



May 27, 2020

Land Use File(s): S-2018-001, NR-2018-003, VR-2018-006, VR-2018-007

NOTICE OF DECISION

This is official notice of action taken by the Milwaukie Planning Commission on May 26, 2020.

Traducciones de este documento e información sobre este proyecto están disponibles en español. Para solicitar información o preguntar en español, favor de email espanol@milwaukieoregon.gov.

Applicant(s):	I&E Construction, Inc.
Appellant (if applicable)	N/A
Location(s):	Vacant Lot on SE Railroad Ave.
Tax Lot(s):	12E31DD03000
Application Type(s):	Subdivision, Natural Resource Review, Variance
Decision:	Approved with Conditions
Review Criteria:	Milwaukie Municipal Code: <ul style="list-style-type: none">• MMC 12 Streets, Sidewalks, and Public Places• MMC 17.12 Application Procedure and Approval Criteria - Land Division• MMC 17.20 Preliminary Plat• MMC 17.28 Design Standards• MMC 17.32 Improvements• MMC 19.301 Low Density Residential Zones• MMC 19.402 Natural Resources NR• MMC 19.500 Supplementary Development Regulations• MMC 19.600 Off-street Parking• MMC 19.700 Public Facility Improvements• MMC 19.911 Variances• MMC 19.1200 Solar Access Protection• MMC 19.1006 Type III Review
Neighborhood(s):	Linwood

Appeal period closes: 5:00 p.m., June 10, 2020

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 Denny Egner, Planning Director, at 503-786-7654 or egnerd@milwaukieoregon.gov, if you wish to view this case file.

This decision may be appealed by 5:00 p.m. on June 10, 2020, which is 15 days from the date of this decision.¹ (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.

Per MMC Subsection 19.1001.7.E, this land use approval expires unless the applicant has: (1) obtained and paid for all necessary development permits and started construction within 2 years of land use approval, and (2) passed final inspection and/or obtained a certificate of occupancy 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

The Conditions of Approval for this application are included in Exhibit 2.



Dennis Egner, FAICP
Planning Director

Exhibits

1. Findings in Support of Approval
2. Conditions of Approval

cc: I&E Construction, Inc. (9550 SE Clackamas Rd. Clackamas, OR 97015)

¹ As per MMC Section 19.1010, if the 15th 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.

Jeff Bolton, Multi-Tech Engineering (1155 SE 13th St. Salem, OR 97302
and via email: jbolton@mtengineering.net
Planning Commission (via email)
Leila Aman, Community Development Director (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)
Mike Boumann and Matt Amos, CFD#1 (via email)
Tim Salyers, Code Enforcement Coordinator (via email) (variances only)
NDA(s): Linwood (via email)
Interested Persons
Land Use File(s): S-2018-001, NR-2018-003, VR-2018-006, VR-2018-007

EXHIBIT 1: Findings of Approval
File #S-2018-001; NR-2018-003, VR-2018-006, VR-2018-007 – Railroad Ave
Subdivision
(TL 12E31DD03000, Vacant Lot on SE Railroad Ave)

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, I&E Construction, Inc, has applied for approval to create a six-lot subdivision at tax lot 12E31DD03000, a vacant lot on SE Railroad Ave. The site is zoned Low Density Residential R-5. The land use application master file number is S-2018-001, with the accompanying file numbers NR-2018-003, VR-2018-006, VR-2018-007. For this site, the applicant previously submitted an application for a zone change from R-7 to R-5 and a Comprehensive Plan Designation change from Low Density to Moderate Density, under Land Use File #ZA-2018-002 and CPA-2018-002. The City Council approved the zone and Comprehensive Plan Designation change at a public hearing on March 7, 2019.
2. The subdivision application was submitted on May 17, 2018. It was initially deemed incomplete by City staff on June 7, 2018. The applicant revised and resubmitted the application and the City deemed the application complete as of August 12, 2019. The applicant also provided an extension to August 12, 2020. Further revisions were submitted to the City in September 2019, November 2019, February 2020, March 2020, April 2020, and May 2020.
3. The proposal is subject to the following provisions of the Milwaukie Municipal Code (MMC):
 - MMC 12 Streets, Sidewalks, and Public Places
 - MMC 17.12 Application Procedure and Approval Criteria - Land Division
 - MMC 17.20 Preliminary Plat
 - MMC 17.28 Design Standards
 - MMC 17.32 Improvements
 - MMC 19.301 Low Density Residential Zones
 - MMC 19.402 Natural Resources NR
 - MMC 19.500 Supplementary Development Regulations
 - MMC 19.600 Off-street Parking
 - MMC 19.700 Public Facility Improvements
 - MMC 19.911 Variances
 - MMC 19.1200 Solar Access Protection
 - MMC 19.1006 Type III Review

The application has been processed and public notice provided in accordance with MMC Section 19.1006 Type III Review. A public hearing was opened on September 24, 2019, as required by law. Subsequent hearings were held on October 22, 2019; December 10, 2019; January 14, 2020; February 25, 2020; and April 28, 2020.
4. MMC 12.08 Street & Sidewalk Excavations, Construction, and Repair

MMC 12.08 applies to all construction that is completed in the right-of-way that is eventually dedicated to the City.

The applicant's public improvement process will follow MMC 12.08.020. This standard is met.

5. MMC 12.16 Access Management

MMC Chapter 12.16.040 establishes standards for access (driveway) requirements.

A. MMC 12.16.040.A requires that all properties be provided street access with the use of an accessway.

The proposed development, as conditioned, is to be constructed in compliance with the City of Milwaukie Public Works Standards, is consistent with MMC 12.16.040A.

B. MMC 12.16.040.B provides requirements for access spacing onto arterial and collector streets.

The proposed development, as conditioned, is consistent with MMC 12.16.040B.

C. MMC 12.16.040.C provides requirements for accessway locations.

(1) Double Frontage

The proposed development is consistent with MMC 12.16.040.C.1 as lots 3 and 4 take access from 56th Ave instead of Railroad Ave.

(2) Limiting Driveway Access from Arterials and Collectors

No direct driveway access is being proposed on Railroad Ave, which is a collector. The proposed development is consistent with 12.040.C.2.

(3) Distance from Property Line

Plans currently show the driveways for most lots located 7 feet from the side property line, where 7.5 feet is required. This will be addressed under site plan review. As conditioned, proposed driveways will conform to 12.16.040.C.3.

(4) Distance from Intersection

Plans currently show the driveway for lot 3 within the required 45-foot spacing from the nearest intersection. Proposed lot layout allows for the siting of houses that will facilitate the required 45-foot accessway spacing from intersections. This spacing requirement will be captured in site plan review.

As conditioned, the proposed development will conform to MMC 12.16.040.C.4.a.

Driveways in the proposed development, as conditioned, are consistent with MMC 12.16.040.C.3.

D. MMC 12.16.040.D provides requirements for the number of accessway locations.

The applicant proposes the minimum number of accessway locations. The proposed development is consistent with the standards.

- E. MMC 12.16.040.E and MMC 12.16.040.F provide requirements for ADA standards and width for accessways.

The proposed development, as conditioned to be constructed in compliance with the City of Milwaukie Public Works Standards, will conform to MMC 12.16.040.E and F.

6. MMC 12.24 Clear Vision at Intersections

MMC 12.24.040 provides requirements for clear vision.

The proposed driveways, accessways, and intersections in the proposed development, as conditioned, will conform to the standards in MMC 12.24.030.

7. MMC 19.301 Low Density Residential Zones

MMC 19.301 establishes the development standards that are applicable to this site. The applicable development standards are listed below in Table 19.

Table 19.301.2 Residential Zone R-5 Development Standards			
Standard	Required	Proposed	Staff Comment
1. Minimum Lot Size	5,000 sq ft	<p>Lots 1-3 sizes are between 4,372 sq ft to 4,474 sq ft</p> <p>Lots 4-6 sizes are between 5,061 sq ft to 6,164 sq ft</p>	<p>A variance is requested for Lots 1, 2, & 3. See Finding 12.</p> <p>Lots 4, 5, & 6 comply with the standard.</p>
2. Minimum Lot Width	50 ft	Lot widths are between 50 and 111 ft (approximate)	Complies with the standard.
3. Minimum Lot Depth	80 ft	Lot depths are between 55 and 110 ft (approximate)	<p>Variations are requested for Lots 1-5. See Finding 12.</p> <p>Lot 6 complies with the standard.</p>

4. Minimum Setbacks	20 ft (front, rear) 5 ft (side), 15 ft (street side yard)	Lots 4-6 meet the standards. Lots 1-3 have front and rear yard setbacks of 10 ft	Variance requested for Lots 1-3. See Finding 12. Lots 4-6 meet the standards.
5. Frontage	35 ft	Lot street frontages range from approximately 50 ft to 154 ft	Complies with the standard.
6. Density	7.0-8.7 units/net acre	Parcel size is 0.75 acres. Minimum density is 5 units and maximum is 6 units. The applicant proposes 6 dwelling units.	Complies with the standard.

As Conditioned, the Planning Commission finds that the proposal complies with the applicable standards of the R-5 zone.

8. MMC 19.402.13 Natural Resources NR – Land Division and Property Line Adjustments

MMC 19.402.13 establishes standards for all forms of land division with natural resource overlay zones on the property.

The subject property includes both Habitat Conservation Area (HCA) and Water Quality Resource (WQR) areas and the standards in MMC 19.402.13 are applicable.

MMC 19.402.13.A Boundary Verification

The applicant shall verify the boundaries of the WQR and HCA on the property according to Subsection 19.402.15.

Verification of the boundaries according to Subsection 19.402.15 are listed below.

(1) MMC 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.

According to 19.402.13.A, the applicant shall also verify the HCA boundaries in accordance with 19.402.15.A.2.b.

The applicant provided a Wetland Delineation Report and vegetation assessment to determine verification for WQR and HCA on the site. The findings are listed below.

a) MMC 19.402.15.A.2 Type II Boundary Verification

Corrections to mapped WQRs and/or detailed verification of mapped HCAs may be proposed according to the following procedures.

i. Corrections to WQRs

a. Submittal Requirements

The applicant shall submit a wetland delineation report, prepared by a professional wetland specialist demonstrating the location of any wetlands on the site. The delineation report will be accepted only after approval by Department of State Lands (DSL).

The applicant submitted a wetland delineation report completed by a wetland specialist at Schott and Associate. Their assessment determined two types of water features and a drainage that parallels the eastern property boundary and fringe wetland adjacent to the drainage at the northern end of the property. The report was submitted to DSL and approved on August 22, 2017.

b. Approval Criteria

The City shall update the NR Administrative Map if the wetland or hydrology report submitted demonstrates that there was an error in the original mapping.

The wetland delineation report conducted by Schott and Associates determined that there is an error in the City's original mapping. The wetland and drainage ditch were flagged, surveyed, and mapped based on methods accepted by DSL and the Corps. The flagged surveyed drainage ditch was found to be entirely onsite within the eastern property and not extending offsite to the east as shown on the NR Administrative Map.

A wetland delineation and site assessment of the property was conducted by Schott and Associates in September 2016. Based on soil, vegetation, and hydrology data taken in the field, two fringe palustrine emergent (PEM) wetlands totaling 3,393 sq ft were delineated onsite, surveyed and mapped. The property is nearly flat and slopes adjacent to the wetland are less than 25 %. Per Table 19.402.15 Determination of WQR Locations, the wetland is a primary protected water feature and the required vegetated corridor applied to the outer boundary of the wetland is 50 feet in width.

Just inside the east property boundary is a ditched drainage that enters from the residential property to the north. The drainage follows the eastern property boundary and flows south across the property entering a road ditch at the southern extent of the property which parallels Railroad Ave. The drainage flows through a culvert. A drainage engineer at Multi/Tech Engineering calculated the stream as draining 64 acres based upon the City of Milwaukie Stormwater Master Plan documentation. The drainage meets the definition of intermittent, a secondary protected water feature, with a 15-foot vegetated corridor width applied to the outer boundaries of the water feature (both banks of a watercourse).

Per the NR Administrative Map, the drainage (depicted as the vegetated corridor) is shown onsite west of and parallel to the east property boundary of tax lot 3000 in the approximate northern 1/3 of the property. The drainage then shows angling east onto the adjacent tax lot to the east, then directing south within that tax lot to the southern property boundary. From the delineation report conducted, the current depiction of the vegetated corridors (as described above) is incorrect. The onsite surveyed delineation shows the drainage to be entirely within tax lot 3000 property boundaries.

The Planning Commission finds that the approval criteria is met to correct the WQR on the site.

- ii. Detailed Verification of HCAs
 - a. Submittal Requirements

The applicant shall submit a report prepared and signed by a knowledgeable and qualified natural resource professional. The report shall also include requirements established in MMC 19.402.15.A.2.b.1.

The applicant submitted a report completed by a wetland specialist at Schott and Associate. A description of the type of vegetation in the HCA and its relation to the water features on the site were included in the report. The report included pictures and aerials of the vegetation and the topography of the site.

This requirement is met.

b. Approval Criteria

A boundary verification request submitted shall be evaluated under the following 3-step process:

i. Verify boundaries of inventoried riparian habitat

The applicant shall locate the top bank of all streams, rivers, and open waters. They shall also locate all flood areas within 100 ft of the property and all wetlands within 150 ft of the property.

On the NR map a drainage was mapped as partially on tax lot 3000 (subject property). As described previously, a drainage and two fringe wetlands were located, delineated, and surveyed on the subject property consistent with methods currently accepted by DSL and the Corps. The drainage was located onsite along the entire eastern property boundary of tax lot 3000. The two fringe wetlands were on each side of the drainage at the northern extent of the property. No additional wetlands or waters were identified within 150 or 200 ft of the property. No flood areas were found within 100 ft of the property.

1. Identify the vegetative cover status of all areas on the property that are within 200 ft of the top of bank of streams, rivers, open water; 150 ft of wetlands; and 100 ft of flood areas.

On the 2005 Metro Vegetative Cover Map, it shows the area west of the drainage is mapped scrub/shrub. The applicant believes an error was made with this designation. According to the applicant, a 2005 Google Earth Aerial, upon which the Vegetated Cover status was based, shows a majority of the site to be open field with narrow tree canopy along the eastern property boundary, some trees and a hedge line along the southern property boundary with a couple of lone trees at the northern end of the property.

Onsite assessment confirmed the site is predominately an open grass field dominated by spike bentgrass. Foliage along the drainage consists of an overstory of Oregon ash and cottonwood with English hawthorn, Himalayan blackberry and various grasses in the understory. Along the southern property boundary was a scattered row of English hawthorn. Near the southern boundary was a lone oak. The southwestern property boundary consisted of a laurel hedge.

According to Table 19.402.15.A.2.b(2)(a)(iv), areas 0-50 ft of Surface Stream features with low structure vegetation or open soils are designated as Class I Riparian areas. Areas 51-100 ft of Surface Streams with low structure vegetation or open soils are designated as Class II Riparian areas.

The area, 0-50 ft and 51-100 ft from the drainage meets the definition of "Low Structure Vegetation or Open Soils" as the area is mainly open field with a few trees bordering the drainage.

Beyond 50 ft on either side of the drainage is entirely open grass field. Per the table listed

above, 50-100 ft from the wetland also meets the same definition but is designated as Class II Riparian area.

2. Determine whether the degree that the land slopes upward from all streams, rivers, and open water within 200 ft of the property is greater than or less than 25%, using the methodology outlined in Table 19.402.15.

The topography is flat to gently south sloping as shown on the surveyed existing conditions map. Slopes adjacent to the wetlands and drainages are flat and less than 25%.

3. 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).

As mentioned previously, the areas 0-50 ft of the surface stream are “Low Structure Vegetation or Open Soils” and considered Class I Riparian area.

The areas 51-100 ft from the surface stream are also “Low Structure Vegetation or Open Soils” and considered Class II Riparian area.

The area 0-100 ft from the wetlands are also “Low Structure Vegetation or Open Soils” and considered Class II Riparian area.

There are no flood areas on the site.

- ii. Determine the Property’s Urban Development Value

Use the Metro 2040 Design Type designation map to find if the property has changed from one with a lower urban development value to one with a higher urban development value.

According to Metro 2040 Growth Concept Map, the property is listed as "Neighborhood." It is not in the "Town Center" designation. The urban development value has not changed.

iii. Cross-Reference Habitat Class with Urban Development Value

City verification of the locations of HCAs shall be consistent table 19.402.15.A.2.b(2)(c).

According to the table, all Class I and Class II Riparian areas are HCA. All of the areas within 100 ft of the surface stream and wetlands shall be designated HCA. The applicant shows on site plans the new HCA boundary that meet this standard.

The Planning Commission finds that the approval criteria for a HCA boundary verification have been met.

The Planning Commission finds that the approval criteria for the correction to the WQR boundary and the detailed HCA boundary verification have been met.

F. MMC 19.402.13.B Construction Management Plans

In accordance with Subsection 19.402.9, a construction management plan is required for applications for land division that will require physical site improvements (e.g., grading and/or construction of structures, streets, or utilities) within, or within 100 ft of, a WQR or HCA.

The applicant will submit a construction management plan per MMC 19.402.9 with the final plat application.

As conditioned, the Planning Commission finds that this standard is met.

G. MMC 19.402.13.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.

The proposed subdivision will be required to provide physical site improvements within the WQR and HCA. The relevant standards from 19.402.11 and 19.402.12 are applied below.

(1) MMC 19.402.11 Development Standards

(a) MMC 19.402.11.A Protection of Natural Resources During Site Development

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

- (i) Work areas shall be marked to reduce potential damage to the WQR and HCA.

The applicant will adhere to this standard.

- (ii) Trees in WQRs and HCAs shall not be used as anchors for stabilizing construction equipment.

The applicant will adhere to this standard.

- (iii) Native soils disturbed during development shall be conserved on the property.

The applicant will adhere to this standard.

- (iv) 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.

The applicant will provide an erosion and sediment control plan in compliance with the City's Public Work Standards.

- (v) 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.

The applicant will adhere to this standard.

- (vi) Stormwater flows that result from proposed development within and to natural drainage courses shall not exceed predevelopment flows.

The applicant will adhere to this standard.

- (vii) Prior to construction, the WQR and 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.

The applicant will adhere to this standard.

- (viii) The construction phase of the development shall be done in such a manner as to safeguard the resource portions of the site that have not been approved for development.

The applicant will adhere to this standard.

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

The applicant will adhere to this standard.

- (x) All work on the property shall conform to a construction management plan prepared according to Subsection 19.402.9.

The applicant will submit a construction management plan per MMC 19.402.9 with the application of the final plat.

As conditioned, the Planning Commission finds that these standards are met.

(b) MMC 19.402.11.B General Standards for Required Mitigation

Where mitigation is required by MMC 19.402 for disturbance to WQRs and/or HCAs, general standards apply for temporary disturbances, required plants, plant size, plant spacing, plant diversity, location of mitigation area, invasive vegetation, ground cover, tree and shrub survival, and light impacts.

The applicant will adhere to the general standards of MMC 19.402.11.B for any mitigation within the WQR and HCA.

As conditioned, the Planning Commission finds that these standards are met.

(c) MMC 19.402.12 General Discretionary Review

(i) MMC 19.402.12.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. 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 watershed 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.

Identification of the ecological functions of riparian habitat was noted in the Wetland Delineation Report and Natural Resource report by Scotts and Associates. This standard is met.

2. An inventory of vegetation, sufficient to categorize the existing condition of the WQR per Table 19.402.11.C, including the percentage of ground and canopy coverage materials within the WQR.

An inventory of vegetation was provided via the Wetland Delineation Report and Natural Resource report. Foliage along the WQR consists of an overstory of Oregon Ash and Cottonwood with English Hawthorne, Himalayan blackberry and various grasses in the understory.

100% of the WQR has ground coverage and about 52% of it is tree cover. This qualifies the existing conditions of the WQR as Class A "Good" per Table 19.402.11.C.

3. An assessment of the water quality impacts related to the development, including sediments, temperatures and nutrients, sediment control, and temperature control, or any other condition with the potential to cause the protected water feature to be listed on DEQ's 303(d) list.

The Wetland Delineation Report assessed the water quality of all wetland and non-wetland waters. There was no indicated of conditions 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, listing measures that will be taken to avoid and/or minimize adverse impacts to designated natural resources, and demonstrating that:
 - a. No practicable alternatives to the requested development exist that will not disturb the WQR or HCA.

A list of six alternatives are provided below showing why Alternative #3 is the preferred alternative and there is no practicable alternative that would not disturb the WQR or HCA.

Alternative #1: Roadway Crossing to the Vacant Lot to the East

The subject property has large developable lots to the east and west. The lot to the east is vacant and is 125,312 sq ft in size. The lot to the west has a single-family home on a 29,832 sq ft lot. Per MMC 17.12.040.A streets must be laid out to conform to streets on adjoining property and MMC 19.708.E.3 requires that streets be extended to the property boundaries to give access to or allow for future development of adjoining properties. Alternative #1 includes an extension of 56th Ave through the site to Railroad Ave. The alternative also provides access to the property to the west and a full street stub to the larger property to the east. This street would provide enhanced connectivity between the two lots and could enhance development opportunities on the eastern vacant lot.

However, the new road connection to the east would require the applicant to disturb over 1,200 sq ft of the WQR and over 3,200 sq ft of HCA on the site. The Natural Resource Review memorandum by ESA stated concern over this road connection because of the level of disturbance to the natural resources. It suggested a pedestrian connection rather than a street connection to reduce disturbance while meeting the connectivity goals of the city.

Conclusion: Alternative #1 would not work due to the level of natural resource disturbance from the road connection to the east.

Alternative #2: Connection via pedestrian access

As mentioned in the Alternative #1 discussion above, the ESA Natural Resource Review memorandum suggested a pedestrian connection to the vacant lot to the east to reduce

disturbance to the natural resources on the site. Alternative #2 still proposes 6 lots, but Lot 1 has been shifted south to be farther away from the wetland. The pedestrian connection is located farther north than the road connection in Alternative #1.

All of the lots in this proposal meet the minimum lot size of 5,000 sq ft, but none meet the minimum lot depth of 80 ft. This is due to the constraints on the site with the 56th Ave extension and the natural resources. The proposed lots in Alternative #2 are all big enough that buildings on each lot will be able to meet the required setbacks. The proposal requires a variance for the lot depth standards.

As with Alternative #1, lots 1, 2, and 3 continue to be entirely within the HCA. This alternative requires a variance to the Natural Resource standard of MMC 19.402.13.I.2 which states that all proposed lots shall have adequate buildable area outside of the WQR and HCA.

The applicant notes that this street layout and lot pattern is preferred as it provides six lots and satisfies the requirement for a road connection through the site. Full avoidance of the HCA would result in the loss of the three lots to the east and would make the extension of 56th Ave through the site infeasible given the cost of the road and the loss of revenue from a reduced number of the lots. The applicant notes that the pedestrian connection to the east is preferred because it disturbs less of the natural resources and is less costly. The applicant also states that the proposed natural resource tract will restrict development from encroaching into the most vulnerable natural resources on the site. The portion of the site where development is proposed, including the HCA portion, is an open field that includes cut, maintained grasses without trees. The resource areas close to the intermittent stream and wetlands where there is more variety of vegetation and better-quality natural resources will be protected in a separate tract. The applicant has also proposed a mitigation plan to enhance and restore the

natural resource tract. The mitigation plan (Figure 9) is described later in the report and addresses a variance to the mitigation planting requirements.

Conclusion: The applicant initially suggested that this is the best alternative as it provides enough lots and development to pay for the 56th Ave street connection, while also minimizing and mitigating disturbance in the most vulnerable and best quality natural resources on the site.

Alternative #3: Expanded buffer for Lots 1, 2, and 3 – Preferred alternative

This alternative was suggested by City staff and is similar to Alternative #2 except that an additional 10 feet of HCA buffer is proposed along the intermittent stream to the east of Lots 1, 2, and 3. City staff acknowledges the economic argument made by the applicant about needing six lots for single-family development to pay for the 56th Ave street extension. Staff proposes that all six lots be retained, however the depth of lots 1, 2, and 3 be reduced. This will disturb less of the HCA and come closer to meeting the standard in MMC 19.402.13.I.2 which requires all proposed lots to have adequate buildable area outside the WQR or HCA. Alternate #3 would reduce the lot sizes of lots 1, 2, and 3 and provide a slightly wider natural resource tract and restrict development in more of the HCA. This alternative reduces the lot depth of all three lots by 10 ft and allow 10-ft front and yard setbacks, versus the 20 ft setback requirements in the R-5 zone. As seen in Figure 8, this would reduce the lot sizes to under 5,000 sq ft, however, this reduction would provide an additional 2,400 sq ft of area for the natural resource tract. Variances are required for lot depth, lot area, and front and rear yard setbacks.

Conclusion: Alternative #3 provides a 25-ft wide buffer from the intermittent stream while still allowing six lots and a full street extension through the site.

Alternative #4: Avoidance of HCA with three lots and the 56th Ave Road extension

Other than impacts due the extension of 56th Ave, Alternative #4 avoids impacts to the HCA by eliminating lots 1, 2, and 3 and keeping only the lots on the western portion of the site (lots 4, 5, & 6). Under this alternative 56th Ave would be extended to Railroad Ave with an additional street connection provided to the west and a pedestrian connection to the east.

The applicant has expressed concerns with this alternative for a number of reasons. The first being the loss of three dwelling units. Economically, the applicant believes that the required street connection through the site is not proportional to the amount of development that would be permitted. Secondly, this site was allowed a zone change from R-7 to R-5, which was approved by both Planning Commission and City Council, to allow more lots on this site. An alternative that avoids the HCA reduces the number of dwellings and conflicts with the reasoning for the zone change approval. Finally, the applicant does not believe that the quality of the HCA on the site warrants total avoidance. As described in their Natural Resource report completed by Schott and Associates, the expanded HCA is predominately an open grass field that does not provide a riparian function in connection with the intermittent stream through the site. The applicant argues that Alternatives #1, #2, and #3 protect the area adjacent to the stream through riparian plantings and setbacks.

Conclusion: While this alternative provides less disturbance to the designated HCA, the applicant argues that the HCA requirements are excessive given the character of the HCA as an open field. In addition, if only three lots are allowed, the development would not be proportional to the amount of street infrastructure required for the extension of 56th Ave through the site.

Alternative #5 – Attached housing, outside of the HCA

This alternative is similar to Alternative #4 except that rather than three lots with only single-family development, the site would be developed with a natural resources cluster development including housing such as duplexes, triplexes, or townhomes. This type of development is only allowed in the R-5 through the Natural Resource Residential Cluster Development standards (MMC 19.402.14.C). The cluster process encourages flexible site design that enables the allowable density to be transferred elsewhere on a site to protect environmentally sensitive areas.

The applicant does not prefer this alternative for a number of reasons. The first being that this type of development (attached housing) would need deeper lots based on the style of the housing. If the lots were deepened then the 56th Ave extension road would have to shift east going into the HCA. This would defeat the purpose of this alternative to totally avoid the HCA. Secondly, the applicant states that attached housing would not justify the same frontage improvements that can be supported through development of a single-family development. Thirdly, same as in Alternative #4, the applicant feels that the quality of the HCA doesn't warrant total avoidance.

Conclusion: The applicant does not prefer this alternative and believes it won't totally avoid the HCA with the style of housing. In addition, the quality of the HCA does not warrant total avoidance.

Alternative #6 – 5-Lot Subdivision

This alternative was provided by ESA as another option to limit more disturbance in the HCA. It would remove Lot 1 and provide a 5-lot subdivision instead of 6 lots.

The main reason why the applicant does not find this as a viable option is economic costs of losing a lot, similar to Alternative #4. With the amount of public improvements being required for the proposal, the loss of a lot would require the applicant to up the selling prices of the homes to make up the lost profit. The trade-off would be higher

housing prices to have more area in the natural resource tract. The applicant doesn't believe that this is a good trade-off as the natural resource in Lot 1 consists of non-native grasses.

The Planning Commission finds that there is no practicable alternative to avoid disturbance of the WQR and HCA. This standard is met with Alternative 3.

- b. Development in the WQR and/or HCA has been limited to the area necessary to allow for the proposed use.

Within the WQR, development has been avoided except for the pedestrian connection to the adjacent lot to the east. The pedestrian connection is a requirement per the Land Division Chapter (17) in the MMC stating subdivisions shall conform with any development plans of the City.

Development in the HCA has been limited to what is only necessary, as described below:

- *The proposed streets and street connections within the HCA are meeting the minimum requirements for street design. The location of the proposed streets are there to connect with the existing 56th Ave north and to provide space to make lots 4, 5, and 6 big enough to be buildable within the R-5 development standards.*
- *Disturbance from Lots 1, 2, and 3 have been limited by reducing the size of the lots to increase the natural resource tract along the eastern boundary of the lot from 15 ft to 25 ft.*

As conditioned, this standard is met.

- 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.

The existing condition of the WQR is considered Class A "Good" except that much of the HCA consists of an open

grass field. The proposed pedestrian connection does not show any existing trees in the WQR or HCA being cut down, which will keep the area as Class A "Good."

However, to combat the disturbance of the pedestrian connection, the applicant will restore the area with native species from the Milwaukie Native Plan List, using a City-approved plan developed to represent the vegetative composition that would naturally occur on the site.

The disturbance in the HCA will be mitigation with native trees, shrubs, and removal of invasive species. However, it will not be consistent with the requirements of Subsection 19.402.11.D.2. This subsection would require 185 trees and 927 shrubs to be planted. The applicant is proposing 24 new trees and 111 new shrubs. A variance is being requested to this HCA mitigation requirement. See Finding 12.

As conditioned, this standard is met.

- d. Road crossings will be minimized as much as possible.

The proposed road crossings are meeting the minimum requirements.

This standard is met.

5. Evidence that the applicant has done the following, for applications proposing routine repair and maintenance, alteration, and/or total replacement of existing structures located within the WQR:
- a. Demonstrated 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. Provided mitigation to ensure that impacts to the functions and values of the WQR will be mitigated or restored to the extent practicable.

The only disturbance in the WQR is the pedestrian path to the vacant lot to the east. Per MMC 17.12.040.A streets must be laid out to conform to streets on adjoining property and MMC 19.708.E.3 requires that streets be extended to the property boundaries to give access to or allow for development of adjoining properties.

To meet this standard, one alternative was to provide access to the property to the west and a full street stub to the larger property to the east. This street would provide enhanced connectivity between the two lots and could enhance development opportunities on the eastern vacant lot. However, the new road connection to the east would require the applicant to disturb over 1,200 sq ft of the WQR and over 3,200 sq ft of HCA on the site.

To continue to meet this connectivity standard, but reduce impacts to the WQR and HCA, a 10-ft wide pedestrian path has been proposed. The path will be pervious allowing drainage and native trees and shrubs will be planted around the pathway to enhance the natural resource area.

This standard is met.

6. A mitigation plan for the designated natural resource that contains the following information:
 - A description of adverse impacts that will be caused as a result of development.
 - An explanation of measures that will be taken to avoid, minimize, and/or mitigate adverse impacts to the designated natural resource; in accordance with, but not limited to, Table 19.402.11.C for WQRs and Subsection 19.402.11.D.2 for HCAs.
 - Sufficient description to demonstrate how the following standards will be achieved:
 - Where existing vegetation has been removed, the site shall be revegetated as soon as practicable.
 - Where practicable, lights shall be placed so that they do not shine directly into any WQR and/or

HCA location. The type, size, and intensity of lighting shall be selected so that impacts to habitat functions are minimized.

- 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 and to provide opportunity for food, water, and cover for animals located within the WQR.
- 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.
- 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 ODFW.

The applicant has provided a mitigation planting plan for both the disturbance in the WQR and HCA. Additional details to satisfy the other requirements listed above will be provided for final plat approval.

As conditioned, this standard is met.

(ii) MMC 19.402.12.B Approval Criteria

Applications subject to the discretionary review process shall demonstrate how the proposed activity complies with the following criteria:

1. 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 than other practicable

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

As stated in Finding 8.G.(1)(c)(i).4.a, there were six development alternatives for this site.

The extension of 56th Ave through the site to Railroad Ave will always disturb some of the HCA. There aren't any alternatives that totally avoid HCA because of 56th Ave, but there were two alternatives (#4 and #5) that provided options for greater avoidance of the HCA for the proposed lots. However, as described above neither of those alternatives are practicable and total avoidance cannot be achieved.

The Planning Commission finds the approval criteria met.

2. Minimize

If the applicant demonstrates that there is no practicable alternative that will avoid disturbance of the designated natural resource, then the proposed activity within the resource area shall minimize detrimental impacts to the extent practicable.

- a. 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.
- b. To the extent practicable within the designated natural resource, the proposed activity shall be designed, located, and constructed to:
 - o 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).
 - o Minimize adverse hydrological impacts on water resources.

- Minimize impacts on wildlife corridors and fish passage.
- Allow for use of other techniques to further minimize the impacts of development in the resource area.

Explained above, the preferred alternative (Alternative #3) shows how disturbance is being minimized. The required connection to adjacent properties was minimized by adding a 10 ft pedestrian pathway versus a full street connection. The natural resource tract was also increased by minimizing the depth of Lots 1, 2, and 3 to create more habitat area and enhanced vegetation.

A condition will also be included that any fencing on Lots 1, 2, and 3 will be see-through to minimize impacts on habitat connectivity and wildlife corridors.

As conditioned, the Planning Commission finds that this standard is met.

3. Mitigate

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

- a. The mitigation plan shall demonstrate that it compensates for detrimental impacts to the ecological functions of resource areas, after taking into consideration the applicant's efforts to minimize such detrimental impacts.

A mitigation plan will be submitted with the final plat application that demonstrates compensation for any detrimental impacts. The applicant has submitted a variance request regarding the amount of mitigation to be provided (see Section 12 below).

- b. 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 if 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.

Mitigation will not occur off-site for the WQR and some of the mitigation for the HCA will occur within the WQR buffer as it has room to accommodate more vegetation.

- c. All revegetation plantings shall use native plants listed on the Milwaukie Native Plant List.

The applicant will adhere to this standard.

- d. All in-stream work in fish-bearing streams shall be done in accordance with the allowable windows for in-water work as designated by ODFW.

There are no fish-bearing streams on this site. The standard does not apply.

- e. A mitigation maintenance plan shall be included and shall be sufficient to ensure the success of the planting. Compliance with the plan shall be a condition of development approval.

That applicant will provide a mitigation maintenance plan with the final plan application.

As conditioned, the Planning Commission finds that this criterion is met.

As conditioned, the Planning Commission finds that the approval criteria for General Discretionary Review is met.

H. MMC 19.402.13.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 completion of the mitigation requirements for any impacts to the WQR or HCA. When mitigation is required for new streets created as

part of a subdivision, such mitigation shall be completed prior to approval of the final plat for the subdivision.

The applicant will adhere to the mitigation requirements provided in Finding 8.G. Mitigation will be completed prior to approval of the final plat for the subdivision. Note that findings are included for a variance to the amount of mitigation plantings required (See Section 12 below).

As conditioned, the Planning Commission finds that this standard is met

I. MMC 19.402.13.I Subdivisions

Applications for subdivisions shall comply with one of the following two standards:

- 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.
- If a subdivision cannot comply with the standards in Subsection 19.402.13.I.1, the application shall comply with the following standards:
 - All proposed lots shall have adequate buildable area outside of the WQR and HCA.
 - To the extent practicable, the lot and access configurations shall mitigate the potential future impacts to the WQR and HCA from access and development.
 - An Impact Evaluation and Alternatives Analysis shall be prepared in accordance with the relevant portions of Subsection 19.402.12.A.
 - 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.

The applicant cannot comply with the standards of Subsection 19.402.13.I.1. All proposed lots have adequate buildable area outside of the WQR and HCA, except for Lots 1, 2 and 3 where the HCA covers more than 85% of the total lot area. A variance has been requested for this standard in Finding 12.

An Impact Evaluation and Alternatives Analysis was conducted in Finding 9.G.(1).(c).(i) for Lots 1, 2 and 3 and all proposed areas of disturbance in the WQR and HCA. A mitigation plan and mitigation management plan will be submitted with the final plat application to ensure mitigation of future impacts.

As conditioned, the Planning Commission finds that these standards are met.

J. MMC 19.402.13.J Resource Area as a Separate Tract

Where required, the new subdivision shall delineate and show all WQRs and HCAs as being located in a separate unbuildable tract(s) according to the following process:

- Prior to preliminary plat approval, the designated natural resource (whether WQR, 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.
- 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:
 - Private natural area held by the owner with a restrictive covenant and/or conservation easement.
 - 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.
 - Public natural area where the tract has been dedicated to the City of Milwaukie or a private nonprofit with the mission of land conservation.
- 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.

The applicant has designated a tract as a natural area that shall not be part of any lot or parcel used for construction of any structures. Prior to final plat approval, ownership of a separate natural resource tract shall be identified. Boundaries of all such separate tracts shall be demarcated with stakes, flags, or some similar means.

As conditioned, the Planning Commission finds that these standards are met.

9. MMC 19.607 Off-Street Parking Standards for Residential Areas

MMC 19.607 establishes off-street parking standards for residential areas.

The applicant's materials indicate awareness of these requirements and will address compliance during the development permit process.

11. MMC 19.700 contains regulations for Public Facility Improvements. The proposal complies with these regulations as described in this finding.

- A. MMC Chapter 19.700 applies to partitions, subdivisions, new construction, and modification or expansion of an existing structure or a change or intensification in use that result in any projected increase in vehicle trips or any increase in gross floor area on the site.

The applicant proposes to partition the existing parcel into six new lots. The subdivision triggers the requirements of MMC Chapter 19.700.

MMC 19.700 applies to the proposed development.

- B. MMC 19.703 contains the requirements for the review process for all proposed developments subject to Chapter 19.700.
- (1) MMC 19.703.1 requires a pre-application conference for proposals that require a land use application. *The requirement was satisfied on February 16, 2017.*
- (2) MMC 19.703.3.B requires that development shall provide transportation improvements and mitigation at the time of development in rough proportion to the potential impacts of the development per MMC 19.705. *As conditioned, the proposal is consistent with MMC 19.703.3*

- C. MMC 19.704 requires submission of a transportation impact study documenting the development impacts on the surrounding transportation system.

The Engineering Director determined that a transportation impact study was not required as limited impacts on the transportation system was evident given the small number of lots.

MMC 19.704 does not apply to the proposed development.

- D. MMC 19.705 requires that transportation impacts of the proposed development be mitigated in rough proportion of the impacts.

The proposed development does not trigger mitigation of impacts beyond the required frontage improvements. The impacts are minimal and the surrounding transportation system will continue to operate at an acceptable level of service, the same as prior to the proposed development.

The proposed development, as conditioned, is consistent with MMC 19.705.

- E. MMC 19.708.1 requires that all development shall comply with access management, clear vision, street design, connectivity, and intersection design and spacing standards.

19.708.1.A – Access Management

Access requirements shall comply with access management standards contained in Chapter 12.16.

19.708.1.B – Clear Vision

Clear vision requirements shall comply with clear vision requirements contained in Chapter 12.24.

19.708.1.D – Development in Non-Downtown Zones

The existing right-of-way width of SE Railroad Ave fronting the proposed development is 60 feet. The Milwaukie Transportation System Plan and Transportation Design Manual classify the fronting portions of SE Railroad Avenue a Collector street. According to Table 19.708.2 Street Design Standards, the required right-of-way width for a collector street is between 40 feet and 74 feet depending on the required street improvements. No dedication is required for the SE Railroad frontage.

Development shall conform to MMC 19.708.1.D.3 through the Conditions of Approval. The proposed development is consistent with MMC 19.708.1.D.

MMC Section 19.708.1.E – Street Layout & Connectivity

MMC 19.708.1.E.3.c states that access reserve strips will be required at stub streets. A reserve strip is required at the west end of SE Beta St.

Development shall conform to MMC 19.708.3.E through the Conditions of Approval.

- F. MMC 19.708.1.F includes specific intersection design and spacing requirements. *Spacing between Stanley Avenue and the proposed 56th Ave extension is over the minimum 300-ft spacing requirement.*

The proposed development is consistent with MMC 19.708.1.F.

- G. MMC Section 19.708.2 establishes standards for street design and improvement.

The applicant shall construct a frontage improvement on the north side of Railroad Avenue along the site's frontage. The street improvement includes the construction of a 12-foot wide pervious asphalt pedestrian path.

The required street construction for all 56th Ave as follows: 5-foot setback sidewalks, 5-foot landscape strips/swales, curb & gutter, 28-foot travel way. The total right-of-way width will be 50 feet. This will provide for two 8-foot travel lanes and two 6-foot parking lanes.

The proposed cross section for Beta Avenue do not include the required landscape strip on both sides. Development may provide for a sidewalk easement that encompasses part of the sidewalks, so the resulting tax lot dimensions will not change. Final constructed streets will be the same dimensions as 56th Ave, but the right-of-way width may remain at 42 ft.

19.708.A.12 addresses requirements for street tree planting when landscape strips are constructed.

Right-of-way improvements for internal streets in the development will conform to 19.708.2 through the Conditions of Approval.

- H. MMC 19.708.3 requires that sidewalks shall be provided on the public street frontage of all development.

The construction of sidewalks along the proposed development property abutting all public rights-of-way is included in the street frontage requirements.

19.708.3.A.2 requires that public sidewalks shall conform to ADA standards. Current proposal does not include a receiving ADA ramp on the west side of the 56th Ave & Alpha St intersection, or an ADA ramp on the east side of the 56th Ave and Beta St intersection.

The proposed development will conform to MMC 19.708.3.A.2 through the Conditions of Approval.

- I. MMC 19.708.4 establishes standards for bicycle facilities.

The portion of Railroad Ave fronting the proposed development is classified as a bike route in the Milwaukie Transportation System Plan. As a result, bicycle facility improvements on the Railroad Ave frontage are required for the proposed development.

The proposed development as proposed is consistent with MMC 19.708.4.

- J. MMC 19.708.5 establishes standards for pedestrian and bicycle paths.

A pedestrian path connection is proposed to the vacant property to the east. This connection is being provided in lieu of a roadway connection.

MMC 19.708.5 is satisfied by the proposed pedestrian path.

- K. MMC Section 19.708.6 establishes standards for transit facilities.

SE Railroad Ave is not classified as a transit route in the Milwaukie Transportation System Plan. Therefore, MMC 19.708.6 does not apply to the proposed development.

12. MMC 19.911 Variances

A. MMC 19.911.3 establishes the review process for variance applications.

The applicant has requested five variances. The variances proposed to setbacks and depth exceed 25% of the dimensional requirements which means these variances must follow the Type III rather than the Type II process. The other variances (lot size, buildable area in the HCA, and the number of trees and shrubs required for HCA mitigation) must be processed as Type III variances since no Type II option is listed for these variances.

The Planning Commission finds that the variance applications for the five variances are subject to Type III Variance review.

B. MMC 19.911.4.B establishes criteria for approving Type III Variance applications.

An application for a Type III Variance shall be approved when all of the criteria in either 19.911.4.B.1 or 2 have been met. An applicant may choose which set of criteria to meet based upon the nature of the variance request, the nature of the development proposal, and the existing site conditions.

The applicant has chosen to address the criteria of 19.911.4.B.1 Discretionary Relief Criteria for the variances.

(1) MMC 19.911.4.B.1 Discretionary Relief Criteria

- (a) The applicant's alternatives analysis provides, at a minimum, an analysis of the impacts and benefits of the variance proposal as compared to the baseline code requirements.

The applicant has submitted a variance application for five variances addressing the Discretionary Relief Criteria:

- *Variance to MMC 19.301.4 to allow the lot depth of five lots to be approximately between 55 ft and 65 ft rather than the minimum 80 ft required;*
- *Variance to MMC 19.301.4 to allow Lots 1, 2, and 3 to have lot sizes below the minimum lot size of 5,000 sq ft.*
- *Variance to MMC 19.301.3 to reduce the front and rear yard setbacks from 20 ft to 10 ft for Lots 1, 2, and 3.*
- *Variance to MMC 19.402.13.I.2.a to allow three proposed lots to have buildable area within the HCA.*
- *Variance to MMC 19.402.11.D.2 to reduce the number of trees and shrubs required for disturbance in the HCA.*

Lot Depth Variance

The applicant's proposed subdivision plan includes an extension of 56th Ave through the site. An alternatives analysis was prepared for HCA compliance. That analysis demonstrates that the site is highly constrained given its relatively narrow width and the existence of the natural resources on the site. With the Wetland Delineation Report showing wetlands and an intermittent stream on the site, the applicant proposed that these features be protected and placed in a separate natural resource tract. The right-of-way for 56th Ave plus the natural resource tract result in a reduction of buildable area and prevent the lots from meeting the lot depth standards for the zone. However, all the lots still provide reasonable building envelopes and setbacks that limit negative impacts to surrounding properties.

An alternative to the requested lot depth would be further encroachment into natural resource areas or the elimination of lots which would take the project below the five-lot minimum density requirement.

Reduced Lot Size and Setback Variances for Lots 1, 2, and 3

Variances to lot size and setbacks for Lots 1, 2, and 3 are proposed in order to provide more area for the natural resource tract. By reducing the lot sizes, an extra 10 feet of natural resource area can be provided along the length of the intermittent stream. The additional width allows for increased plantings and vegetation which will help create an enhanced riparian area.

The reduction of rear and front yard setbacks will give more flexibility to build within the smaller lots. The rear yards of Lots 1, 2, and 3 are not adjacent to other development and any future development on the vacant lot to the east would be buffered by the HCA along the stream.

Without these variances, there would potentially be greater impact on the HCA. With Lots 1, 2, and 3 as proposed, the variances are the best alternatives to minimize and mitigate impacts to the HCA.

HCA Disturbance Variance

The alternatives analysis is provided in Finding 9 above. Two alternatives (#4 and #5) suggest the possibility of totally avoiding the HCA. In Alternative #4, Lots 1, 2, and 3 were removed leaving only the three lots on the west side of the property. This alternative was deemed not viable due to economic costs. The public improvements, including building the 56th Ave extension, are not considered to be proportional to the development of three lots. The improvement cost would be too high to justify only

a 3-lot development. This would also reduce the number of dwelling units to be below the minimum density standards for the site.

Alternative #5 proposed attached housing on the western portion of the lot, transferring the density to only that side of the street. This option was deemed not viable due to the type of lots that would be needed for the attached housing. These lots would need to be deeper than what is currently proposed. Deeper lots would require 56th Ave to be shifted further to the east and rather than lots being in the HCA, it would be the street. This alternative would have only minimal benefit over the preferred alternative in terms of natural resource protection.

Mitigation Plantings Variance

The existing standard for determining the amount of mitigation planting in the HCA is based on the amount of area that is disturbed. For the HCA disturbance that will be required for lots 1, 2, and 3, the standards would require planting 185 trees and 927 shrubs. The City's natural resource consultant, ESA, determined that this would require trees to be planted between 9-11 ft on-center and 4 ft on-center for shrubs. When reviewed by the city's urban forester, Julian Lawrence, it was suggested that planting trees and shrubs this closely together would not be ideal for the health of the plantings. He noted that the trees should be planted 20 ft on-center.

The mitigation plantings plan has trees spaced at 20 ft on center and is providing 100% tree canopy over the natural resource tract (outside of the wetland). This spacing will ensure the health of the plantings over time, and also helps meet the city's tree canopy goals. This alternative is a more viable option to ensure improvement and lasting success of the natural resources on the site.

The Planning Commission finds that this criterion is met for the variances as noted above.

- (b) The proposed variance is determined by the Planning Commission to be both reasonable and appropriate, and it meets one or more of the following criteria:
 - (i) The proposed variance avoids or minimizes impacts to surrounding properties.

Lot Depth Variance

The applicant states that no impacts to surrounding properties have been identified. The proposed lots (4 and 5) will continue to meet the minimum lot

size of 5,000 sq ft and meet the setback requirements for future development. This will limit and minimize any impacts to surrounding properties.

Reduced Lot Size and Setback Variances for Lots 1, 2, and 3

As stated above, the variances to reduce lot size and setbacks for Lots 1, 2, and 3 will provide more area for the natural resource tract. By reducing the lot sizes, there will be an extra 10 ft along the intermittent stream where more vegetation can be planted to enhance the riparian area.

The reduction of rear and front yard setbacks will provide more room to build within a smaller lot. The rear yards of Lots 1, 2, and 3 are not adjacent to other development and any future development on the vacant lot to the east would be on the other side of the intermittent stream and separated by the HCA.

HCA Disturbance Variance and Mitigation Plantings Variance

Allowing disturbance in the HCA will provide mitigation for the site, as listed above. The additional plantings of native shrubs and trees will provide more habitat on the site and replace existing non-native species. Surrounding properties will have the ability to experience and observe the restoration of the natural areas on the site due to mitigation requirements.

The Planning Commission finds that this criterion is met for the variances as noted above.

(ii) *The proposed variance has desirable public benefits.*

“Public benefits” are typically understood to refer to benefits to be enjoyed by members of the general public as a result of a particular project, or preservation of a public resource.

Lot Depth Variance

The extension of 56th Ave creates a connection to Railroad Ave for residents of the surrounding neighborhood and new residents. The minimum street standards also include sidewalks, which will provide pedestrian access to Railroad Ave at a shorter distance than what is provided now.

Avoidance of the wetlands also provides a public benefit for the surrounding community to experience the habitat and animals that inhabit these natural resource areas while protecting the area from development or other disturbance.

HCA Disturbance Variance and Mitigation Plantings Variance:

The project will result in a new protected natural resource tract. While privately owned, the public will benefit from the overall increase in natural resource vegetation on the site through mitigation and restoration for both the HCA and WQR.

The Planning Commission finds that this criterion is met.

- (iii) The proposed variance responds to the existing built or natural environment in a creative and sensitive manner.

Lot Depth Variance and Reduced Lot Size and Setback Variances for Lots 1, 2, and 3

These variances are being proposed to respond to the natural resources on the site. They allow flexibility to the lot design and development so that additional land can be enhanced and preserved in the natural resource tract. Without these variances, there would be more disturbance to the WQR and HCA. Without the development, there would be no enhancement of the riparian corridor along the stream.

HCA Disturbance Variance and Mitigation Plantings Variance

Per the conditions stated above, disturbance in the HCA will require the applicant to enhance and restore the natural areas on the site to meet the mitigation requirements. Without those mitigation requirements from disturbance, the site would continue to exist with non-native vegetation and grasses. The proposed mitigation plan will be able to provide increased tree canopy, eradicate the invasive species on the site, and plant more trees and shrubs providing more diverse habitat on the site.

The Planning Commission finds that this criterion is met.

- (c) Impacts from the proposed variance will be mitigated to the extent practicable.

As noted above, the variances allow the development to occur and result in extensive mitigation planting which will increase vegetation and habitat on the site.

Lots 1, 2, and 3 will be required to have see-through fencing to make the natural resource area a visual amenity to lot owners and to create a sense of community ownership of the tract to keep it well maintained.

As conditioned, the Planning Commission finds that this criterion is met for the variances noted above.

As conditioned, the Planning Commission finds that the Discretionary Relief Criteria is met.

13. MMC 19.1200 contains standards for solar access. These standards as described below.

- A. MMC 19.1203.2 states that the standards of Chapter 19.1200 apply to applications for a development to create lots in single-family zones. Therefore, the chapter is applicable to the proposed subdivision.

MMC 19.1203.3 establishes the design standards for compliance with the solar access requirements. The section requires that 80% of the lots that are subject to the provisions must comply. Three options are available. The Basic Requirement is set out in subsection A and requires a north-south dimension of 90 feet or more and a front lot line that is oriented in an east-west direction (which would typical result in two 20-foot rear yards separating the structures).

Subsection B provides the Protected Solar Building Line Option. This option requires a deed restriction or plat note to ensure that lots are protected from shade by structures built to the south. The solar building line is a location on a lot where a point two feet above may not be shaded by structures or nonexempt trees.

Subsection C sets out a Performance Option. Under this option, habitable structures built on the lots must either: 1) have the long axis of the structure oriented in an east-west direction with 80% of the southern ground floor wall protected from shade by deed restrictions, or 2) have 32% of the window glazing and 500 sq ft of the roof area oriented in an east-west direction with deed restrictions to prevent shading.

In addition, MMC 19.1203.4 provides for exemptions from the standards due to existing nonexempt vegetation and other features.

Initially, the applicant indicated that they would comply with the solar access provisions through the Performance Option but upon closer review, compliance is more complex. Lot 3 is exempted from the need to have solar access by the existing White Oak tree that is located on the southeast portion of the lot. This tree is required to be protected under the HCA provisions above under Finding 12. With the exemption of Lot 3, four of the remaining five lots (80%) must be guaranteed the right to solar access. Lot 6 meets the Basic Requirement; it is 90 feet deep and fronts on Beta St. Lots 4 and 5 can meet the Basic Requirement with a condition to treat the lot line between the lots as a rear yard lot line with 20-foot yards on each lot thus providing greater separation between the structures. As an alternative, solar protection could be provided to the northern lot (Lot 5) via the Protected Solar Line Option.

To reach 80% compliance for the subdivision, either lot 1 or 2 must be guaranteed solar access rights. This can be accomplished through the Performance Option but must include deed restrictions on the lot to the south (either lot 2 or 3) to guarantee protection from shade. The applicant can choose which lot needs protection and which will carry the deed restrictions.

With appropriate conditions, the application complies with Chapter 19.1200.

As conditioned, the Planning Commission finds that this criterion is met.

14. MMC 17.12.040 contains approval criteria for a preliminary plat. These criteria are met as described below.

A. MMC 17.12.040.A.1 requires that the proposed preliminary plat complies with Title 19 of this code and other applicable ordinances, regulations, and design standards.

These findings demonstrate that the proposed subdivision and preliminary plat comply with the applicable ordinances, regulations, and design standards in the Milwaukie Municipal Code. MMC 19.301.4 includes standards for lot depth and rear and front yard setbacks. All of the lots require a variance to either depth, setbacks, or both. A variance application has been submitted to respond to these requirements. Subject to the approval of said variances, this criterion is met.

B. MMC 17.12.040.A.2 requires that “the proposed division will allow reasonable development of the affected lots and will not create the need for a variance of any land division or zoning standard.”

MMC 17.12.040.A.2 requires that the proposed land division will allow reasonable development and will not create the need for a variance of any land division or zoning standard. As proposed, variances are requested to lot depth and setbacks within the subdivision. The subdivision plan has identified the building envelope for each of the lots. Each lot provides buildable lot area to accommodate a reasonably sized house so no additional variances should be required for house construction.

This criterion is met.

C. MMC 17.12.040.A.3 requires that the proposed subdivision plat name is not duplicative and the plat otherwise satisfies the provisions of ORS 92.090(1).

At this time, the subdivision does not have an approved name. Prior to subdivision approval, the applicant will request a subdivision name approval through the County.

As conditioned to require proof of approval by the Clackamas County Surveyor, this criterion is met.

- D. MMC 17.12.040.A.4 requires that the streets and roads are laid out to conform to the plats of subdivisions already approved for adjoining property as to width, general direction, and in all other respects unless the City determines it is in the public interest to modify the street or road pattern.

The adjacent properties to the north are fully developed and a stub street is located along the north property line of the proposed subdivision site. Therefore, 56th Ave is required to extend through the proposed subdivision. This street connection will be in compliance with City standards and consistent with the already improved 56th Ave.

This criterion is also satisfied within the confines of what the City can obtain for street right-of-way per MMC Chapter 19.700.

This criterion is met.

- E. MMC 17.12.040.A.5 requires a detailed narrative description demonstrating how the proposal conforms to all applicable code sections and design standards.

The applicant has submitted this information in the materials submitted for the land use application. This standard is met.

15. MMC 17.20 contains the information required for a preliminary plat application.

The materials submitted by the applicant satisfy the requirements of this chapter except for the necessity for a variance to the requirements of MMC 19.301.4.

16. MMC 17.28 contains design standards for land divisions and boundary changes. The proposed subdivision satisfies these as described below.

- A. MMC 17.28.010 requires that partitions and subdivisions shall conform with any development plans of the City and shall take into consideration any preliminary plans made in anticipation thereof and shall conform with the requirements of state laws and with the standards established by the City.

The proposed street to the west and pedestrian connection the east abut properties that provide opportunity for land development in this location and to access the new street and trail. As demonstrated by these findings, and as conditioned to accommodate the future development of adjoining property, the subdivision conforms with applicable city criteria and standards.

- B. MMC 17.28.020 requires that all land divisions and boundary changes that increase the number of lots shall be subject to the requirements and standards contained in Chapter 19.700 Public Facility Improvements and the Public Works Standards for improvements to streets, sidewalks, bicycle facilities, transit facilities, and public utilities.

As described elsewhere in these findings, the proposed subdivision complies with Chapter 19.700. Utilities and work within the right-of-way will be reviewed by the Milwaukee Engineering Department for conformance with Public Works Standards.

C. MMC 17.28.040 contains standards for lot design.

- (1) MMC 17.28.040.A requires that the lot size, width, shape, and orientation shall be appropriate for the location and the type of use contemplated. Minimum lot standards shall conform to Title 19.

The proposed design is based on the need for variances to lot depth and setbacks. Variances are addressed under Finding 12, above. The subdivision plan has identified the building envelope for each of the lots. Each lot provides buildable lot area to accommodate a reasonably sized house so no additional variances should be required for house construction.

Upon approval of the variance, this standard is met.

- (2) MMC 17.28.040.B requires that lot shape shall be rectilinear, except where not practicable due to location along a street radius, or existing lot shape. The sidelines of lots, as far as practicable, shall run at right angles to the street upon which the lots face. As far as practicable, the rear lot line shall run parallel to the street.

All lots are rectilinear and run at right angles to the street upon which the lots face. This standard is met.

- (3) MMC 17.28.040.C limits compound lot lines for side or rear lot lines.

All lots limit compound lot lines for all side and rear lot lines. This standard is met.

- (4) MMC 17.28.040.D allows lot shape standards to be varied pursuant to MMC 19.911.

A variance is not needed for lot shape. This standard does not apply.

- (5) MMC 17.28.040.E states that double frontage and reversed frontage lots should be avoided except in certain situations.

No double frontage or reversed frontage lots are proposed. This standard is met.

- (6) MMC 17.28.040.F requires that pursuant to the definition and development standards contained in Title 19 for frontage, required frontage shall be measured along the street upon which the lot takes access.

As proposed, the required frontages of all lots are measured along the streets upon which they take access. This standard is met.

- D. MMC 17.28.080 contains criteria for public open spaces.

The Milwaukie Comprehensive Plan does not identify any planned park or open space for the site. As such, no dedication for public open space is required.

17. MMC 17.32 describes required public improvements.

The applicant proposes that all public improvements will meet the standards of this chapter. The proposal is consistent with MMC 17.32.

18. As described in Finding 3, public notice of these applications was posted on site and mailed to parties as identified in the Milwaukie Municipal Code. The applications were referred for comment to the following: Milwaukie Building Division; Milwaukie Engineering Department; Clackamas Fire District #1; Clackamas County; Metro; and the Linwood Neighborhood District Association Chairperson and Land Use Committee. The responses received are summarized below. Agencies did not respond if a response is not listed below.

Milwaukie Engineering Department – the Milwaukie Engineering Department responded with a memorandum regarding public improvements and stormwater. The memorandum has been incorporated as the findings for MMC Chapter 19.700 and in the “Conditions of Approval” and “Other Requirements” sections of this notice.

Clackamas Fire District #1 (CFD #1): There does not appear to be any issues with access or water supply.

EXHIBIT 2
Conditions of Approval
File #S-2018-001 (master file), Railroad Ave Subdivision

Conditions of Approval

1. The applicant shall submit a final plat application within six months of the preliminary plat approval in accordance with MMC Subsection 17.24.040. The applicant shall obtain approval of the final plat prior to the expiration of this preliminary plat approval.
2. The applicant's final plat application shall include the items listed on the City of Milwaukie Final Plat Checklist. The following specific items and changes are required as part of the application:
 - a. A written narrative describing all changes made to the final plat that are not related to these conditions of approval.
 - b. A final plat that substantially conforms to the plans received by the Planning Department on May 11, 2020 and approved by this action, except as modified by these conditions of approval.
 - c. The final plat shall include spaces for signatures by the Milwaukie Planning Director and Milwaukie Engineering Director, and a note indicating that this subdivision is subject to the requirements of City of Milwaukie Land Use Application S-2018-001; NR-2018-03; VR-2018-006; VR-2018-007.
 - d. Work with city staff on traffic calming solutions at the intersection of SE Beta Street and SE 56th Avenue.
 - e. A Construction Management Plan per MMC 19.402.9
 - f. A final Mitigation Plan addressing:
 - i. Standards listed in MMC 19.402.12.A.6.
 - ii. Standards showing protection of natural resources during site development listed in MMC 19.402.11.A.
 - iii. General standards for required mitigation listed in MMC 19.402.11.B.
 - iv. A maintenance plan per MMC 19.402.12.B.c.(5).
 - v. An updated version of the May 19 mitigation planting plan that:
 1. Identifies the location of the White Oak on Lot 3 and notes that the tree will be protected.
 2. Requires plat notes stating that rear yard fencing on Lots 1, 2, and 3 must be designed to be powder-coated, colored, and see-through to provide a strong visual connection to the riparian corridor and to minimize impacts on habitat areas.
3. Compliance with MMC 19.1203 shall be provided through the following:

- a. Lots 4 and 5 will include 20 foot yards along their common lot line or deed restrictions shall be placed on the lots to demonstrate compliance with the Protected Solar Line Option of MMC 19.1203.
 - b. Deed restrictions will be used to ensure that either lot 1 or 2 is guaranteed solar access rights under the Performance Option of MMC 19.1203. Depending on the lot selected, restrictions will be placed on the subject lot and the lot to the south.
4. Prior to approval of the final plat, the following shall be resolved:
- a. Rename Beta Street to a name that complies with City street name requirements and does not create a duplicate street name.
 - b. Proof of ownership of the separate natural resource tracts per MMC 19.402.13.J.
 - c. Submit full-engineered plans for construction of all required public improvements, reviewed and approved by the City of Milwaukie Engineering Department.
 - d. Submit a storm water management plan to the City of Milwaukie Engineering Department for review and approval. The plan shall be prepared in accordance with Section 2 – Stormwater Design Standards of the City of Milwaukie Public Works Standards. Private properties may only connect to public storm system if percolation tests show that infiltration cannot be obtained on site. In the event the storm management system contains underground injection control devices, submit proof of acceptance of the storm system design from the Department of Environmental Quality.
 - e. Obtain a right-of-way permit for construction of all required public improvements listed in these recommended conditions of approval.
 - f. Pay an inspection fee equal to 5.5% of the cost of the public improvements.
 - g. Provide a payment and performance bond for 130% of the cost of the required public improvements.
 - h. Provide an erosion control plan and obtain an erosion control permit.
 - i. Install an 8-inch DIP water main along the proposed extension of 56th Ave, connecting to the existing water mains along Railroad Ave and the south end of the existing 56th Ave. Provide an extension of 8-inch DIP to the west end of the proposed Beta St. (this is currently shown in the submitted plans dated Nov. 2017).
 - j. Sanitary service connection shall be via installing a new manhole at the existing 15-inch main in Railroad Ave. Sanitary service system must extend to the west end of Beta St by providing an 8-inch sewer line, terminating at a clean out to be installed by the applicant.
 - k. Stormwater service must extend to the west end of Beta St by providing a 12-inch sewer line, terminating at a clean out to be installed by the applicant. Applicant

must design Beta St so that all stormwater runoff is directed into the proposed project.

- l. Install all underground utilities, including stubs for utility service prior to surfacing any streets.
 - m. Applicant shall construct a 12-ft wide pervious asphalt multi-use path along the SE Railroad Avenue frontage.
 - n. Construct 5-ft setback sidewalks, 5-ft landscape strips, curb and gutter, 28-ft travel way and driveways on SE 56th Ave and SE Beta St. The city has agreed to allow a portion of the sidewalks along 56th Ave to be located outside of the proposed right-of-way but located within public sidewalk easements. Approved street trees will also be planted at a 40-ft spacing.
 - o. In lieu of a street connection, the city and applicant have agreed to allow a 10-ft public pathway to provide future pedestrian/bicycle connection from SE 56th Avenue to Stanley Avenue. Applicant shall construct this pathway at their costs and provide a public access easement over it.
 - p. At the end of all non-connecting sidewalks and pathways, and at the west end of Beta St. applicant must construct Type III barricades.
 - q. Construct a driveway approach to meet all guidelines of the Americans with Disabilities Act (ADA) to each new lot. The driveway approach aprons must be between 9 and 20 ft in width and least 7.5 feet from the side property line. All driveways will be located a minimum of 45 feet from nearest intersection.
 - r. Construct three ADA ramps at the Beta/56th intersections.
 - s. Proposed Lots 3 and 4 must have vehicular access only via 56th Ave. Provide an access control strip on Lots 3 and 4 adjacent to Railroad Ave to prohibit vehicular access to that street.
 - t. Applicant must form an Home Owners Association (HOA) that must provide maintenance to the stormwater planters, the 10-ft concrete sidewalk extending east from 56th Ave, and the open tract of land this sidewalk lies upon.
 - u. Clear vision areas must be maintained at all driveways and accessways and on the corners of all property adjacent to an intersection.
 - v. Applicant shall install streetlighting with the project meeting city Public Works Standards, except that street lights shall be 45-watt Leotek LED roadway luminaire CCT 3000K with 30-ft Gray Direct Buried Fiberglass poles to meet current city requirements.
 - w. Provide a final approved set of electronic PDF “As Constructed” drawings to the City of Milwaukie prior to final inspection.
 - x. Remove all signs, structures, or vegetation in excess of three feet in height and below eight feet in height that are located in “vision clearance areas” at intersections of streets, driveways, and alleys fronting the proposed development.
5. Prior to final inspection for any building on the proposed development, the following shall be resolved:

- a. Connect all residential roof drains to private drywell or other approved structure.

Other Requirements

The following items are not conditions of approval necessary to meet applicable land use review criteria. They relate to other development standards and permitting requirements contained in the Milwaukie Municipal Code and Public Works Standards that are required at various points in the development and permitting process. They are included for the applicant's convenience and do not necessarily represent all standards or requirements that may be applicable.

1. The Time Limit on Approval established in MMC 17.04.050 applies to this proposed subdivision.
 - a. MMC 17.040.050.A: All decisions on boundary changes and land divisions shall expire one year after the date of approval. Reactivation of expired decisions may only be made by submission of a new application and related fees. *Staff note - approval of a final plat must occur prior to the expiration of the preliminary plat approval on which the final plat is based.*
 - b. MMC 17.04.050.B: Approvals may be extended up to six months upon submission of formal request to the original decision-making authority. One extension of the approval period not to exceed six months will be granted if the criteria in MMC 17.04.050.B are satisfied.
2. The requirements on MMC 17.24 for preparation and recording the final plat are as follows:
 - a. MMC 17.24.040: Within six months of City approval the applicant shall submit the final plat for City signatures. Approval of the final plat shall be null and void if the plat is not submitted within the time specified or if the plat is not recorded within 30 days after the date the last required signature has been obtained. One copy of the recorded plat shall be supplied to the City.
 - b. MMC 17.04.120.B: Prior to recording a lot consolidation, property line adjustment, subdivision, or partition plat or replat, the applicant shall submit the recording instruments to the Planning Director for a determination of consistency with the City Code and required approvals.
 - c. MMC 17.04.120.A: Recording instruments for boundary change, subdivision, partition, and replat shall be submitted to the County Surveyor within six months of City approval.