



CITY OF MILWAUKIE

September 26, 2019

Land Use File(s): NR-2019-003

NOTICE OF DECISION

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

Applicant(s):	City of Milwaukie (represented by North Clackamas Parks and Recreation District)
Location(s):	11910 SE McLoughlin Blvd
Tax Lot(s):	1S1E36CB03100
Application Type(s):	Natural Resource Review
Decision:	Approved with Conditions
Review Criteria:	Milwaukie Municipal Code (MMC): <ul style="list-style-type: none">• MMC Chapter 18.04 Flood Hazard Areas• MMC Section 19.304 Downtown Zones (incl. OS)• MMC Section 19.401 Willamette Greenway• MMC Section 19.402 Natural Resources• MMC Section 19.1005 Type II Review
Neighborhood(s):	Island Station, Historic Milwaukie

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

This notice is issued in accordance with Milwaukie Municipal Code (MMC) Section 19.1005 Type II Review. The complete case file for this application is available for review by appointment between 8:00 a.m. and 5:00 p.m. on regular business days at the Planning Department, Johnson Creek Facility, 6101 SE Johnson Creek Blvd. Please contact Brett Kelter, Associate Planner, at 503-786-7657 or kelterb@milwaukieoregon.gov, if you wish to view this case file or visit the project webpage at www.milwaukieoregon.gov/planning/nr-2019-003.

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

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.

Commission following the procedures of MMC Section 19.1010 Appeals. This decision will become final on the date above if no appeal is filed during the appeal period. Milwaukie Planning staff can provide information regarding forms, fees, and the appeal process at 503-786-7630 or planning@milwaukieoregon.gov.

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

1. Prior to final inspection for the development permit(s) related to the approved activity, provide documentation sufficient in form and detail to confirm that the amount of material removed from within the 100-year floodplain on the site has been balanced with an equal amount of fill added within the floodplain, as per the requirements of MMC Title 18.

Other requirements

1. Final plans submitted for development permit review shall be in substantial conformance with the plans approved by this action, which are the plans stamped received by the City on September 5, 2019. The submittal should include a completed Floodplain Development application, as well as an application for Development Review in accordance with the standards established in MMC Section 19.906.

Director's Declaration of Impartiality

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

Decision

- Approved
 Approved with Conditions
 Denied



Dennis Egner, FAICP
Planning Director

Exhibits

1. Findings in Support of Approval

cc: Jennifer Garbely, Assistant City Engineer, applicant (via email)
Tonia Williamson, Natural Resources Coord., NCPRD, applicant's representative (via email)
Planning Commission (via email)
Leila Aman, Community Development Director (via email)
Justin Gericke, City Attorney (via email)
Steve Adams, City Engineer (via email)
Engineering Development Review (via email)
Samantha Vandagriff, Building Official (via email)
Stephanie Marcinkiewicz, Inspector/Plans Examiner (via email)
Harmony Drake, Permit Technician (via email)
Mike Boumann and Izak Hamilton, CFD#1 (via email)
NDA(s): Lake Road, Historic Milwaukie (via email)
Interested Persons
Land Use File(s): NR-2019-003

ATTACHMENT 1
Findings in Support of Approval
File #NR-2019-003
Natural Resource Review for Soft-Surface Trail & Overlook
Kronberg Park (11910 SE McLoughlin Blvd)

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

1. The applicant, Jennifer Garbely of the City of Milwaukie's Engineering Department, represented by Tonia Williamson of the North Clackamas Parks and Recreation District, has applied to disturb portions of the natural resource areas designated on the City's Natural Resource administrative map (NR map). The subject property is Kronberg Park, a city park downtown addressed as 11910 SE McLoughlin Blvd and zoned Open Space (OS). The land use application file number is NR-2019-003.
2. The Kronberg Park Master Plan, which was adopted by the Milwaukie City Council in 2015, features a hard-surface multiuse path connecting the pedestrian bridge over Kellogg Lake with a new signalized pedestrian crossing of McLoughlin Blvd at River Rd. In addition, the master plan includes a soft-surface trail and overlook between the multiuse path and Kellogg Lake. The multiuse path received land use approval (land use file #NR-2019-001) and is currently under construction; the applicant has now proposed construction of the soft-surface trail and overlook.

The subject property includes designations of Water Quality Resource (WQR) and Habitat Conservation Area (HCA) as shown on the NR map. The proposed development involves permanent disturbance of approximately 1,400 sq ft of HCA and approximately 425 sq ft of WQR, including some minimal cut and fill activity within the 100-year floodplain (for construction of the overlook). The entire site is also covered by the Willamette Greenway (WG) overlay.

3. The proposal is subject to the following provisions of the Milwaukie Municipal Code (MMC):
 - MMC Chapter 18.04 Flood Hazard Areas
 - MMC Section 19.304 Downtown Zones (incl. Open Space)
 - MMC Section 19.401 Willamette Greenway
 - MMC Section 19.402 Natural Resources
 - MMC Section 19.1005 Type II Review

The application has been processed and public notice provided in accordance with MMC Section 19.1005 Type II Review, with a decision by the Planning Director. The application was submitted on September 5, 2019. The application was deemed complete and public notice was sent to properties within 300 ft of the subject property on September 10, 2019, as required.

4. MMC Chapter 18.04 Flood Hazard Areas

MMC 18.04 provides standards intended to minimize public and private losses due to flood conditions in specific areas. The regulations do this in part by controlling the alteration of natural floodplains, stream channels, and natural protective barriers, which help accommodate or channel flood waters; controlling filling, grading, dredging, and other development which may increase flood damage; and preventing or regulating the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards in other areas. As per MMC Section 18.04.100, a development permit is required prior to any construction or development within the flood management area.

The subject property includes flood hazard and flood management areas as identified on the Flood Insurance Rate Map prepared by the Federal Emergency Management Agency (FEMA) and acknowledged by the City for the purposes of implementing this title. Current FEMA floodplain mapping provided by the applicant shows that a minor portion of the proposed development will encroach into the floodplain, with some materials being added while others are removed. The applicant has proposed to ensure that the volume of material cut from within the floodplain will be offset by an equal amount of fill. A condition has been established to ensure that this standard is met.

The Planning Director finds that, as conditioned, the proposed development is consistent with the applicable standards of MMC 18.04. This standard is met.

5. MMC Section 19.304 Downtown Zones (incl. Open Space)

MMC 19.304 establishes standards for the Downtown Mixed Use (DMU) and Open Space (OS) zones. MMC Table 19.304.2 provides a list of allowable uses in the OS zone, including parks.

The proposed development does not involve any change in the existing approved park use and does not affect any of the development standards established in MMC Subsection 19.304.4.

The Planning Director finds that this standard is met.

6. MMC Section 19.401 Willamette Greenway Zone

MMC 19.401 establishes standards for the Willamette Greenway overlay designation. The subject property is covered by the Willamette Greenway overlay as shown on the City's zoning map. MMC Subsection 19.401.5 establishes procedures for activities within the Willamette Greenway overlay and clarifies that the construction of new low-impact pathways within parks are not considered changes in use that require review.

The proposed development is a new soft-surface trail and overlook, both of which are low impact facilities, and does not require Willamette Greenway review.

The Planning Director finds that this standard is met.

7. MMC Section 19.402 Natural Resources

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

a. MMC Subsection 19.402.3 Applicability

MMC 19.402.3 establishes applicability of the natural resource regulations, including all properties containing WQRs and HCAs as shown on the City's NR map.

Kellogg Lake abuts the subject property along its northern and eastern boundaries, and swaths of WQR and HCA, as well as the 100-year floodplain, extend into the site parallel to the top of the bank. The City's NR map shows WQR and HCA areas that will be disturbed by the proposed development.

The Planning Director finds that the requirements and standards of MMC 19.402 are applicable to the proposed development.

b. MMC Subsection 19.402.4 Exempt Activities

MMC 19.402.4 establishes that certain activities within a designated WQR and/or HCA are exempt from review. Within HCAs, low-impact outdoor recreation facilities (including impervious-surface trails no wider than 5 ft and interpretive or educational overlooks) that contain no more than 500 sq ft of new impervious surface are exempt. In addition, disturbance of WQR or HCA areas for outdoor uses is exempt provided it is no more than 150 sq ft, does not involve the removal of trees, and is at least 30 ft from the top of bank.

The proposed development includes approximately 280 linear feet of an impervious, soft-surface (crushed rock), 5-ft-wide trail within the HCA. Within the WQR, approximately 100 sq ft of permanent disturbance will result from the trail and approximately 325 sq ft from the proposed overlook, including an area less than 150 sq ft that is more than 30 ft from the top of bank.

The Planning Director finds that the proposed trail construction within the HCA and a portion of the overlook within the WQR are exempt from further review under MMC 19.402.

c. MMC Subsection 19.402.7 Activities Requiring Type II Review

MMC 19.402.7 establishes that certain activities within a designated WQR and/or HCA are subject to Type II review in accordance with MMC 19.1005. As per MMC 19.402.7.A.3, this includes walkways and bike paths that comply with the standards for special uses as established in MMC Subsection 19.402.11.E.

The proposed development includes a non-exempt section of trail and overlook area within the WQR that is reviewable as a walkway.

The Planning Director finds that the proposed trail and overlook construction is subject to Type II review and the applicable special use standards established in MMC 19.402.11.E.

d. MMC Subsection 19.402.9 Construction Management Plans

MMC 19.402.9 establishes standards for construction management plans, which are required for projects that disturb more than 150 sq ft of designated natural resource area. Construction management plans must provide information related to site access, staging of materials and equipment, and measures for tree protection and erosion control.

The applicant's submittal materials include a construction management plan that provides the information required by MMC 19.402.9, including tree protection measures. The plan will be formally reviewed at the time of submittal for the associated development permit(s).

The Planning Director finds that an adequate construction management plan has been provided for the proposed development. This standard is met.

e. MMC Subsection 19.402.11.E Development Standards for Special Uses

MMC 19.402.11.E establishes standards for identified special uses within designated natural resource areas, including walkways and bike paths. The general standards include requirements to provide a construction management plan, to protect existing vegetation, and to revegetate temporarily disturbed areas. To remain eligible for Type II review, walkways and bike paths must not exceed a 12-ft width, be designed to avoid impacts to WQR and HCA areas and minimize disturbance to existing vegetation to the extent practicable, be at least 10 ft from the boundary of a protected water feature, and avoid the placement of any associated lights that shine directly into the WQR and/or HCA.

The proposed development includes permanent WQR disturbance of approximately 100 sq ft for the trail and 325 sq ft for the overlook. The proposed trail is 5 ft wide and opens into a wider overlook area, where most of the proposed overlook area can be accommodated within the 12-ft width that is allowed for special-use walkways. The remaining overlook area fits within the 150-sq ft exemption allowed for outdoor use (as noted in Finding 7-b).

The submittal materials indicate that the locations of the proposed trail and overlook have been designed to avoid and/or minimize impacts to the WQR and HCA. The proposed development includes a revegetation plan that proposes not only to replant temporarily disturbed areas but also to plant additional vegetation (primarily native species) as part of a larger restoration effort for the larger park site. The applicant's construction management plan confirms that access, staging, and materials areas will be managed to avoid additional impacts, and that no trees will be used for anchoring or any other construction-related activities.

The Planning Director finds that the proposed development is consistent with the applicable standards and requirements for walkways as special uses. This standard is met.

As proposed, the Planning Director finds that the proposed development meets all applicable standards and requirements related to natural resources as established in MMC 19.402.

8. The application was referred on September 10, 2019, to the following departments and agencies:

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

In addition, public notice of the proposal was mailed to properties within 300 ft of the site on September 10, 2019.

The following is a summary of the comments received:

- **Jonny Gish, Engineering Tech 4, Clackamas County DTD:** No comments on the proposal.