otherwise and the most logical course of action is for the applicant to acknowledge the HCA mapping, calculate HCA impacts, and mitigate on-site according to 19.402.11.B. General Standards for Required Mitigation.

The HCA mapping on the City’s Natural Resource Administrative Map is warranted because it meets the definition of shrub-scrub habitat which is “woody vegetation” that is part of a contiguous area 1 acre or larger of shrub or open or scattered forest canopy (less than 60% crown closure) located within 300 feet of the surface stream. The project site (tax lot 3000) is just under 2 acres and meets the definition of shrub-scrub habitat by itself as well as in conjunction with tax lot 2900. The shrub and tree cover is concentrated along the unnamed stream, with some of the woody cover along the northern property boundary and adjacent property. The image below shows the delineated intermittent stream approximated in the blue dashed line and areas of shrub and tree cover outlined in red.



Metro’s vegetative cover map identifies shrub/scrub (light green shading) on the site which is approximated by the red polygon below.



Landcover Type



- b. Inventory of existing vegetation, identification of the ecological functions of riparian habitat, and categorization of the existing condition of the WQR on the subject property?

Response: The inventory of existing vegetation looks reasonably accurate, although the application does not provide a detailed discussion of ecological functions of riparian habitat. The application discounts the NR mapping of shrub-scrub habitat and states that the low-level non-native grasses and forbs are without significant habitat functions and should not be mapped as HCA. The riparian corridor and associated shrub-scrub habitat provide foraging and nesting opportunities for songbirds and raptors (red-tailed hawk, sharp-shinned hawk). Birds observed on-site in the grasslands and in the riparian habitat during the field visit include spotted towhee, song sparrow, American robin, scrub-jay, and black-capped chickadee. The lone Oregon oak tree on-site and the oak tree on the neighboring property provide habitat for wildlife including woodpeckers, squirrels, jays, and birds of prey. The shrub-scrub habitat mapped for tax lot 3000 and 2900 is one of the largest patches of habitat mapped for the area.

- c. Analysis of alternatives to the proposed development, including a critique of the rationale behind choosing the alternative selected

Response: An analysis of alternatives to the proposed development was not provided, presumably because the applicant is contending that the study area should not be mapped as HCA.

- d. Mitigation plan that is appropriate for the proposed disturbance and that ensures the disturbed portions of the WQR and HCA will be restored to an equal or better condition, including appropriateness of the proposed mitigation planting list. Review ETC's alternatives report to remediation of the banks of the slough.

Response: A mitigation plan for WQR/HCA impacts was not provided. The vegetated corridor adjacent to the "fringe" wetlands has been disturbed from past land clearing and would benefit from native shrub and tree plantings.

3. Evaluate the proposed activity with respect to the three approval criteria established in MMC Subsection 19.402.12.B:
 - a. Avoid = The proposed activity will have less detrimental impact to the WQR and HCA than other practicable alternatives.
 - b. Minimize = Where impacts cannot be avoided, the proposed activity shall minimize detrimental impacts to the extent practicable.
 - c. Mitigate = The proposed mitigation plan demonstrates appropriate and adequate mitigation for adverse impacts to the WQR and HCA.

Response: The project for the most part avoids impacts to the wetlands, intermittent stream and regulated buffers which would be placed in separate tracts; although impacts to the stream due to SE. Alpha St. are not discussed or mitigated for in the application. SE. Alpha St. is shown crossing the intermittent stream in anticipation of future buildout of tax lot 2900. The application does not address impacts to the HCA outside of the WQR, which would impact an estimated 0.2 to 0.3 acres of HCA (rough estimate).

4. Evaluate the proposed project with respect to standards and criteria for subdivisions established in MMC 19.402.13.I. Subdivisions
 1. At least 90% of the property's HCA and 100% of the properties WQR shall be located in a separate tract

Response: This standard is not met. A majority of the wetlands and stream are placed in separate tracts, although SE. Alpha St. intrudes into the vegetated corridor in anticipation of future buildout of the adjacent tax lot. The location of the HCA according to the NR Administrative Map is not placed in a separate tract.

2. 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.

Response:

- 2a. Six R5 lots are proposed, although Lot 1 and a portion of Lot 2 would impact HCA. Lot 6 would require a variance to the front and rear yard setbacks in part because of avoidance of the wetland on the west side of the intermittent stream and associated vegetated corridor.*
- 2b. Road access does not appear to take into account future impacts to WQRs/HCA mapped on the adjacent tax lot 2900.*
- 2c. An alternatives analysis was not provided.*
- 2d. The HCA mapping outside of the 50-foot wetland buffer and 15-foot stream buffer (Tracts A and B) covers an estimated 20 to 25 percent of the remaining buildable acreage. This standard does not apply.*

5. Prepare a written report that summarizes your assessment.

Response: *The following deficiencies are recommended to be resolved with revised application materials prior to the issuance of a decision:*

- *The HCA mapping as shown in the NR Administrative Map is warranted, therefore the applicant should reassess impacts and provide mitigation on-site to offset the loss of HCA.*
- *Evaluate a minimum of 2 alternatives, including a clustered alternative, to the proposed project and quantify WQRs/HCA impacts for all alternatives.*
- *Consider roadway options that entirely avoid crossing the intermittent stream. The proposed layout of SE. Alpha St. would impact WQR/HCA on tax lot 2900, therefore transportation options for future buildout should also consider options for avoiding future natural resource impacts.*
- *For mitigation plans, clearly identify the type, quantity and condition of native plants proposed to off-set WQR and HCA impacts on-site.*