

From: [Milwaukie Planning](#)
To: [Connie Concon](#)
Subject: RE: Strongly Oppose PD-2020-001 Waverly Woods
Date: Thursday, October 29, 2020 10:06:18

Good morning Connie,

Thank you for your email. I will share your thoughts with the appropriate staffer.

Best,

N. Janine Gates

Assistant Planner
she/her/hers
503.786.7627
City of Milwaukie
6101 SE Johnson Creek Blvd • Milwaukie, OR 97206

From: Connie Concon <connie023@yahoo.com>
Sent: Thursday, October 29, 2020 9:11 AM
To: Milwaukie Planning <Planning@milwaukieoregon.gov>
Subject: Strongly Oppose PD-2020-001 Waverly Woods

This Message originated outside your organization.

Why I strongly oppose PD-2020-001 Waverly Woods

1. It will Increase pressures on the sewage system
2. traffic congestion
3. habitat destruction of protected species
4. violation of the Greenway Zoning without benefit to community
5. geologic instability increased by heavy construction

Sincerely

Neighbor
Connie Concon
1550 SE Lava #11
Milwaukie OR 97222

From: [Milwaukie Planning](#)
To: [Vera Kolas](#)
Subject: Fw: Opposed to Waverly Greens Apartments Development
Date: Wednesday, October 28, 2020 17:00:05

FYI.

From: edgington6@aol.com <edgington6@aol.com>
Sent: Wednesday, October 28, 2020 4:58 PM
To: Milwaukie Planning <Planning@milwaukieoregon.gov>
Subject: Opposed to Waverly Greens Apartments Development

This Message originated outside your organization.

Hello

I am writing in opposition to the proposed Waverly Greens Apartments development. The proposed area of development is one of the last wild areas along the river and home to a variety of wildlife including coyote, bald eagle, red tailed hawk and peregrine falcon. It would be a massive destruction of this wildlife habitat in addition to destruction of our way of life due to overcrowding, traffic and possible ground destabilization due to dynamiting, that would destroy my property.

Thank you

Margie Edgington
Owner, River Royal Terrace #5
1550 SE Iava Drive

From: [Claudia Cougle](#)
To: [Vera Kolia](#); [Milwaukie Planning](#)
Subject: Waverley Woods Application; PD-2020-001
Date: Friday, November 6, 2020 17:29:04

This Message originated outside your organization.

Waverley Woods Concerns

My name is Claudia Cougle. I reside at the River Royal Terrace Condominiums, 1550 SE Lava Drive, Unit 8, Milwaukie. I bought this condo one year ago. Prior to that, I lived up at Waverley Greens Apartments in The Highlands complex for four years, from 2015-2019. In that four years, I never heard any mention of them building another development. Waverley is a very well-managed and well-run community. It is already very large with all the different complexes. I've described it as "several colleges on a university campus." I cannot believe they are now trying to squeeze more square footage into their already-crowded land. I am dumbstruck by the size of the proposed construction project and feel this will negatively impact us in the following ways, to name a few:

- Excess water run-off and resulting erosion;
- Huge strain on sewer and water lines and problems with sewage flow and backup;
- Lower water pressure for those of us at the bottom of the hill;
- Impact to traffic flow and traffic patterns (especially given the bike/walking trail that was recently completed at the intersection of SE 17th Avenue and SE Lava Drive). That is already a very dangerous intersection which really demands a traffic signal;
- The projected amount of time to build this 100-unit dwelling is six years. That means six years of dump trucks, dirt, rocks, debris, mud, nails in the road, traffic impediment, construction noise and other nuisances; and,
- If dynamite is used to blast/excavate for the proposed underground parking facility, that may well cause seismic activity which would very likely adversely affect us.

When I purchased my 3-bedroom, river-view condo in July 2019, I had *NO IDEA* that Waverley Woods was even in the offing. If I had known, I would not have made an offer on this place; that is how vehemently opposed to this project I am. The thought of "Waverley Woods" wreaking havoc on our otherwise quiet neighborhood is very upsetting indeed. I am opposed to this project moving forward.

Sincerely,

Claudia J. Cogle

11/07/2020

City of Milwaukie
Planning Commission

To whom it may concern:

Reference: PD-2020-001; TFR-2020-002; WG-2020-001; PLA-2020-001; ZC-2020-001

Please add these comments to our previous memo of 10-13-2020 regarding the proposed Waverly Development:

-The Willamette Greenway is designed to ensure certain designated environmental and recreational values for the greater benefit of the citizens of Oregon and, in this case, the citizens of Milwaukie. The request for a variance to exceed building height and length limits specified in the WG Zone appears to benefit only the developer. A fourth story of high end apartments (buildings A1 and A2) is planned to generate additional rental income. Of additional concern is the actual height for proposed apartments. Low and high end elevations including the mechanical 'story' and the roofline need specificity. The proposed height is **significantly** in excess of WG Zone requirements.

-The developer states in the application that the development provides benefits to the city by the addition of a fourth story. It seems the City of Milwaukie would give up benefits provided by the WG Zone. This development is private property. We see no provision for the greater community to use any aspect of the amenities. The pool, community buildings, garden and hiking trails are not available to the public at large. Further, per realtor input, a significant downgrade in value of adjacent Waverly Heights properties is at stake.

-As a Planned Development, it appears all phases must be portrayed in some detail upon submission. This should include the new lot created at the western corner of Lava Drive and Waverly Country Club. This 'phase' of development may also require a variance as it is within the WG Zone. By allowing a variance now, the City is setting precedence for approval of additional building within the Greenway at some future unspecified date.

-It appears that the most current tree canopy retention counts are significantly less than specified in the original submission. We question whether the requirements stated in the Comprehensive Plan (whichever one applies) or the WG are being met and whether the "Waverly Forest" retention mentioned in the submission is realistic or sustainable. The current health of the canopy needs immediate attention and the further impact on vegetation during construction should be taken into account. There is little doubt that this area is a significant natural resource to our city. Please re-review the wildlife inventory previously provided. The residents of Waverly Heights to the north, have made a conscious and continued effort to preserve this resource.

-We once again invite the Planning Staff and Commissioners to visit our historic community. The value of retention of natural habitat in this unique community is evident with a short walk.

-Finally, the Wyse family has been in touch with us about mitigation and buffers between their R2 and our R10 properties. We appreciate their outreach and will continue to work collaboratively with them.

Steve and Gloria Stone

503-730-8471

10230 SE Cambridge Ln.

November 10, 2020

To: Milwaukie Planning Commission
From: Patricia Justice, 10252 SE Cambridge Lane, Milwaukie, Oregon
Subject: Waverley Woods Proposed Development

1. Screening and Moving A1 and A2

We have met twice with the owners, and the second time included the building architect and the landscape architect. They stated that they may be able to move A1 and A2 about 6 feet toward Waverley Court. Also, they have indicated a willingness to work with us on screening, including trees and shrubs, and the possibility of a solid fence. **In the event the project is approved, I would like to see the agreement on screening in writing and included as a condition. We would also appreciate elevations as viewed from Cambridge Lane, including a 3D view.**

2. Building Height

The applicant is requesting the allowable height to be based on Planned Development zoning instead of the Willamette Greenway height restriction. It's justified by referencing the 2018 Milwaukie Comprehensive Plan Update which stated that this particular piece of land in the Willamette Greenway is "subject to review." **Please reject this argument and retain the Greenway height restriction.** Buildings A1 and A2 will rise at least 62 feet as viewed from the river. I believe the true height, from the ground at the lowest grade to the highest point of the buildings, may be greater than this. **Can the applicants provide the heights as requested in the attachment?**

3. Tree canopy

Trees saved total 135, a little less than 1/3 of the total trees surveyed. The arborist's comments indicate that many of the saved trees are ivy-covered, one-sided, and some are only in fair condition. **Are any of the 135 saved trees on the parcel of land reserved for future apartments?** This could further reduce the number of trees making up the forest and the tree canopy. Not having a robust forest and tree canopy negatively impacts the views of the proposed 4-story apartments from the river. In addition, not having a healthy forest of trees and shrubs will result in fewer numbers and varieties of forest-dwelling birds and other wildlife.

4. Complete Build Out

In the April 23 Pre-App Conference Narrative there are multiple exhibits showing a draft build out of the apartments, including apartments on the parcel reserved for the future. **Why not include a full draft build out now?** This would give greater visibility over the retained forest and land, critical to the justification of this project.

5. Timeline

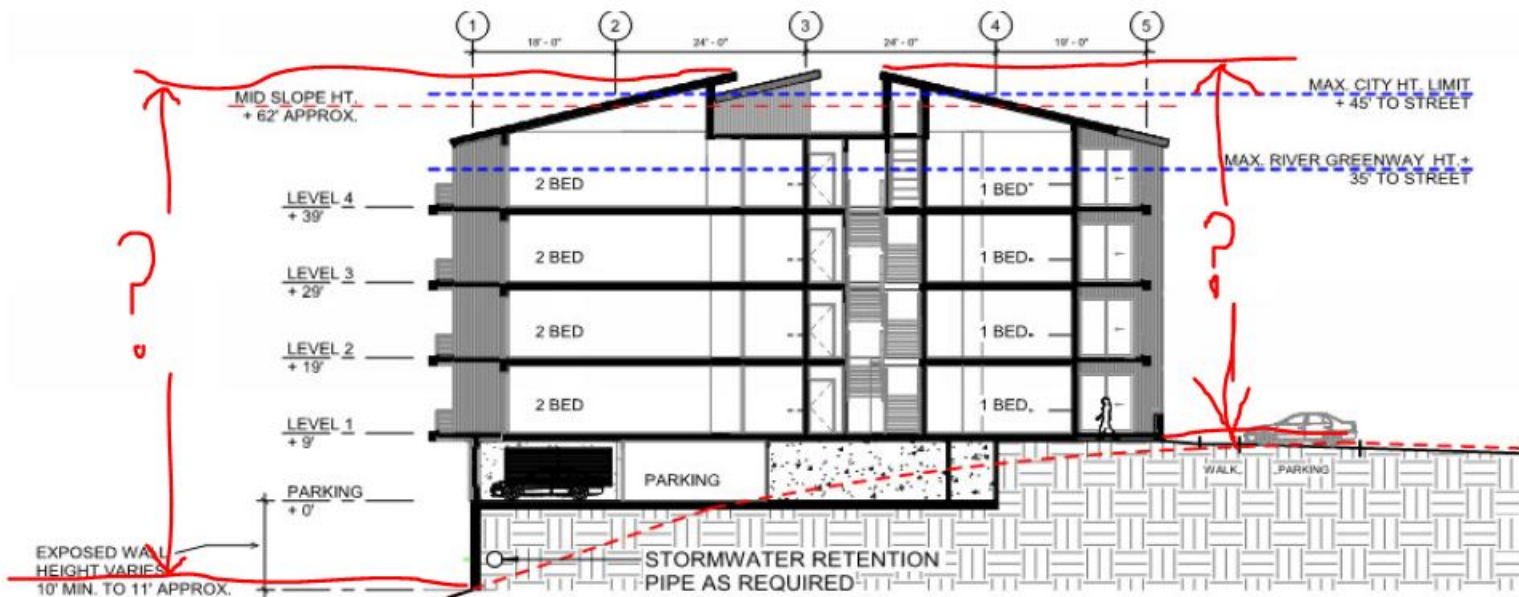
We would appreciate an estimated timeline for the entire project, including Phase 1, Phase 2, and Phase 3.

6. Visit

At the October 27 meeting of the Planning Commission, at least one of the commissioners indicated that he had visited the site of the proposed apartments. I'm guessing this was from Lava Drive. **I encourage you all to visit the site as viewed from Cambridge Lane to see the impact of multi-family units on single family homes located in a woodland setting.**

Thank you!

Patti Justice



1

BUILDING A.1 (A.2 SIM) - SECTION DIAGRAM

1/16" = 1'-0"

--- EXISTING TOPOGRAPHY

From: [Scott Wyse](#)
To: [Vera Kolia](#)
Cc: [Wendy Wyse](#); [Duncan Wyse](#); [Nels Hall](#); [Phil Krueger](#); [Mike Connors](#)
Subject: Waverley Woods Apartment Development Application dated July 28, 2020 (Application)
Date: Tuesday, November 10, 2020 14:07:06
Attachments: [We sent you safe versions of your files.msg](#)
[Walker Ventures, LLC letter to Planning Commission.pdf](#)

Mimecast Attachment Protection has deemed this file to be safe, but always exercise caution when opening files.

This Message originated outside your organization.

Re: Waverley Woods Apartment Development Application dated July 28, 2020 (Application)
Application File Nos. PD-2020-001, ZC-2020-001, WG-2020-001, PLA-2020-001 & TFR-2020-002

Dear Chair Massey and Planning Commission Members:

Walker Ventures, LLC (Applicant) submits the attached letter which supplements its Application particularly with respect to MCC 19.311.3C.

In addition, Applicant responds to various questions and concerns submitted by residential neighbors to Applicant's proposed development plan:

1. Access for the construction of the proposed new buildings will be from Waverley Court. The portion of Lava Drive to the west of its intersection with Waverley Court will not be used for construction. It is possible that portion of Lava Drive may be used for the transportation of some shrubs and trees which will be removed from the site, but any such activities on Lava Drive will be limited and of short duration so as to minimally disturb any residents of condominiums at Shoreside East.

2. My brother, Duncan, our architect, our landscape architect, and I met with Steve and Gloria Stone and Patricia Justice on Saturday, November 7, 2020, to discuss their concerns further:

a. We responded to the Stones' concerns about potential shade from Building A-2 on their house by showing them a shade analysis our architect prepared which shows that on the day of the winter solstice, the day of the year on which the sun is lowest on the southern horizon, the shade on their home from Building A-2 would be minimal and that on the day of the summer solstice, the day of the year on which the sun is highest in the sky, there would be no shade from Building A-2 on their property whatsoever. Our architects are submitting a copy of that shade analysis to the Planning Commission. That shade analysis was prepared by a sophisticated software program which takes into account the heights and locations of the respective buildings.

b. We discussed with them that we are committed to planting shrubs and trees to mitigate the visibility of the A-2 Building from their properties. Our landscape architect heard their ideas as to such plantings, and we will seek their input into the plan we develop for those plantings.

c. We told them that because of their concerns about the proximity and height of Building A-2, we had our architects revise the siting of that building to move it six feet further from their home. They told us they thought that would be an improvement from their point of view. Moving the Building A-2 six feet further away from their property will visually have the same effect as would reducing the height of that building by about six feet. Our architects are submitting to the Planning Commission, drawings showing Building A-2 moved six feet further away from the Stones' property.

d. We discussed with them that our intention in designing our plan was to maintain the existing flora and fauna on our property as much as we reasonably can consistent with development of the property, and that we will be able to maintain about 54% of the property in either a natural or a landscaped condition.

e. We have discussed with them that all external lighting at the property will be down lighting which does not shine directly onto other property and that we intend that our contractor and our residents will comply with all noise ordinances.

f. We have explained to these neighbors that our new stormwater system will drain water from Waverley Court and from all new hard surfaces on our property so that their drainage problems should be alleviated rather than made worse by the development.

g. We have acknowledged to these neighbors that we will maintain and repair the existing fence between our properties consistent with our obligations under the existing fence agreement.

3. There are no current plans to develop Parcel 3.

We appreciate the concerns and many thoughtful suggestions which have been submitted by residential neighbors of this property. Our plan was developed with the express objective of maintaining as much of the natural flora and fauna as could be maintained consistent with development of the property. Many of the ideas expressed by neighbors will be helpful to us as we seek to achieve that goal. The outstanding nature of our plan in this regard can best be seen when it is compared with existing apartment complexes in the vicinity as is done in the attached letter. We remain open to discussing neighbor ideas and concerns throughout the development of this property.

WALKER VENTURES, LLC

900 S.W. Fifth Avenue, Suite 2000

Portland, Oregon 97204

November 10, 2020

Mr. Robert Massey, Chair
Planning Commission
City of Milwaukie
6101 S.E. Johnson Creek Blvd.
Milwaukie, OR 97206

Re: Waverley Woods Apartment Development Application dated July 28, 2020
(Application)
Application File Nos. PD-2020-001, ZC-2020-001, WG-2020-001, PLA-2020-001 & TFR-2020-002

Dear Chair Massey and Planning Commission Members:

Applicant, Walker Ventures, LLC, submits this letter to supplement its Application and to provide additional evidence in support of that Application.

MCC 19.311.3C authorizes the City to “permit residential densities which exceed those of the underlying zone, if it determines that the planned development is outstanding in planned land use and design and provides exceptional advantages in living conditions and amenities not found in similar developments constructed under regular zoning.” Applicant’s development proposal seeks approval of such an increase in density.

At the beginning of the Application, in the Development Description and Development Requests for Approval sections (10-27-20 Packet, Section 5.1, pps. 68-69), Applicant generally describes why that determination referred to in MCC 19.311.3C should be made and why the additional density requested should be permitted. This letter further elaborates.

1. Applicant’s development proposal covers significantly less of the land with impervious surfaces than is typical of apartment developments. Applicant’s proposal retains about 54% of the land in vegetated pervious surface, with some natural and some landscaped. This creates an environment of urban living in a forested setting which is seldom achieved in apartment communities. It provides the occupants with more views of the natural and landscaped settings. It provides greater capacity for the property to absorb rain water and provide a place for abundant flora and fauna. Applicant is able to achieve this result by using a combination of design techniques:

a. Applicant's design takes advantage of the ridge of the property by placing the two somewhat larger A-1 and A-2 buildings along that ridge. This placement is designed to optimize an important amenity to the occupants of the apartments in those buildings: the view from the property across the Willamette River. In addition, by having those buildings larger, aligned end-to-end, and containing more apartments means that fewer buildings are needed to achieve density, less land is covered by buildings to achieve the same density, and fewer views from apartments will be of principally of other buildings.

b. Placing those two buildings along the ridge takes advantage of the slope to build the main access roadway to the apartments and the principal parking for the apartments underneath those two buildings by cutting that level into the slope, so that when viewed from the fronts of those buildings, the parking level is entirely underground and does not appear to add to the height of the four floors of apartments. Placing the majority of the parking for the apartments underground not only means that less land needs to be paved for parking, it also provides as an amenity to the residents access to their apartments by elevator from a dry parking space as well as more views of foliage instead of cars and parking lots.

c. Building the main access driveway and parking under the buildings also makes it possible to limit the other roadways on the property to a single access road in front of the buildings and a small amount of exterior parking. As can be seen from the site plans found in the Application, the amount of area of the property which would be paved for access roadways and parking spaces is relatively small when compared to the size of the property.

2. The buildings are broken up in appearance by wide courtyard entryways which give each building the appearance of being two buildings. A significant benefit of this design is that it makes it possible for 6 of the 8 apartments on each floor to have their main living areas on building corners so that they can have windows on two sides of the living area with two different outlooks. The importance of this amenity was described by renowned Oregon architect, Christopher Alexander, in his seminal work *A Pattern Language* (1977, at page 747):

When they have a choice, people will always gravitate to those rooms which have light on two sides, and leave the rooms which are lit only from one side unused and empty.

It is intuitively true for most people that rooms with windows on two sides are more appealing than rooms with windows on only one wall. The unique design of Applicant's project makes it possible to have 75% of the apartments with this exceptional amenity. This characteristic is also important because it provides cross ventilation, thereby reducing the need for air conditioning. Because the two non-corner apartments on the top floors will have clerestory windows, even they will have cross ventilation so that 26 out of 32 apartments in the A-1 and A-2 buildings will have cross ventilation.

3. By keeping the total number of buildings on the site to only four, Applicant's design makes it possible to space the buildings further apart and in configurations which minimize the number of views from apartments that are dominated by views of other buildings.

4. Because Applicant's proposal preserves about 54% of the land covered by vegetation, it has room to provide and does provide a community garden. This amenity is very popular with urban dwellers who like to have the opportunity to grow their own food and flowers in close proximity while socializing with their neighbors. A community garden is an amenity rarely found in other apartment complexes.

The outstanding and exceptional characteristics of Applicant's project can best be seen when these features are compared to 24 other existing nearby apartment complexes as shown in the chart beginning on the following page. Few of these other apartment complexes have parking underneath the buildings. Few have more than 30% of their land area in a vegetative state, and most have significantly less than that with most of the land area covered by the apartment buildings, roadways, parking spaces, carports, or garages. It is a rare apartment complex which offers the amenity of a community garden. Similarly it is a rare apartment complex which has half or more of its apartments with the main living space on a corner of the building which can have windows on two walls facing outward in different directions. Many apartment complexes do not have any such units. Some have very long buildings with one apartment next to another, so that it is not possible for most of them to have a corner view. Many apartment complexes have many separate buildings which do not provide windows on two sides of the main living areas of even the apartments which are at the corner of the buildings. This could be because the views from such windows, if there were any, would simply be of the adjacent building.

On behalf of Walker Ventures, LLC, I visited each of the apartment complexes identified in the chart below, and I obtained information about them to the extent available from their websites and from aerial maps. While most of the apartment complexes clearly had significantly less than 30% of their land in vegetation and not covered by structures, driveways, or parking spaces, some that were closer to that number were determined by my best estimate from the information I was able to obtain by those methods.

As can be seen from the chart below, features of Applicant's proposed development which are outstanding in planned land use and design and provide exceptional advantages in living conditions and amenities are in sharp contrast to the features of other apartment developments in the general vicinity of Applicant's property.

Name and Address of 24 Nearby Apartment Complexes	Apt. complexes which have more than 30% of land in vegetation and not covered by structures, driveways, or parking spaces	Parking under building(s)	Community Garden Amenity	Half or more of apartments have corner living rooms with window views on two walls
Hamlin Apts. * 2946 SE Harrison Milwaukie	No	No	No	No
Shorewood Terrace Apts. * 11233 SE 27 th Ave., Milwaukie	No	No	No	No
Milwaukian Apts. * 11275 SE 27 th Ave., Milwaukie	No	No	No	No
Dutch Village Apts. 11349-65 27 th Ave. Milwaukie	No	No	No	No
Walsh Commons * 2326 SE Willard St., Milwaukie	No	No	No	No
Chestnut Place Apts. * 12150 SE 31 st Pl., Milwaukie	Unable to determine because unclear how much property along Kellogg Creek is included	No, but with a few exceptions	Yes	No
Quail Ridge Apts. 2868 SE Lake Rd, Milwaukie	No	No	No	No
Shoreside East Condominium 1400 SE Lava Dr., Milwaukie	No, depending upon how the property shore-line is measured	No	No	No

Name and Address of 24 Nearby Apartment Complexes	Apt. complexes which have more than 30% of land in vegetation and not covered by structures, driveways, or parking spaces	Parking under building(s)	Community Garden Amenity	Half or more of apartments have corner living rooms with window views on two walls
Axletree 11125 SE 21 st St. Milwaukie	No, building and paving covers most of the site	Yes, four stories of apartments above parking	No	No
River View Apts. 12425 SE River Rd., Milwaukie	No	No	No	No
River Cliff Apts. 12505 SE River Rd., Milwaukie	Possibly, if the unusable steep sloped area of the property is included	No	No	No
Forest Ridge Apts. 12600 SE River Rd., Milwaukie	No	No	No	No
The Bluffs Apts. 12601 SE River Rd., Milwaukie	Possibly, if the unusable steep sloped area of the property is included	No	No	No
Rim Rock Apts. 12424 SE River Rd., Milwaukie	No	No	No	No
Miramonte Lodge 12200 SE McLoughlin Blvd. Milwaukie	Yes, if Kellogg Creek and embankment which are part of the property are included	No	No	No
Springcreek Apts. 2406 SE Harrison St., Milwaukie	No, building covers almost entire site	No	No	No
Apartments at 2507-2525 SE Monroe Milwaukie	No, most of property covered by buildings and parking lot, with only a few shrubs	No	No	Yes, but most views are of buildings, some of which are within less than 10 feet
Crystal Lake Apts. 10500 SE 26 th Ave., Milwaukie	Yes, if lake and land surrounding it are included	No	No	No

Mr. Robert Massey, Chair

November 10, 2020

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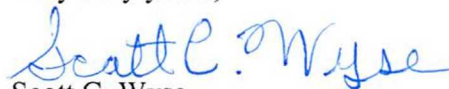
Name and Address of 24 Nearby Apartment Complexes	Apt. complexes which have more than 30% of land in vegetation and not covered by structures, driveways, or parking spaces	Parking under building(s)	Community Garden Amenity	Half or more of apartments have corner living rooms with window views on two walls
Springwater Flats 8237 SE 17 th Ave. Portland	No, building covers almost the entire parcel	Yes, four stories of apartments above parking	No	Yes, if non-corner units with pop-outs are included
Holm at Sellwood 8220 SE 6 th Ave. Portland	No, building covers almost the entire parcel	Yes, four stories of apartments above parking	No	No
Wheelhouse Lofts 8130 SE 6 th Ave. Portland	No, building covers almost the entire parcel	No	No	No
The Morgan Apts. 1650 SE Tacoma St., Portland	No, building covers almost the entire parcel	Yes, four stories of apartments above parking	No	Yes, if non-corner units with pop-outs are included
Moreland Crossing Apts. 8150 SE 23 rd Ave. Portland	No, building and parking covers majority of the parcel	No	No	Yes, if non-corner units with pop-outs are included
Sellwood Apts. 1721 SE Tacoma St., Portland	No, building covers almost the entire parcel	No	No	No

* Constructed under regular R-2 zoning.

Conclusion.

Because Applicant's proposed development achieves about 54% of the land preserved in a vegetated state and provides exceptional amenities not available in other similar apartments, it "is outstanding in planned land use and design and provides exceptional advantages in living conditions and amenities not found in similar developments constructed under regular zoning" and the greater density sought by Applicant should be permitted.

Very truly yours,



Scott C. Wyse

Member, Walker Ventures, LLC

November 10, 2020

Michael C. Robinson
Admitted in Oregon
T: 503-796-3756
C: 503-407-2578
mrobinson@schwabe.com

VIA E-MAIL

Mr. Robert Massey, Chair
City of Milwaukie Planning Commission
6101 SE Johnson Creek Blvd
Milwaukie, OR 97206

RE: Waverly Woods Planned Development, File No. PD-2020-001
Letter on behalf of Waverley Country Club

Dear Chair Massey and Planning Commission Members:

This office represents Waverley Country Club (“Waverley”). In submitting this second letter, Waverley maintains its opposition and writes to supplement its letter dated October 27, 2020, as well as to bring up additional points of concern following Applicant’s presentation during the October 27, 2020 hearing.^{1,2}

1. Applicant Has Not Shown That Its Development Meets the “Exceptional Advantages in Living Conditions and Amenities” Requirement to Obtain PD Zoning

Applicant has asked for an increase in density of 20% over that allowed in the Site’s current base zoning, R-2, and has stated on the record that the only way to get to that increased density and make the development work (by avoiding covering most of the land with buildings and pavement) is to add height and length otherwise not allowed in the R-2 zone to the Ridge apartment buildings (A.1 and A.2). (Oct. 27 Hrg. at 1:43:23-1:44:50; *see also* 10-27-20 Packet, Section 5.1, p. 64 (“In lieu of adding a fifth residential building [for the additional units that would be allowed if Applicant met the requirements for increased density] the project proposes that the Ridge buildings A.1 and A.2 extend to 203’ in length and exceed the 35’ building height limit with the addition of a fourth level.”).)

¹ While Waverley appreciates Applicant’s comment and concern over its opposition (Oct. 27 Hrg. at 1:42:30), Waverley would like to clarify that it does not oppose the development outright. Rather, Waverley opposes the application because the proposed development is too big, too tall, too wide, and too dense without meeting the approval criteria for these increases, and all of these increases adversely affect Waverley and its neighbors.

² Since the October 27 hearing, Waverley and Applicant have engaged in discussions on ways Applicant can address Waverley’s concerns. Waverley is hopeful Applicant’s commitment to responding to those concerns results in an agreement acceptable to both parties.

Milwaukie's Municipal Code ("Code" or "MMC") clearly sets forth that to obtain the increased density benefit allowed by Planned Development ("PD") zoning, an applicant must provide "exceptional advantages in living conditions and amenities not found in similar developments constructed under regular zoning." MMC 19.311.3.C; *see also* MMC 19.311.9.H.

Applicant has not met this approval criterion because it has not shown by substantial evidence that the "living conditions and amenities" its proposed development will provide are "exceptional" or that they are "not found in similar developments constructed under regular zoning." Moreover, even if found to meet this criterion, the amenities proposed are not planned for development until later phases of the project, and Applicant has stated on the record that it cannot guarantee those phases will be built.

For convenience, the living conditions and amenities Applicant argues its proposed development will have are as follows:

- "100 units of much-needed housing with a range of affordability"³ or housing that fills a "gap in the availability of the proposed apartment types" (10-27-20 Packet, Section 5.1, p. 23 (Staff Report); *id.*, p. 68);
- Upgraded/relocated community garden (*id.*, p. 64, para. 6);
- Outdoor pool and patio adjacent to the community center (*id.*);
- "[C]ommunity center at the Garden level with a kitchen, workout space, and meeting rooms" (*id.* ("Garden level" refers to buildings B.1 and B.2));
- "[A]dditional community facility . . . located at the Ridge, between Buildings A.1 and A.2 . . . [and] will include a library, warming kitchen, wine cellar, bathrooms, and meeting room opening to an expansive river view terrace." (*id.*, p. 64, para. 8);
- Walking paths (*id.*);
- Secure parking (*id.*, para. 4);
- Responsible, sustainable development (*id.*, p. 64, para. 10; *id.*, p. 66, "Response" following discussion of Ord. 2051), including:
 - solar power (*id.*, p. 64, para. 10; Oct. 27 Hrg. at 1:54:46)
 - charging stations for electric cars (Oct. 27 Hrg. at 1:55)
 - insulation (*id.* at 1:54:54).

A. Living Conditions and Amenities Not "Exceptional"

First, Applicant has not shown that the above-listed living conditions and amenities are "exceptional." For one, "exceptional" is a subjective term, and is not defined by the Code. Nor has Applicant explained what it believes "exceptional" means, or why the listed living conditions and amenities are so. For the Commission and the City to determine whether this approval

³ Applicant stated during the October 27 hearing that the proposed development would be "high-end" and thus is not "affordable" under any definition.

criterion is met, more explanation from Applicant is needed as to what “exceptional” means and why the living conditions and amenities described in the application are exceptional.

Taking the requirement in context with the approval criterion, arguably “exceptional” means that the amenity or living condition provided must “not [be] found in similar developments constructed under regular zoning.” If that were the case, then none of the above-listed living conditions or amenities can be considered exceptional. This is because most are already found in similar developments constructed under regular zoning—namely, the Waverly Greens apartment communities. For instance, the neighboring apartment communities already have a pool, dog park, sport court, fitness room, meeting room, community garden, some garage parking, community center allowing for a variety of classes and events, energy-efficient upgrades to windows and doors, increased insulation in roofs, the “biggest solar installation on an apartment in Oregon,” an electric car purchase program, and a range of housing at different rent levels. (Oct. 27 Hrg. at 1:25-1:35:15.) Applicant described these amenities in great detail during its presentation at the October 27 hearing. The Applicant’s proposed development merely upgrades, relocates, or adds additional amenities already provided by those “similar developments constructed under regular zoning.”

It may be that some of the proposed amenities meet the requirement of exceptionality, but to determine that, more explanation should be required of the Applicant. For instance, Applicant argues that it will provide “secure” parking for cars and bikes; but does not explain what “secure” means, and whether it will be a different type of, or better, security than that provided in the neighboring communities.

As another example, Applicant argues that its proposed development will be “responsible” and “sustainable,” but provides no definition or explanation of those terms. Indeed, even Commissioner Hemer pointed out during the October 27 hearing that the application included no discussion of the standard for “green buildings.” (Oct. 27 Hrg. at 1:53:56.) Applicant responded that it is “hoping to meet” one of the LEED standards, but could not provide information as to which one, or how the proposed development would meet them. (*Id.* at 1:54:22) As Commissioner Sherman pointed out (stating that it appeared there were a lot of things being studied, but nothing yet confirmed), Applicant has not provided *any* concrete guarantee or plans showing that the proposed development will include the solar panels, electric charging stations, or other “sustainable” amenities discussed. (*Id.* at 2:17:41) Statements that Applicant is “interested in” or “committed to” such “responsible, sustainable” development in general terms are not sufficient and do not prove exceptionality by substantial evidence.

In sum, for the Commission to determine whether the proposed living conditions and amenities are indeed “exceptional” and/or not found in “similar developments constructed under regular zoning” such that this approval criterion is met, Applicant should be required to provide additional information.

B. Amenities Provided By Nearby Developments Cannot Be Considered Evidence of Exceptionality of the Proposed Development’s Amenities

During Applicant’s opening remarks, Ms. Wyse stated that it is “important that you see this as, this new development as part of a whole entity that our community is.” (Oct. 27 Hrg. at 1:23:45; *see also* 10-27-20 Packet, Section 5.1, p. 64, paras. 2 & 11.) But that community—i.e., the other apartment complexes within Waverly Greens—is not part of the development Applicant has proposed with this application. As such, Applicant’s reliance on and discussion of the features of the other apartment complexes Applicant owns in the Waverly Greens community is inappropriate, except to the extent they are being used to show that the proposed development includes “exceptional advantages in living conditions and amenities *not found in similar developments constructed under regular zoning.*” Thus, the “affordability” of, “sustainability” of, and existing amenities found at Applicant’s existing developments have no bearing on this application outside of providing a point of comparison.

C. Even if Exceptional, None of the Proposed Amenities Are Planned for Development in Phase 1

To obtain the density bonus allowed with PD zoning, an applicant must provide the required exceptional living conditions and amenities. As discussed above, Applicant’s requested increase in density will be provided for via the additional height and length proposed for buildings A.1 and A.2. Building A.1 alone is planned for Phase 1. Building A.2 and one community center are planned for Phase 2, and the Garden Buildings (B.1 and B.2) and *all other listed amenities* are planned for Phase 3 or not planned at all:

Proposed “Exceptional Advantages in Living Conditions and Amenities”	Planned Phase for Development
Ridge community facility, located “between Buildings A.1 and A.2,” which will include “a library, warming kitchen, wine cellar, bathrooms, and meeting room opening to an expansive river view terrace.”	Phase 2
Garden level community center with a “kitchen, workout space, and meeting rooms”	Phase 3
Outdoor pool and patio	Phase 3
Relocated community garden	Phase 3
Walking paths	No discussion of phase
Responsible, sustainable development features such as solar panels, electric car charging stations, and insulation	No discussion of phase
Secure parking	No discussion of phase ⁴

⁴ Given the application’s drawings include parking underneath Building A.1 (10-27-20 Packet, Section 5.1, p. 80), Waverley assumes parking will be provided as part of phase 1. However, whether that parking will be “secure” at that time is unclear.

This staggering of development might be acceptable if Applicant provided any substantive phasing plans, or a guarantee that all phases would and could be completed. But Applicant made clear during the October 27 hearing that phases 2 and 3 will be built “considerably down the road because the cost of these buildings is pretty high,” and that while the “hope is to build them eventually,” “it’s probably not going to happen soon,” if at all (Oct. 27 Hrg. at 1:45.)

Such a speculative plan for building and implementing the purported “exceptional” living conditions and amenities that are *required* for Applicant to obtain the density bonus requested cannot be the basis for allowing a re-zone to PD zoning. If PD zoning is allowed, Applicant would immediately obtain the benefits of the PD zone, construct residential building A.1 (which will be taller and wider than allowed by the Site’s current R-2 and WG zoning), and could then potentially halt construction due to its admitted potential lack of funding before providing the reciprocal amenities required in the PD zone. Such a plan should not be approved; or, at minimum, the Commission should require Applicant to guarantee, by bonding or some other financial mechanism, that the amenities discussed and argued to be “exceptional” will in fact be provided.

2. The Proposed Development Does Not Address a Public Purpose and Provide Public Benefits and/or Amenities Beyond Those Permitted In the Base Zone

The final approval criterion for obtaining PD Zoning requires an applicant to show by substantial evidence that its development (1) “addresses a public purpose” and (2) “provides public benefits and/or amenities beyond those permitted in the base zone.” MMC 19.311.9.I. Applicant’s narrative does not sufficiently show that the two requirements of this criterion are met.

First, “public” is not defined by the Code. However, other terms using the word “public” *are* defined, and imply that “public” relates to the City of Milwaukie as a whole. See MMC 19.201 (“*Public area requirements*’ means specific standards for streets, sidewalks, and public spaces adopted to implement the Downtown and Riverfront Land Use Framework Plan”; “*Public facilities*’ means transportation and public utility improvements as described below. ‘*Transportation facilities*’ means transportation-related improvements in a right-of-way or easement, including, but not limited to, travel lanes, bicycle lanes, sidewalks, and transit facilities. ‘*Public utilities*’ means public utility-related improvements in a right-of-way, easement, or tract, including water, sanitary sewer, and stormwater infrastructure”; “*Public park*’ means a park, playground, swimming pool, reservoir, or athletic field within the City which is under the control, operation, management, or ownership of the City of Milwaukie or other public agency” (emphasis added).)

Applicant appears to define “public” more narrowly, and focuses only on benefits to the “existing six communities of Waverley [sic] Greens Apartments.” (10-27-20 Packet, Section 5.1, p. 68). This is not in line with the Code and as such, Applicant cannot meet the requirements to obtain PD zoning on this ground because any public purpose or public benefits

must be for the Milwaukie community as a whole – not just to the Waverly Greens Apartment Community.

Moreover, the public benefits and amenities provided by a proposed planned development must be “beyond those permitted in the base zone.” Here, even assuming the purported benefits are “public,” the benefits and amenities proposed are all permitted in the base zone, R-2. Indeed, the only features of the development Applicant proposes that are *not* permitted in the R-2 base zone are the requested increased density and building length. The public benefits and amenities Applicant has included in its narrative are:

- “more places for community gathering and celebration”
- “two new community centers and outdoor amenities [that] provide places for the inhabitants to garden, swim, eat, celebrate, meet, organize, and educate themselves”
- “existing community garden [that] already partners with local educators to provide classes to its residents”
- “increase[d] number of spaces and opportunities for these [educational] experiences”
- “relocating and enlarging the community garden which is an extremely popular amenity”
- “creating walkable paths through the forested area with peek-a-boo views of the Willamette River”
- “providing more natural recreation spaces to improve occupant health and exposure to and appreciation for our natural environment”
- “sustainable design” which will purportedly “reduce its operational footprint”
- “take advantage of the natural topography on the site”
- “tuck parking under the buildings”
- “other amenities”

(10-27-20 Packet, Section 5.1, pp. 68-69.) Notably, none of these “public benefits and/or amenities” are prohibited in the current R-2 base zone. *See* MMC 19.202.2, Table 19.302.2 (R-2 zoning allows outright multifamily residential uses, accessory uses, and agricultural or horticultural uses; allows conditionally office uses; and allows community service use via a Community Service Use approval; and there are no restrictions relating to under-building parking, sustainable design, or creating paths through the forest). Indeed, most, if not all, of these amenities exist already in the Waverly Greens community, and Applicant has admitted as much. As such, this approval criterion is not met.

3. Phased Development Must Be Complete in 7 Years

For proposed developments in a PD zone that will be phased, Milwaukie’s code requires that “in no case will the total time period of construction of all phases exceed 7 years, as measured from the date of approval of the final development plan until the date that building permit(s) for the last phase is(are) obtained.” MMC 19.311.17.A. Yet, Applicant’s phasing plan omits entirely any discussion of a development timeline. (*See* 10-27-20 Packet, Section 5.1, p. 64, para. 3 (explaining only that “phased construction of (4) multifamily apartment buildings” will be built

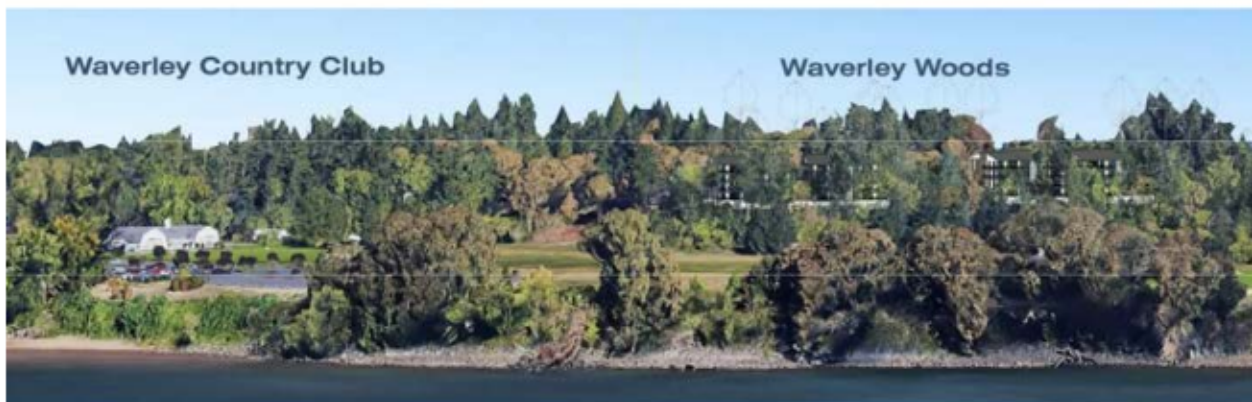
in three distinct phases: “building A.1 (32 units) will be built along the Ridge in phase 1”; “Building A.2 (32 units) and the associated community building will occur in phase 2”; and “two Gardens Buildings B.1 (18 units) and B.2 (18 units) and the community center with pool would be developed in Phase 3”).)

During the October 27 hearing, Applicant confirmed that there was no timeline currently planned for the proposed phases, but that construction could take ten years overall to complete. (Oct. 27 Hrg. at 1:45.) Applicant’s engineer later re-affirmed this, stating that Applicant was looking at ten or more years for this development. (*Id.* at 2:02.) Applicant’s lack of a detailed phasing plan generally, coupled with a potential 10-year construction period, shows that Applicant does not meet this requirement.

4. Height of Buildings A.1 and A.2 Will Make Them Visible From Waverley Country Club

Applicant stated in its application that the A.1 and A.2 Ridge buildings “are the farthest away and downhill from the public street, so the height and length increases will not have a significant visual impact to the surrounding community.” (10-27-20 Packet, Section 5.1, p. 64 para. 12.) But this statement ignores that Waverley is part of the surrounding community, and that the height and length increases *will* have a significant visual impact on Waverley and its members and neighbors, from, at least, the driving range of Waverley’s golf course, which is located downhill from the proposed development. Currently, the view from Waverley looking towards the Site of the planned development includes only trees and vegetation. When Waverly Woods’ Ridge buildings are in place, Waverley and its members and neighbors will be able to see those buildings from the golf course. This visual impact is shown clearly on page 17 of Applicant’s hearing presentation slide deck:

VIEWS FROM RIVER



VIEWS LOOKING EAST ACROSS RIVER TO SITE SHOWING MINIMAL PROJECT VISIBILITY

Compatibility with the surrounding areas and current zoning is required for a conditional use permit and for zoning map amendments. MMC 19.905.4.A.2 (“The operating and physical

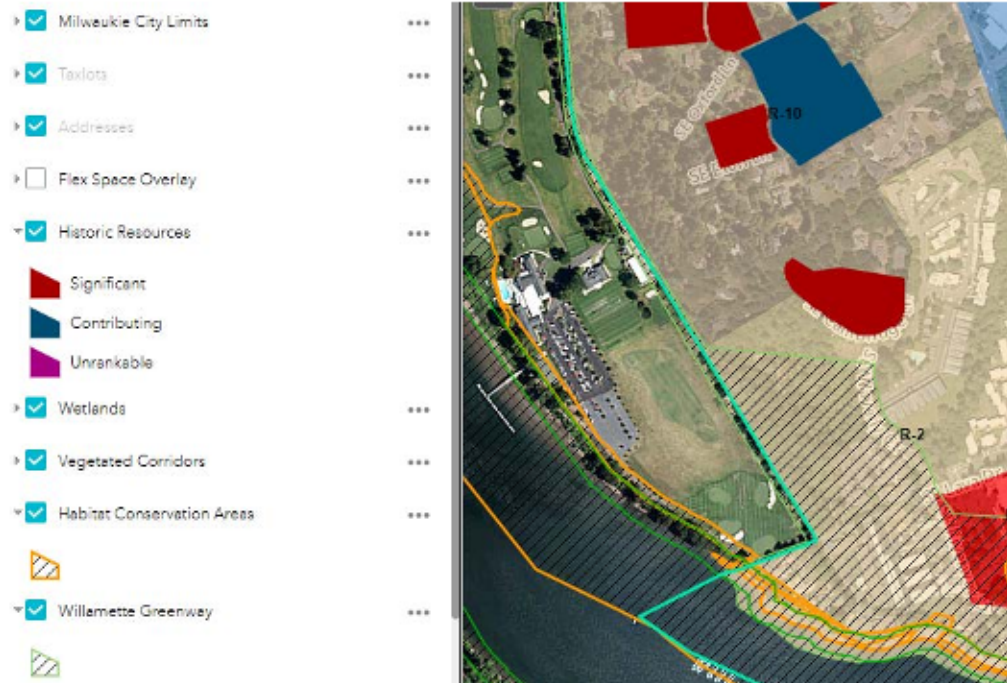
characteristics of the proposed use will be reasonably compatible with, and have minimal impact on, nearby uses.”); MMC 19.905.4.A.5 (“The proposed use will comply with all applicable development standards and requirements of the base zone, any overlay zones or special areas, and the standards in Section 19.905.”); *see also* MMC 19.905.5 (allowing the Planning Commission to “impose conditions of approval that are suitable and necessary to assure compatibility of the proposed use with other uses in the area and minimize and mitigate potential adverse impacts caused by the proposed use”).

The requested increased height is not compatible with the surrounding area (Waverley) or with the base zone (R-2) or the overlay zone/special area (WG) because it exceeds the limits set by the base and overlay zones, and because Applicant has not met its burden of showing “exceptional advantages in living conditions and amenities” to obtain the increased density that will be accommodated by the increased height.

5. Application Ignores Single-Family Zoning in Area

MMC 19.311.9.C requires an applicant to show that its proposed development is compatible with the surrounding area based on “site location and character of the area”; “predominant land use pattern and density of the area”; and “expected changes in the development pattern for the area.” Applicant’s response to this approval criteria states, “The proposed development is consistent with the predominant⁵ land use pattern and density of the area *as it is surrounded by existing multifamily apartment complexes.*” (10-27-20 Packet, Section 5.1, p. 68 (emphasis added).) But the area is also surrounded by single-family homes in the R-10, low density zone, some of which have historical preservation overlay zoning:

⁵ “Predominant” is another subjective term used by Applicant that is not defined and that does not provide a standard by which the Commission or the City can use to determine its meaning. Applicant should be required to provide data showing that R-2 zoning and multi-family apartment complexes are indeed the “predominant” land use pattern and density of the area. As the City’s zoning map shows, this may not be the case.



(See Milwaukie Zoning Map, available at <http://milwaukie.maps.arcgis.com/apps/webappviewer/index.html?id=48bfb9fc517446f9af954d4d1c4413af>.)

Applicant’s response omits reference to the single-family and historical preservation overlay zoning in the area altogether, and thus does not explain how the proposed development is compatible with such zoning. Applicant’s comments during the October 27 hearing (at around 1:46) are similarly lacking in explanation regarding the proposed development’s compatibility with the single-family and historic zoning. The application should be denied for this additional reason.

6. Additional 50 Feet in Width Proposed for the A.1 and A.2 Buildings Not Acceptable

As discussed above, Applicant wishes to use additional building length not normally allowed in the R-2 zone to accommodate the requested 20% density increase. Applicant stated that such a building with extra length is “not without precedent” in the area. (10-27-20 Packet, Section 5.1, p. 66.) But such “precedent”⁶ is not relevant. Simply put, a development must meet the requirements of the base and overlay zoning; if it does not, an applicant must prove by substantial evidence that it meets the approval criteria for PD zoning or exceptions, if any. Applicant here has not done this. The break in the middle of the building shown below—which Applicant appears to use as a way of assuaging concerns over the added length—provides none

⁶ The precedential value of buildings in the area is discussed below in Section 12.

of the required evidence that the development meets the approval criteria of MMC 19.311.9, many of which have already been discussed herein and need not be repeated.



Image 1. Ridge Building A-1 entry level showing overall 203' long plan broken into two masses at street.

This is because the inset in the middle of the building in no way changes the fact that the proposed A.1 and A.2 buildings are still overly long buildings, longer than allowed under the current zoning. Indeed, the additional length will be strikingly visible to those viewing the buildings from the back side—namely, Waverley and its members and guests, and anyone in or across the Willamette River. These will also be the tallest buildings at the highest point on the land in this area. This is a deviation from the R2 zoning in this area, and Applicant has not shown by substantial evidence that it meets the requirements of PD zoning to make such a deviation acceptable.

7. Open Space Requirements

According to the Code, “[o]pen space means the land area to be set aside and used for **scenic, landscaping, or open recreational purposes** within the development. Open space may also include areas which, because of topographic or other conditions, are deemed by the City Council to be suitable for leaving in a natural condition. Open space shall be adequate for the recreational and leisure needs of the occupants of the development, and **shall include the preservation of areas designated by the City for open space or scenic preservation in the Comprehensive Plan or other plans adopted by the City.**” MMC 19.311.3.E (emphasis added).

Waverley does not dispute that Applicant’s proposed development includes open space. However, in the portion of the application addressing the public open space requirement of MMC 19.505.3.D, relating to multifamily design guidelines (requiring “sufficient open space for

the purpose of outdoor recreation, scenic amenity, or shared outdoor space for people to gather”), Applicant includes a listing of amenities that do not fit within the definitions of open space in either MMC 19.505.3.D or MMC 19.311.E, including a kitchen and catering space, wine cellar, and community meeting rooms. (10-27-20 Packet, Section 5.1, p. 70). Waverley respectfully requests that the Commission consider whether the “large outdoor community gardens, swimming pool, walking trails, . . . [and] permanent picnic tables” noted by Applicant sufficiently satisfy the public open space requirement for a multifamily dwelling, especially given the residents of the 32 units of Building A.1 will be without those amenities until phases 2 and 3 are complete, which Applicant already admitted may not happen for a period of years, if at all, depending on their funding.

PD zoning also requires that the “development plan and program **shall provide for the landscaping and/or preservation of the natural features of the land. To ensure that open space will be permanent, deeds or dedication of easements of development rights to the City may be required.** Instruments and documents guaranteeing the maintenance of open space shall be approved as to form by the City Attorney. Failure to maintain open space or any other property in a manner specified in the development plan and program shall empower the City to enter said property in order to bring it up to specified standards. In order to recover such maintenance costs, the City may, at its option, assess the real property and improvements within the planned development.” MMC 19.311.3.E (emphasis added).

At least one neighbor during the hearing, as well as others through public written comments, expressed a hope that the suggested requirement for a conservation easement or the like would be imposed on Applicant, and Waverley agrees. Applicant stated at the October 27 hearing that, as to the open space requirement and in response to a question by one of the neighbors, “the whole plan commits to the open space” requirement. (Oct. 27 Hrg. at 3:19:47). Waverley notes that statements made by Applicant at the hearing are binding. Given those statements and the strong sentiments from the surrounding property owners and residents, the Planning Commission should impose conditions on any approval that require Applicant to dedicate open space as set forth in MMC 19.311.3.E.

Finally, the Code requires “[a]ll planned unit developments will have **at least one-third of the gross site area devoted to open space and/or outdoor recreational areas. At least half of the required open space and/or recreational areas will be of the same general character as the area containing dwelling units.** Open space and/or recreational areas do not include public or private streets.” MMC 19.311.3.E (emphasis added). It is unclear whether the “same general character” requirement is addressed in the application.

Applicant states, and the Staff Report confirmed, that approximately 54% of the Site will be left as vegetation. The Recommended Findings states that the “gross area of the subject property is approximately 10.8 acres, so a minimum of 3.24 acres must be provided as open space, with at least 1.6 acres available for recreational purposes.” (10-27-20 Packet, Section 5.1, p. 24). First, we respectfully note that one-third of approximately 10.8 acres is approximately **3.6** acres. Using that number, the Code requires that approximately 3.6 acres must be provided as “open

space and/or outdoor recreational areas.” The Code thus also requires that at least half of the approximately 3.6 acres, or 1.8 acres, must be of the “same general character as the area containing dwelling units.” This requirement was not discussed in the application or in the Staff Report or Recommended Findings. (*Id.*; *id.* at p. 61.)

Waverley notes that 54% of 10.8 acres is 5.8 acres. Thus, applicants are leaving 5.8 acres as natural “vegetated open space set aside for scenic, landscaping, or open recreational purposes.” It is not clear from the narrative or accompanying drawings, however, that Applicant meets the requirements to make half of the required open space and/or recreational areas (1.8 of the 5.8 acres of open space set aside) of the same general character as the area containing dwelling units. It is also unclear whether any of the 5.8 acres of open space includes public or private streets, which is prohibited. Waverley opposes the application on this ground, and respectfully requests clarification on these points.

8. Economic Viability of a Proposed Development is Not Part of Approval Criteria

During Applicant’s presentation at the October 27 hearing, Applicant stated that building parking under the Ridge buildings was very expensive, and that the only way to make the development economically viable was to make the buildings bigger and taller: it is “not economically feasible to build the buildings on the ridge with underground parking without having them be 4 story buildings.” (Oct. 27 Hrg. at 1:43:22; *id.* at 1:44:48 (“Only way we can achieve these objectives and have an economically viable project.”).) Economic viability for the developer is not required and not part of any approval criteria, and as such, any discussion of that should be disregarded.

9. Height, Length, Density Increase Requests Cannot Be Addressed By Variances to Current Zoning

The Staff Report states that “[e]xcept for the Willamette Greenway zone restriction on building height, the proposed development could be permitted via review of variances rather than the application of a planned development review.” (10-27-20 Packet, Section 5.1, p. 13.) Waverley respectfully notes that this is not entirely correct.⁷

R-2 zoning allows for the following:

- Height: 3 stories or 45 feet, whichever is less (but with an exception allowed for 1 additional story where an additional 10% of site area beyond the minimum is retained in vegetation)
- Density: 11.6 – 17.4 dwelling units per acre, calculated to allow for 84 units
- Length: 150 linear feet horizontally

⁷ The height restriction of the Willamette Greenway zone could not be avoided by the variance procedure, as the Staff Report correctly pointed out, because structures exceeding 35 feet in height are “prohibited” in that zone. MMC 19.911.2.B.1; MMC 19.401.3.

MMC 19.302.4; MMC 19.302.5.H.2.

However, the Code is explicit in that it lists the following “ineligible variances”:

- “To increase, *or have the same effect as* increasing, the maximum permitted density for a residential zone.”
- “To allow a use that is not allowed outright by the base zone. Requests of this nature may be allowed through the use exception provisions in Subsection 19.911.5, nonconforming use replacement provisions in Subsection 19.804.1.B.2, conditional use provisions in Section 19.905, or community service use provisions in Section 19.904.”

MMC 19.911.2.B.5; MMC 19.911.2.B.7

Because Applicant has admitted that the height and length increases requested “increase, or have the same effect as increasing, the maximum permitted density for a residential zone,” none of applicant’s proposed increases in height, density, length may thus be addressed by a variance. Rather, the only way to do it is to obtain exceptions, or apply for re-zoning, as Applicants did here.

10. New Comprehensive Plan Does Not Apply

As pointed out in Waverley’s first letter, Applicant incorrectly relied on the May 2020 Public Review Draft of the 2020 Milwaukie Comprehensive Plan in its narrative. When the application was submitted, Milwaukie’s new 2020 Comprehensive Plan was not yet effective, and Applicant should be required to revise its narrative responses to the approval criteria requiring conformance with the Comprehensive Plan in effect at the time the application was submitted (“the Effective Comprehensive Plan”). See ORS 227.178(3)(a).

Applicant’s proposed development and the added height, length, and density Applicant requests are not in conformance with either the Effective Comprehensive Plan or with the 2020 Comprehensive Plan, and as such, the application should be denied on this ground.

The Effective Comprehensive Plan includes the following relevant sections that may be relevant to the proposed development, each of which includes further relevant goals, objectives, and policies:

- Introduction
- Environmental and Natural Resources (Chapter 3)
- Land Use (Chapter 4)

The Introduction of the Effective Comprehensive Plan includes a list of “four overriding policies”:

- Public and private actions will result in a net benefit for existing City residents and will contribute to the improvement of the local business and industrial economy.
- Existing natural resources and developments of character will be preserved, and new development will contribute to improving the quality of the living environment, and to a sense of City-wide identity and pride.
- Neighborhoods, their identity, and security, will be maintained and enhanced by all actions resulting from public and private activities.
- Public facilities and services will adequately serve existing residents and businesses, and not be overburdened by new public or private development.

Applicant's proposed development does not conform with these policies. First, as discussed above, Applicant has made no guarantee that the benefits its development will provide (in the form of amenities for the residents) will be constructed—indeed, Applicant admitted during the October 27 hearing that it may never obtain the funds needed to do more than build the single residential building that is part of the application's "phase 1." This does not amount to a "net benefit for existing City residents." Second, the planned development, while dedicated to preserving 54% of the site as "open space," is removing significant trees and other vegetation, which is not in conformance with the policy of preserving existing natural resources (and, as discussed above, it is unclear whether some of the set aside "open space" is actually that). Third, Applicant entirely ignores the single-family neighborhood—including historic residences located therein—that surrounds the site for the proposed development, contrary to the policy of maintaining and enhancing the surrounding neighborhoods, their identity, and security. The public testimony by neighbors living in those single-family homes stressed this point, and Waverley agrees. And, as to security, Waverley has its own concerns relating to security, namely, the risk of trespass onto its property. Fourth, Applicant requests a density increase of 20% (measured in number of units), which could stress and overburden the public facilities and services that are currently serving existing residents and businesses, contrary, to the fourth stated policy.

Chapter 3 of the Effective Comprehensive Plan includes the following relevant goals, objectives, and policies:

- Natural Hazards element, objective #2 – seismic conditions: "Regulate the structural integrity of all developments within the City consistent with the provisions of the Uniform Building Code, Earthquake Regulations."
- Historic Resources element, goal statement: "Preserve and protect significant historical and cultural sites, structures, or objects of the City."
- Open Spaces, Scenic Areas, and Natural Resources element,
 - Goal statement: "To conserve open space and protect and enhance natural and scenic resources in order to create an aesthetically pleasing urban environment, while preserving and enhancing significant natural resources."

- Objective #2 – natural resources: “To preserve and maintain important natural habitats and vegetation by protecting and enhancing major drainageways, springs, existing wetlands, riparian areas, water bodies, and significant tree and vegetative cover while retaining their functions and values related to flood protection, sediment and erosion control, groundwater discharge and recharge, aesthetics, education, recreation, vegetation, and wildlife habitat. Regulate development within designated water bodies, riparian areas, wetlands, uplands, and drainage areas.”
- Objective #2, Policy 1: “Protect designated natural resources and their associated values through preservation, intergovernmental coordination, conservation, mitigation, and acquisition of resources” by doing the following:
 - “Notify and coordinate review of development proposals and plans within natural resources with affected State, local, and federal regulatory agencies.”
 - “Develop a review process for development within natural resources, which requires mitigation or other means of preservation of natural resource values.”
 - “The City shall pursue funding for the acquisition, protection, or enhancement of natural resources through private environmental groups, federal or State agencies, or local groups.”
 - “Regulate activities within natural resources that may be detrimental to the provision of food, water, and cover for wildlife.”
- Objective #2, Policy 4: “Protect existing upland areas and values related to wildlife habitat, groundwater recharge, and erosion control” by doing the following:
 - “Encourage the development of open spaces and increased vegetation for wildlife habitats.”
 - “Protect steep slopes from erosion through the use of vegetation.”
 - “Provide protection between the resource and other urban development.”

As to the Natural Hazards element, objective #2 – seismic conditions, the application does not make mention of plans to ensure conformance with this objective. The Commission should require Applicant to address the structural integrity of the planned development, especially given the proximity to the fault line (indicated by the red dashed line in the clip from Map 3 below):



As to the Historic Resources element, Map 4 and Appendix 1 of the Effective Comprehensive Plan show numerous significant and contributing historical properties in the neighborhood directly abutting the proposed development (significant and contributing resources show in red and purple, respectively, in the clip from Map 4 below):



Yet, the application ignored that neighborhood and those resources in its narrative, and Applicant did not begin conversations with residents of that neighborhood until just before the October 27 hearing. (See also Public Comments at p. 16 (email from P. Green noting that “there were no residents of Waverly Heights present [at the Historic Milwaukie NDA Meeting]”).) As the Effective Comprehensive Plan states, “The City realizes that protecting historic resources has several cultural and economic benefits for City residents: Fostering civic pride in accomplishments of the past, promoting choices in housing types and styles, strengthening the economy of the City, and providing educational and recreational opportunities.” Waverley hopes that Applicant will adequately address the City’s goal of preserving and protecting the historical sites that are so close to the site of its proposed development.

As to the Open Spaces, Scenic Areas, and Natural Resources element, Waverley incorporates the discussion in Section 7 above regarding whether Applicant has met the open space requirements. Waverley also notes that significant wildlife habitat will be disturbed or destroyed by the proposed development, which is contrary to the goals of conservation, natural resource enhancement and preservation, and protecting wildlife habitats. Waverley repeats its request that the Commission require a conservation easement or the like to ensure that natural resources and wildlife habitats will be protected to the highest extent possible.

Chapter 4 of the Effective Comprehensive Plan includes the following relevant goals, objectives, and policies:

- Residential Land Use and Housing element,
 - Goal statement: “To provide for . . . the development of sound, adequate new housing to meet the housing needs of local residents and the larger metropolitan housing market, while preserving and enhancing local neighborhood quality and identity.”
 - Objective #3 – residential land use: design,

- Policy 1: “New multifamily development projects will take measures to reduce potentially negative impacts on existing, adjacent single-family development and adjacent lower-density zones. Such measures may include reduced maximum heights, increased setbacks for large façades, building size limitations, and other design features to maintain privacy of nearby properties.”
 - Policy 3: “All Planned Unit Developments will have area devoted to open space and/or outdoor recreational areas. At least half of the open space and/or recreational areas will be of the same general character as the area containing dwelling units. Open space and/or recreational areas do not include public or private streets.”
 - Policy 5: “In all cases, existing tree coverage will be preserved whenever possible, and areas of trees and shrubs will remain connected particularly along natural drainage courses.”
- Willamette Greenway element, Objective #3 – land use, Policy 2: “Intensification of uses, changes in use, or development of new uses are permitted only when consistent with the City’s adopted Willamette Greenway Element, the Greenway Design Plan, the Downtown and Riverfront Land Use Framework Plan, and the Town Center Master Plan.”
 - Neighborhood element, Neighborhood Area 1 (Historic Milwaukie),
 - Guideline #2: “To ensure that new multifamily housing does not significantly alter the visual character of existing single family areas, and does not create problems of drainage, traffic, noise, and light to adjacent properties.”

As to the Residential Land Use and Housing element, as discussed above, it is unclear how Applicant made its assessment that there is a “need” for the type of high-end housing that will be provided by the proposed development, and Applicant should be required to provide additional information to this point. Further, it appears that Applicant’s proposed development is directly contrary to Policy 1, in that it has not taken measures to reduce potentially negative impacts on existing, adjacent single-family development and adjacent lower-density zones. Indeed, as discussed above, the application omits any discussion of those single-family areas adjacent to the development. Moreover, the requested additional height and building size is exactly what this Policy directs *against* doing (“[s]uch measures may include *reduced* maximum heights, increased setbacks for large façades, building *size limitations*, and other design features to maintain privacy of nearby properties”). Waverley incorporates its discussion from Section 7 above as it relates to Policy 3. As to Policy 5, Applicant should be required to confirm that it is eliminating only as much vegetation and as many trees as are necessary for the development. Further, given Applicant’s statements that phases 2 and 3 may not be completed in the near term, if at all, it would be reasonable to require Applicant to also phase its removal of trees and vegetation in case those phases are in fact never developed.

As to the Willamette Greenway element, the proposed development does not conform to either Policy 2 or 3. Regarding Policy 2, the Effective Comprehensive Plan clearly states that intensification of uses, which would include the requested density, height and length increases, should only be permitted when consistent with the Willamette Greenway Element. But that element, implemented by the WG zone, expressly prohibits structures exceeding 35 feet in height. The proposed development thus does not conform with Policy 2.

Waverley is also concerned by Applicant's statement, made in connection with Goal 4 of the 2020 Comprehensive Plan, that "the city allows for a compatibility review to determine appropriateness and compatibility of a new proposed use," implying that it should be excepted from the Willamette Greenway requirements because the site is in an area "further from the river" than the areas intended to be protected by the "Greenway Review's intended purpose," which, according to Applicant, is to focus on areas "in close proximity and visible from the river." (10-27-20 Packet, Section 5.1, p. 70.) First, the stated purpose of the Willamette Greenway zone is "to protect, conserve, enhance, and maintain the natural, scenic, historic, economic, and recreational qualities of lands along the Willamette River and major courses flowing into the Willamette River," and does not include any distinction between areas close to or further away from the river. MMC 19.401.1. Second, the proposed development is in fact "in close proximity" to the river and will be "visible from the river." Third, Applicant does not explain what this "compatibility review" is or what section of the Code allows such a review. Regardless, the Site is located in the WG overlay zone and Applicant must comply with the requirements and procedures in place for that zone, regardless of its thoughts on whether such zoning should apply.

As to the Neighborhood element, Waverley and other interested parties have pointed out in letters and public testimony that there will be significant alterations to the visual character of the existing single-family areas due to the proposed development's buildings' added height and length, as well as to the elimination of 46% of the vegetation on the Site. Applicant should be required to address this concern thoroughly, as it appears the proposed development does not conform with this aspect of the Effective Comprehensive Plan.

Finally, Waverley addresses briefly the deficiencies relating to two of the remaining three goals of the 2020 Comprehensive Plan addressed by Applicant.

As to Goal 3.5 – Sustainable Design and Development, Applicant makes no promise or statement that any of the "responsible, sustainable" features it discusses (which are described above) will be implemented, and instead vaguely states that it is "committed to designing sustainably with considerations for energy efficiency and embodied carbon." (10-27-20 Packet, Section 5.1, p. 70). Applicant also does not explain the relevance of the Energy Trust of Oregon Master Planning Session or the substance of what took place during that session. (*Id.*) Comments made during Applicant's presentation during the October 27 hearing were equally vague and speculative. The Commission should condition any approval of this application on Applicant providing the sustainable and responsible amenities it has spoken of.

As to Goal 3.4 – Healthy Urban Forest, Applicant only states that “the reduction of the development footprint” allows the project to “increase the tree canopy, vegetated areas, natural habitat and recreational opportunities.” (*Id.*) Applicant does not explain how that will happen, and, confusingly, the project’s plan includes cutting down trees and removing significant amounts of vegetation, which does not, in fact, promote or conform with the “healthy urban forest” goal. The Commission should condition any approval of this application on Applicant agreeing to a conservation easement or the like.

11. Statewide Planning Goals

For an applicant to obtain a zoning map amendment, as is requested here, consistency with the goals and policies of the Statewide Planning Goals must be shown by substantial evidence. MMC 19.902.6.B.8. Applicant did not address the Statewide Planning Goals in its application, but the Staff Report and Recommended Findings did. (10-27-20 Packet, Section 5.1, p. 51).

For the reasons explained above in Section 10 and in Waverley’s first letter, the application is not consistent with Statewide Planning Goal 2, Land Use Planning or with Goal 15, Willamette Greenway.

The application is also not consistent with Statewide Planning Goal 10, Housing. As previously discussed, Applicant explained that it saw a “need” for the type of housing its proposed development would provide, but did not explain how it determined there was such a need. Applicant’s presentation during the October 27 hearing was directly contrary to that statement. The current rents for the multifamily developments nearby, all owned by the Applicant, range from “affordable” (the \$1150-1300 per month Banbury development) to “mid-range” (the \$1500-1900 per month Highlands development and the \$1700-2000 per month Stonehaven development) to “high-end” (the \$1700-3200 per month, “condo quality” Dunbar Woods development). (Oct. 27 Hrg. at 1:27:25.) Applicant stated that the proposed Waverly Woods development would bring in rents at ranges similar to or possibly even higher than those of Dunbar Woods. (*Id.* at 1:56:32) This is contrary to Applicant’s statement, as pointed out by the Staff Report, that there is a “gap in the availability of the proposed apartment types.” (10-27-20 Packet, Section 5.1, p. 25.) Moreover, while Waverley understands there is a general need in Milwaukie and the Portland Metro Area for housing, it is unclear whether high-end housing is really what is “needed.” (See 10-27-20 Packet, Section 5.1, pp. 50-51.)

Goal 10 also includes an affordability aspect, which is not met by this application for a high-end multifamily development for the reasons stated above.

12. Procedural Issues

Waverley notes that, pursuant to ORS 197.763(6)(e), the final written argument period does not extend the 120-day period as do the first two open record periods here; as such, the 120-day period now ends on January 30. We note this because the City may want the Applicant to extend

the 120-day period if there is any reason to believe that the City Council cannot issue its final decision by January 30.

Further, to the extent Applicant submits a revised narrative to its application, and / or a new Staff Report and Recommended Findings, which may include revised conditions for approval, is issued, the Planning Commission should hold a new evidentiary hearing so that Applicant, the Public, and all interested parties have an opportunity to provide additional testimony and comment on the new evidence and new conditions. Without such testimony, the Planning Commission will not be able to fully consider all of the relevant evidence or public comment. *See Conte v. City of Eugene*, 66 Or LUBA 334 (2012) (Parties to a land use proceeding have the right to review and respond to substantive changes in the application that occur during the proceedings. If such a change occurs after the close of the record or hearing, the local government may be required to re-open the record to allow other parties a reasonable opportunity to submit responsive testimony and evidence. Failure to do so can be procedural error and a basis for remand, if the petitioners demonstrate the error prejudiced their substantial rights.); *see also Friends of the Hood River Waterfront v. City of Hood River*, 67 Or LUBA 179 (2013) (ORS 197.763(6)(c) authorizes any participant to request an opportunity “to respond to” new evidence submitted during the open record period, even where quasi-judicial land use hearing has already closed following such open record period. If such a request is made, “the hearings authority shall reopen the record pursuant to [ORS 197.763(7)].”)

Finally, Applicant stated in its application that buildings such as the Ridge buildings proposed here that have extra length are “not without precedent” in the area. (10-27-20 Packet, Section 5.1, p. 66.) A question was raised during the October 27 hearing regarding “precedent” for similar added length and height. Waverley notes for the Commission that precedent is a legal term, and is not created by mere applications or by surrounding developments. Legal precedent is created only by decisions of the Land Use Board of Appeals and the Oregon Court of Appeals, and any questions as to precedent should be resolved by reviewing opinions issued from those institutions.

13. Conclusion

For the reasons set forth above, in Waverley’s first letter dated October 27, 2020, and in Waverley’s oral testimony during the October 27 hearing, the Planning Commission should recommend denial of the application that is File No. PD-2020-001. In the alternative, should the Planning Commission recommend approval of the application, it should do so with conditions that address each of Waverley’s points set forth in its written submissions and oral testimony.

Mr. Robert Massey, Chair
November 10, 2020
Page 21

Very truly yours,



Michael C. Robinson

MCR/jmhi

cc: Ms. Vera Kolas (*via email*)
Ms. Erin Forbes (*via email*)
Mr. James Dulcich (*via email*)
Mr. Justin Gericke (*via email*)
Mr. Bruce Pruitt (*via email*)
Mr. Brian Koffler (*via email*)

PDX\093231\105404\EMF\29388714.2

Memorandum

To: Vera Kolias, Associate Planner - City of Milwaukie
From: Phil Krueger
CC: Wendy Wyse, Scott Wyse, Duncan Wyse, Michael Connors, Nels Hall
Subject: PD-2020-001 Waverley Woods 10/27/2020 Public Hearing Response
Date: 11/10/2020
Attachments: 1. Zoning Plan
2. Site Plan with Phases
3. Site Plan with Proximate Residences
4. Site Plan showing Forest Buffer Zone
5. Building Sections
6. Solar Shading Study Summer Solstice
7. Solar Shading Study Winter Solstice
Kellogg Creek Staff Report

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The following memorandum is provided to address public comments associated with the October 27, 2020 Planning Commission Public Hearing:

Item 1) The proposed development will comply with section **19.311.17 Phased Development:**

A. The Planning Commission may approve a time schedule for developing a site in phases as follows:

2. For all other projects, in no case will the total time period of construction of all phases exceed 7 years, as measured from the date of approval of the final development plan until the date that building permit(s) for the last phase is(are) obtained.

Response: The project's general contractor estimates each phase will take approximately 1-year to complete resulting in 3-years of total construction for all three phases.. Within the 1-year construction duration, the general contractor estimates that 6-months of the work will be on the exterior and potentially impact surrounding residents. The remaining 6-months of work will be primarily on the interior and result in limited construction noise. Per Section 19.311.16 Expiration of Planned Development Zone, "substantial construction" of Phase 1 is required to occur within one year of the final development approval. Building A.1 is currently on schedule for a mid-Summer 2021 construction start with site utility work scheduled for late-Spring 2021.

Item 2) Per Section 19.505.3.C Design Standard - Multifamily Housing- Review Process, the project is pursuing the **discretionary process** since the Planned Development Review already requires Type III and Type IV Development Review. Each building in the development is required to go through a Land-use design review during permitting to confirm final design meets approved Planned Development criteria. The following responses supplement the responses to this Section in the Application. The applicant also agrees with the Staff Report response to these criteria.

19.505.3.D Multifamily Design Guidelines and Standards

*1. **Private open space:** The development should provide private open space for each dwelling unit. Private open space should have direct access from the dwelling unit and should be visually and/or physically separate from common areas.*

Response: Each apartment unit has its own private balcony directly accessible from the interior of each dwelling, and separate physically and visually from other apartments. The smallest private outdoor space is 195 sq.ft.

1. **Public open space:** *The development should provide sufficient open space for the purpose of outdoor recreation, scenic amenity, or shared outdoor space for people to gather.*

Response: Community is important to the Waverley Greens Apartment complex. This new development has focused on creating many additional community spaces and amenities for the residents of the entire complex, including but not limited to the following: large outdoor community gardens, a swimming pool, walking trails, permanent picnic tables, and river overlook sitting areas. The project is proposing 54% of the site to be vegetated open space set aside for scenic, landscaping, or open recreational purposes

2. **Pedestrian Circulation:** *Site design should promote safe, direct, and usable pedestrian facilities and connections throughout the development. Ground-floor units should provide a clear transition from the public realm to the private dwellings.*

Response: The site design promotes safe, direct, and usable pedestrian facilities and connections throughout the development. The project will have continuous connections with adequate lighting and street crossings to site elements as required. Walkways are separated from vehicle parking with physical barriers such as planter strips and raised curbs. Walkways shall be constructed of concrete, with a minimum width 5 ft and 7 ft. where parked vehicles will overhang the walkway. The walkways will be separated from parking areas and internal driveways using curbing, landscaping, or distinctive paving materials. Exterior site lighting will be included that provides code required light levels. The ground-floor units provide a clear transition from the public areas to the private dwellings.

3. **Vehicle and Bike Parking:** *Vehicle parking should be integrated into the site in a manner that does not detract from the design of the building, the street frontage, or the site. Bicycle parking should be secure, sheltered, and conveniently located.*

Response: The vehicle parking will be integrated in a manner that does not detract from the design of the building, the street frontage, or the site. Waverley Woods A.1, A.2 and B.2 are located on a private internal dead-end drive, not a public right-of-way. As is typical for multifamily developments, including the other apartments in this complex, some parking spaces are outside the building entry along the private drive. A total of 108 vehicle parking spaces for residents will be located under the buildings and 30 parking spaces will be provided off the private dead-end street for the apartment buildings, community center and other provided amenities. Covered, secure bike parking with permanently mounted bike racks/hangers will be provided in the parking garage and outdoor bike racks, located no further than 30' from the main entrance of each building to meet the required number of racks required by this code section.

5. **Building Orientation & Entrances:** *Buildings should be located with the principal façade oriented to the street or a street-facing open space such as a courtyard. Building entrances should be well-defined and protect people from the elements.*

Response: Waverley Woods A.1, A.2 and B.2 are located on a private internal dead-end drive, not a public right-of-way. Buildings A.1 and A.2 feature street facing primary entrances, which become focal points as the central element of the buildings' U-shape and are oriented to the street. The building entrances are well-defined and will protect people from the elements as users are drawn into the building entry by an entry overhang, walking paths, and landscape elements.

6. **Building Façade Design:** *Changes in wall planes, layering, horizontal datums, vertical datums, building materials, color, and/or fenestration shall be incorporated to create simple and visually interesting buildings. Windows and doors should be designed to create depth and shadows and to emphasize wall thickness and give expression to residential buildings. Windows should be used to provide articulation to the façade and visibility into the street. Building façades shall be compatible with adjacent building façades. Garage doors shall be integrated into the design of the larger façade in terms of color, scale, materials, and building style.*

Response: The buildings incorporate numerous design features that create simple and visually interesting buildings. The buildings in the development were designed with entrances set back at the middle of the

buildings to break up the façade into two smaller masses. The street facing façade is broken into two building masses flanking a recessed entry with outdoor balconies and projecting window bays providing visual interest. A minimum of 25% of the façade is glazing. Garage doors will appear highly transparent as the garages will be open air and require doors that are perforated. The project seeks to provide condominium-quality apartments for tenants who desire premium features and amenities. Large windows and high-quality materials will make these buildings the premier rental residences in the City.

7. Building Materials: Buildings should be constructed with architectural materials that provide a sense of permanence and high quality. Street-facing façades shall consist predominantly of a simple palette of long-lasting materials such as brick, stone, stucco, wood siding, and wood shingles. A hierarchy of building materials shall be incorporated. The materials shall be durable and reflect a sense of permanence and quality of development. Split-faced block and gypsum reinforced fiber concrete (for trim elements) shall only be used in limited quantities. Fencing shall be durable, maintainable, and attractive.

Response: The Buildings will be constructed with architectural materials that provide a sense of permanence and high quality consistent with this requirement. Building materials will be a mix of fiber cement board siding with wood accent siding with metal trim panels. The owners require durable and high-quality materials for their rental properties since they own and operate the facilities for the long term.

8. Landscaping: Landscaping of multifamily developments should be used to provide a canopy for open spaces and courtyards, and to buffer the development from adjacent properties. Existing, healthy trees should be preserved whenever possible. Landscape strategies that conserve water shall be included. Hardscapes shall be shaded where possible, as a means of reducing energy costs (heat island effect) and improving stormwater management

Response: The project will provide significant open spaces and courtyards will buffer the development from adjacent properties. Landscaping will be provided per development standards. The project team includes a landscape architect and arborist to provide direction for landscape design and tree preservation. As part of the development, existing trees will be maintained where possible. Diseased and dead trees, as well as, invasive species, such as English ivy and blackberries, will be removed and replaced by native plants where appropriate. New natural walking paths will be developed through the preserved wooded area for residents. The landscape will be continually maintained by the Waverley Greens maintenance team. The project is proposing 54% of the site to be vegetated open space set aside for scenic, landscaping, or open recreational purposes.

9. Screening: Mechanical equipment, garbage collection areas, and other site equipment and utilities should be screened so they are not visible from the street and public or private open spaces. Screening should be visually compatible with other architectural elements in the development.

Response: Screening will be provided as per development to ensure that mechanical equipment, garbage collection areas, and other site equipment and utilities will not be visible from the street or open spaces. Mechanical equipment will be housed inside the buildings with all roof top equipment located on lower roof areas that are blocked from view by adjacent high sloped roofs. Trash and recycling will be collected in internal trash rooms on the parking levels of each apartment building to avoid waste containers being visible from the outside.

10. Recycling Areas: Recycling areas should be appropriately sized to accommodate the amount of recyclable materials generated by residents. Areas should be located such that they provide convenient access for residents and for waste and recycling haulers. Recycling areas located outdoors should be appropriately screened or located so that they are not prominent features viewed from the street.

Response: Recycling collection will be provided in the trash/recycling room located on the parking level of each building. Residents will be responsible to bring their recycling to that location and maintenance staff will collect and transport the material off site

11. Sustainability: Multifamily development should optimize energy efficiency by designing for building orientation for passive heat gain, shading, day-lighting, and natural ventilation. Sustainable materials, particularly those with recycled content, should be used whenever possible. Sustainable architectural elements shall be incorporated to increase occupant health and maximize a building's positive impact on

the environment. When appropriate to the context, buildings should be placed on the site giving consideration to optimum solar orientation. Methods for providing summer shading for south-facing walls, and the implementation of photovoltaic systems on the south-facing area of the roof, are to be considered.

Response: Sustainability is a key component in the design of these residences. Building orientation and solar access along with passive strategies have been the first step of our design analysis. A preliminary solar study has already been completed, and the owners are committed to installing solar panels on the roofs. Each unit is provided with operable windows and overhangs, and sunscreens will be studied to maximize efficiency as part of the building design. Retaining and replanting the surrounding tree canopy is a key component to maintaining a cool site that takes advantage of the breezes flowing down the Willamette River and through the tree canopy to provide passive cooling for the units. On-site rainwater collection is being investigated along with applying roofing materials with an SRI of 78 where the roof has a 3/12 pitch or less and an SRI of 29 where the roof pitch is 3/12 or greater.

12. Privacy Considerations: *Multifamily development should consider the privacy of, and sight lines to, adjacent residential properties, and be oriented and/or screened to maximize the privacy of surrounding residences.*

Response: All privacy design considerations will be met in design. Attention will be paid to sight lines into adjacent properties and landscaping will be located in an effort to minimize views.

13. Safety: *Multifamily development should be designed to maximize visual surveillance, create defensible spaces, and define access to and from the site. Lighting should be provided that is adequate for safety and surveillance, while not imposing lighting impacts to nearby properties. The site should be generally consistent with the principles of Crime Prevention Through Environmental Design:*

- *Natural Surveillance: Areas where people and their activities can be readily observed.*
- *Natural Access Control: Guide how people come to and from a space through careful placement of entrances, landscaping, fences, and lighting.*
- *Territorial Reinforcement: Increased definition of space improves proprietary concern and reinforces social control.*

Response: The project is designed to maximize visual surveillance, create defensible spaces, and define access to and from the site. Exterior light fixtures will be provided that minimize light pollution while maintaining adequate lighting for egress and security. Units have living spaces that overlook building entrances and parking areas.

Item 3) Proposed development meets the Planned Development Approval Criteria as detailed in applicant's Planned Development Preliminary Submission Narrative pages 5-6 and in the City Staff Report page 24-27. Those responses are provided below.

19.311.9 Approval Criteria

The approval authority(ies) may approve, approve with conditions, or deny the PD Zone based on the following approval criteria:

A. Substantial consistency with the proposal approved with Subsection 19.311.6;

Response: The applicant submitted a development plan and program for the proposed PD and has requested that the City consider it to be the final development plan and program submittal, along with the accompanying application for zone change. Although an applicant is permitted to request preliminary development plan approval before filing for final planned development approval, Section 19.311.6 does not preclude an applicant from requesting both preliminary and final planned development approval. As stated below, the City has previously determined that an applicant can apply for both preliminary and final planned development approval at the same time as was the case in the Kellogg Creek Planned Development (PD-2017-001) project.

Compliance with Subsections 19.311.1, 19.311.2, and 19.311.3;

Response: The project is applying for a Planned Development to comply with the purposes set forth in 19.311.1.

To provide a more desirable environment than is possible through the strict application of Zoning Ordinance requirements; to provide a more efficient, aesthetic, and desirable use of public and private common open space; and to provide an alternative discretionary review process for projects requiring more flexibility than what would be provided through the standard clear and objective development review or land division process.

19.311.1 – The project is providing a more desirable environment than is possible through the strict application of the zoning ordinance requirements. The main objective of the development is to minimally impact the site by retaining as much of the existing tree canopy as possible and maximize vegetated space. The project provides recreational opportunities and appreciation for the natural environment while maximizing the density opportunity. To achieve this, three strategies will be used. 1., adding an additional story to the two ridge buildings in lieu of developing a fifth residential building; 2. increasing the length of the two ridge buildings to 203'. 3. taking advantage of the naturally sloping topography to tuck most of the required parking under the building so as to minimize surface parking, further increasing the vegetated area. Through these proposals, the site is able to retain 54% of the vegetated area while maximizing the density. The existing dense tree canopy west of the proposed development extends beyond the proposed building heights, minimizing the visual impact of the additional proposed height from the river.

19.311.2 – This project complies with all use requirements laid out in this standard. See 19.401.6 J for compliance with City's Comprehensive Plan. The proposed development is a multifamily apartment complex located within a neighborhood of existing multifamily apartments all owned by the Wyse family, each having a unique character, but cohesive and harmonious as a neighborhood. Through initial utility research, the capacity of the existing utilities have been assessed as part of the proposed development and are adequate. The development is designed to serve primarily the residents of the planned development and surrounding community.

19.311.3 Development Standards. The development is on land suitable for the proposed development and is of sufficient size to be planned and developed consistent with this zone. The project recognizes the requirements the City may impose on sewer lines, water lines, roads and street or other service facilities and has done preliminary studies to ensure the sizing is known for the existing infrastructure. The project requests the allowable 20% density increase to assist with the development of the community amenities proposed. See Review "Development Description" and "Development Requests for Approval" at the start of this document for additional details. The project provides ample wooded setbacks in its peripheral yards, the smallest of which is 30' in depth. The project is proposing 54% of the site to be vegetated open space set aside for scenic, landscaping, or open recreational purposes.

- C. *The proposed amendment is compatible with the surrounding area based on the following factors:*
1. *Site location and character of the area.*
 2. *Predominant land use pattern and density of the area.*
 3. *Expected changes in the development pattern for the area.*

Response: The proposed amendment is compatible with the surrounding area based upon the site location and character of the area. As noted above, the dense, tall forest minimizes the impact of the taller, wider buildings on the ridge from the Willamette River and the breaking up of the length into two distinct masses minimizes the appearance from the street. The existing multifamily structures in the neighborhood exceed the lengths proposed in this development with the existing Stuart and Waverley Hall Apartments located to the east of this development both ranging in over 284' in length. The proposed development is consistent with the predominant land use pattern and density of the area as it is adjacent to existing multifamily apartment buildings. There are no expected changes in the development pattern for the area. The area is designated med-high density residential and this development is the last undeveloped tract of land in the community. Based on the May 2020 City of Milwaukie Comprehensive Plan, there are no city plans to change the development pattern for the area.

- D. *The need is demonstrated for uses allowed by the proposed amendment;*

Response: The owners understand the needs of the rental market as they own a large portfolio of apartment communities ranging in affordability. They have found a gap in the availability of the proposed apartment types. Within their community, they often have a waiting list for the type of accommodations this project is providing. The City of Milwaukie's Comprehensive Plan recognizes increased housing is a need to be addressed as more people are moving to the Pacific Northwest and there is a housing shortage.

E. The subject property and adjacent properties presently have adequate public transportation facilities, public utilities, and services to support the use(s) allowed by the proposed amendment, or such facilities, utilities, and services are proposed or required as a condition of approval for the proposed amendment;

Response: The applicant demonstrated that there are adequate public transportation facilities, public utilities, and services to support the proposed use. The applicant evaluated the existing infrastructure including a traffic study to analyze the impacts of increased traffic on the existing city infrastructure. Increased storm water, sewer, domestic and fire water as a result of this 100-unit development have also been reviewed and calculated. Please review the additional submitted documentation for compliance. The existing public transportation facilities, utilities, and services are adequate to support the proposed development

F. The proposal is consistent with the functional classification, capacity, and level of service of the transportation system. A transportation impact study may be required subject to the provisions of Chapter 19.700;

Response: A transportation impact study has been included as part of this submission

G. Compliance with all applicable standards in Title 17 Land Division;

Response: The applicant reviewed and is complying with all applicable Title 17 Land Division Standards. Project is applying for a property boundary change as part of this Planned Development submission. Proposed boundary changes meet all criteria for approval in section 17.12.030. The boundary change will still allow reasonable development and as calculated in section 19.302.4 Density Calculations, the proposed boundaries do not impact the minimum density requirements for any of the new parcels.

H. Compliance with all applicable development standards and requirements; and

Response: Please review the Planned Development Preliminary Submission documents for compliance.

I. The proposal demonstrates that it addresses a public purpose and provides public benefits and/or amenities beyond those permitted in the base zone.

Response: The base zone – R2 allows for multi-unit residential development by right. This project is proposing much more than a series of new buildings. It is fulfilling and expanding needed amenities for the existing six communities of Waverley Greens Apartments. It is providing more places for community gathering and celebration. The proposed two new community centers and outdoor amenities provide places for the inhabitants to garden, swim, eat, celebrate, meet, organize, and educate themselves. The existing community already partners with local educators to provide classes to its residents. This proposal will increase the number of spaces and opportunities for these experiences. The project is nestled harmoniously within an existing natural forest. The proposal includes relocating and enlarging the community garden which is an extremely popular amenity and creating walkable paths through the forested area with views of the Willamette River in an area which was once unpassable. Also, the project will include a landscaped sitting area at the entrance off Waverly Court which will provide river views. This development is seeking to maximize density and minimize its footprint to create an urban development within an urban forest thereby fulfilling the City's needs for more housing while providing more natural recreation spaces to improve occupant health and exposure to and appreciation for our natural environment. Through the project's sustainable design, the project will also reduce its operational footprint. Through the approval of the additional height allowance and width of the building, the project is able to take advantage of the natural topography on the site to tuck parking under the buildings. The parking level pushes the building to exceed the Willamette Greenway Zone height limit, but still within the allowable City of Milwaukie code. Tucking

the parking under the building saves the development from surface parking allowing the project space to maintain the forested areas, add additional community spaces, community gardens and other amenities.

Item 3) This memorandum addresses the applicable Comprehensive Plan goals and objectives from the previous Comprehensive Plan (Last Rev.Ord #2169 March 5, 2019). The 2019 Comprehensive Plan applicable goals and objectives are very similar to the 2020 Comprehensive Plan applicable goals and objectives, and therefore we believe the previous responses to the 2020 Comprehensive Plan are sufficient to demonstrate compliance with both Comprehensive Plans. We are providing the responses to the 2019 Comprehensive Plan below out of an abundance of caution.

Chapter 1: Citizen Involvement

Goal: To encourage and provide opportunities for citizens to participate in all phases of the planning process, to keep citizens informed and to open lines of communication for the sharing of questions, problems and suggestions regarding the Comprehensive Plan and land use regulations.

Objective #1 Neighborhood Associations

Policy 2. The City will assist Neighborhood Associations by:

b) Notifying neighborhood associations of proposed land use actions and legislative changes as required by ordinances. Elected association representatives will receive information regarding land use issues.

Response: Project team presented the proposed development to Historic Milwaukie NDA on July 13, 2020 and NDA did not oppose the project. Most attendees appeared enthusiastic about the development and the associated amenities such as wooded walking paths and the community garden.

Chapter 2: Plan Review and Amendment Process

Goal: Establish a Plan review and amendment process as a basis for land use decisions, provide for participation by citizens and affected governmental units, and ensure a factual base for decisions and actions.

Response: The proposed development is going through the City's required procedures for this type of proposal. The Planning Commission held a public hearing for the proposed development and opportunity for public input was provided.

Chapter 3: Environmental and Natural Resources

Natural Hazards Element

Goal: To prohibit development that would be subject to damage or loss of life from occurring in known areas of natural disasters and hazards without appropriate safeguards.

Objective #1 Floodplain

To manage identified 100 year floodplains in order to protect their natural function as waterways, and to protect the lives and property of those individuals and concerns currently located within and along the floodplain boundary.

Response: The proposed development is not located in the floodplain and therefore this objective is not applicable.

Objective#2 Seismic Conditions

Regulate the structural integrity of all developments within the City consistent with the provisions of the Uniform Building Code, Earthquake Regulations.

Response: The proposed development will meet current Building Code for seismic design and a licensed structural engineer will provide design of all structures on site.

Objective #3- Weak Foundations

To ensure that adequate measures are undertaken to mitigate the structural limitations of soils.

Response: The proposed development is not located in area denoted as soils with severe construction rating. Geotech report will be provided indicating suitable soils for foundations.

Historic Resources Element

Goal: Preserve and protect significant historical and cultural sites, structures or objects of the City.

Response: This Goal does not apply to development site but the adjacent property to the northwest is designated a Historic Resource. For this reason, the project is proposing significant visual buffer and increased setbacks between properties to maintain as much of the original context of the Historic property.

Open Spaces, Scenic Areas, and Natural Resources Element

Goal: To conserve open space and protect and enhance natural and scenic resources in order to create an aesthetically pleasing urban environment, while preserving and enhancing significant natural resources.

Objective #1 – Open Space

Response: The proposed development will provide nearly 54% open area which is well in excess of the minimum 15% open space required under the Code.

Objective #2- Natural Resources

To preserve and maintain important natural habitats and vegetation by protecting and enhancing major drainageways, springs, existing wetlands, riparian areas, water bodies, and significant tree and vegetative cover while retaining their functions and values related to flood protection, sediment and erosion control, groundwater discharge and re-charge, aesthetics, education, recreation, vegetation, and wildlife habitat. Regulate development within designated water bodies, riparian areas, wetlands, uplands, and drainage areas.

Response: The proposed site is designated as Natural Resource Site #16 on Appendix 2 Map. The proposed development will protect the natural resources by utilizing a larger building footprint and taller buildings to maximize the density and minimize the need to remove or disturb any natural resources located on site. To save as many trees as possible, the owners are willing to spend significantly more money to provide parking levels under the buildings instead of clearing the site for surface parking, the common approach for multifamily residences in the area.

Objective #3 – Scenic Areas

Significant scenic and view sites will be preserved for the enjoyment of present and future City residents as well as for visitors to the City.

Response: The proposed development will provide walking paths and viewpoints of the Willamette River. The proposed development will minimize the impact of views to and from the Willamette River based on the orientation of the buildings and preservation of existing trees. Overall, the project will increase the opportunities for visual enjoyment of the river and its surrounding environment while minimally impacting views from the river.

Air, Water and Land Resources Quality Element

Objective #2 – Local Air Quality

Response: The proposed development will include electric vehicle charging stations on all parking levels to promote EV use and reduce vehicle emission from tenants.

Objective #3 – Noise

Response: The proposed development will address Item 7 requirement “adequate noise protection be provided between adjoining attached or multifamily residential structures. Noise from inside adjacent living units should not reasonably interfere with normal domestic activities.”

Objective 4 – Water Quality

Response: The proposed development will direct all stormwater from impervious surfaces, including roofs and paving, and route to a lower level stormwater facility that collects and detains the storm water and slowly releases it to ultimately the existing underground storm waters system in Lava Drive.

Chapter 4: Land Use

Residential Land Use and Housing Element

*Goal: To provide for the maintenance of existing housing, the rehabilitation of older housing and the **development of sound, adequate new housing to meet the housing needs of local residents and the larger metropolitan housing market**, while preserving and enhancing local neighborhood quality and identity.*

Objective #1 – Buildable Lands

Response: A portion of the development is in Special Policies Classification with slopes greater than 25%. By locating two of the buildings along this steep slope, the owners are paying for the added expense of locating a parking level partially below grade. Typically for similar apartment developments, all parking would be surface parking and would result in the majority of the site being cleared.

Objective #2 – Residential Land Use: Density and Location

*To locate **higher density residential** uses so that the concentration of people will help to support public transportation services and major commercial centers and foster implementation of the Town Center Master Plan, Downtown and Riverfront Land Use Framework Plan, and Central Milwaukie Land Use and Transportation Plan.*

Response: The proposed development is consistent with this objective because it is maximizing density by building in the smallest footprint that will be financially feasible given the high construction cost to build on a steep slope and provide parking below the building in lieu of surface parking.

Objective #3 – Residential Land Use: Design

To encourage a desirable living environment by allowing flexibility in design, minimizing the impact of new construction on existing development, and assuring that natural open spaces and developed recreational areas are provided whenever feasible.

Planning Concepts

Residential design policies are intended to ensure a high quality of environmental design, a flexible design approach, and a smooth integration of new development into existing neighborhoods. Density bonuses and transfers will be encouraged so that full development potential on individual parcels may be realized.

Transition policies will be applied to reduce any negative impacts of development on adjacent uses. The transition policies will have little or no effect on the number of new units calculated in Table 2.

Policies

1. New multifamily development projects will take measures to reduce potentially negative impacts on existing, adjacent single-family development and adjacent lower-density zones. Such measures may include reduced maximum heights, increased setbacks for large façades, building size limitations, and other design features to maintain privacy of nearby properties.

Response: The proposed development has established side yard setbacks 30' or greater while the minimum required is 5'. Also the proposed rear yard setback is 32' while the minimum required is 15'. After discussions with adjacent property owners, the owners agreed to shift Building A.2 6-feet away from the property line to save additional trees and increase the vegetated buffer along the single-family residential area. The project team includes a landscape architect who designed a vegetated buffer along the property line that will reduce negative impacts on adjacent properties. The applicant will maintain and repair the existing fence between the subject and adjacent properties consistent with its obligations under the existing fence agreement. The project takes advantage of increased setbacks and vegetated buffer to help mitigate the change from multifamily to single family.

2. In all Planned Unit Developments, a density bonus up twenty percent (20%) over the allowable density may be granted in exchange for exceptional design quality or special project amenities.

Response: The focus of the Waverley Woods development is to design a sustainable apartment development that preserves and maintains as much of the wooded landscape and natural habitat as possible. To this end, the project team proposes to minimize the development footprint by removing a 5th building along the ridge and requesting a height increase for an additional floor of apartments. This 4th residential floor allows the project to maximize the density desired for the site, while minimizing the environmental impacts. In addition to the maintained walking paths through the wooded areas, the project also is proposing a large community garden in the central courtyard (available to all Waverley Greens residents), a pool, community kitchen,

exercise room, and meeting spaces for teaching classes and community gatherings. The Waverley Greens owners are passionate about creating a sense of community and enriching the lives of their residents. These new spaces will facilitate an increase in the number and types of educational and community opportunities that can be provided to all their diverse residents. These new facilities will also allow Waverley Greens to expand their engagement with local community colleges who provide a variety of classes for residents, such as yoga.

3. All Planned Unit Developments will have area devoted to open space and/or outdoor recreational areas. At least half of the open space and/or recreational areas will be of the same general character as the area containing dwelling units. Open space and/or recreational areas do not include public or private streets.

Response: The proposed development will provide 54% vegetation on the site which is substantially more than the 15% code minimum. The development will maintain most of the vegetation as natural native growth with maintenance for invasive species, walking paths, open space, and community gardens.

4. All projects in Medium Density and High Density areas will have area devoted to open space and/or outdoor recreational areas. At least half of the open space and/or recreational areas will be of the same general character as the area containing dwelling units. Open space and/or recreational areas do not include public or private streets and parking areas, but may include private yards.

Response: See item 3 above. At least half of the open space and/or recreational areas will be of the same general character as the area containing dwelling units.

5. In all cases, existing tree coverage will be preserved whenever possible, and areas of trees and shrubs will remain connected particularly along natural drainage courses.

Response: A key design feature of the two Ridge Buildings A.1 and A.2 is the parking level located in the steep slope. The additional cost to excavate the rock and build this parking level allows for many existing trees to be saved on site since less area is required for surface parking. The project team has gone to great lengths to locate and design the buildings in an effort to minimize tree removal. The project will preserve the existing tree coverage to the extent possible and 54% of the site to be vegetated open space set aside for scenic, landscaping, or open recreational purposes.

6. Specified trees will be protected during construction, in accordance with conditions attached to building permits.

Response: An arborist is part of the project team and has provided tree protection details to be included in the construction drawings for the contractor. These details will be reviewed and approved by the City during the permitting phase. As part of the City's Conditions of Approval, an arborist will be required to inspect the construction site to verify tree protection measures are in conformance with City requirements.

7. Sites within open space, natural hazard or natural resource areas will be protected according to specifications in the Natural Hazard and Natural Resources Elements.

Response: The open space, natural hazard or natural resource areas will be protected according to these specifications and this information will be included in the construction documents to ensure all requirements are met.

Objective #4 — Neighborhood Conservation

To maximize the opportunities to preserve, enhance and reinforce the identity and pride of existing well-defined neighborhoods in order to encourage the long-term maintenance of the City's housing stock.

Policy 5. Areas may be designated High Density Residential based on the following policies:

a. The predominant housing types will be multifamily units.

Response: The proposed development is providing the exact type of housing that the City has mandated for High Density Residential areas. The additional height and length for two of the buildings is required to provide the number of rental units necessary for a feasible project to be built on this site given the multiple constraints.

b. High Density Residential areas shall be located either adjacent to or within close proximity to the downtown or district shopping centers, employment concentrations and/or major transit centers or transfer areas.

c. Access to High Density areas should be primarily by major or minor arterials.

Response: The proposed development meets all of the criteria associated with High Density Residential because it is a higher density multi-family development that is located near major transit corridors, close to downtown Milwaukie and only a few miles from Portland.

Objective #5 — Housing Choice

To continue to encourage an adequate and diverse range of housing types and the optimum utilization of housing resources to meet the housing needs of all segments of the population.

*While the predominant housing type is expected to continue to be single family detached, **the City will encourage a wide range of housing types and densities** in appropriate locations within individual neighborhood areas including duplexes, rowhouses, cottage clusters, accessory dwelling units, live/work units, **multifamily**, manufactured housing, and mobile home parks.*

Response: The proposed development is providing high density multifamily housing that will fulfill a need for high-quality apartments not currently available within the City. Waverley Greens often has a waitlist and does not anticipate any issue renting these premier units.

Recreational Needs Element

Objective #4 — Private Recreation Opportunities

To ensure that new development does not overburden existing recreation facilities

Response: The proposed development includes walking paths, river overlooks, a pool and community centers. These facilities are available to all Waverley Greens apartment residents reducing the need for residents to use City recreational facilities

Willamette Greenway Element

Goal: To protect, conserve, enhance, and maintain the natural, scenic, historical, agricultural, economic, and recreational qualities of lands along the Willamette River as the Willamette River Greenway.

Objective #3 — Land Use

To encourage the cooperation of public and private ownerships to provide compatible uses within the Willamette Greenway.

*Policy 3. Within the Willamette Greenway Boundary, a Willamette Greenway **Conditional Use Permit must be obtained prior to any new construction** or intensification of an existing use. This policy applies until the Greenway Design Plan is adopted.*

Response: The proposed development will conserve and maintain the Willamette Greenway area by utilizing a larger building footprint and taller buildings to maximize the density and minimize the need to remove or disturb natural resources located on site. The proposed development is going through the Conditional Use permit review process as part of the Planned Development Review.

Objective #4 — Recreation

To maximize the recreational use of lands within the Willamette Greenway boundaries and the related waterways.

Response: The proposed development will maximize the recreational use of the site by providing walking paths, river overlooks, and a community pool for all Waverley Greens residents. Also, the project will include a landscaped sitting area at the entrance off Waverley Court which will provide river views.

Objective #5 — Public Access and View Protection

To provide, improve, and maintain public access and visual access within the Greenway and to the Willamette River and Kellogg Lake.

*Policy 3. The City will evaluate all proposals within the vicinity of the Greenway for their effect on access to the **visual corridors to the Willamette River and Kellogg Lake.***

Response: The design team has done renderings of the site looking from the Willamette River (refer to A6.3 VIEWS FROM RIVER) and these indicate that the development will be partially visible when looking from the east and not visible when looking from the north. The dense trees to the south and west of the site will obscure the development. The proposed development will provide a majority of units with views of the Willamette River and include walking paths and overlooks that also provide residents with visual access to the river, something that is not possible now due to the dense vegetation on the site.

Neighborhood Element

Goal: To preserve and reinforce the stability and diversity of the City's neighborhoods in order to attract and retain long-term residents and ensure the City's residential quality and livability.

Objective #1 — Neighborhood Character

To maintain the residential character of designated neighborhood areas.

Policy 5. Encourage differing residential types to develop in like areas, and, provide buffers where differing types do intermix.

Response: The proposed development is located at the intersection between R-10 single family housing and R-2 multifamily apartment residences. By providing larger setbacks beyond the code minimum, the project is creating more of a buffer between the different housing types. The project team includes a landscape architect and is coordinating with adjacent property owners to develop a strategy for vegetated buffers.

Objective #2 — Neighborhood Needs

To meet the needs of neighborhood areas for public facilities and services.

Neighborhood Area 1

*Neighborhood Area 1 has the most diverse land use pattern of any Milwaukie neighborhood. Map 2 shows these separate areas. To the north is the Milwaukie Industrial park, separated from downtown Milwaukie by the Milwaukie Expressway. West of the industrial park is the Waverly Heights residential area containing a mix of large single family homes and **high density apartments**. Many of these housing units have views to the Willamette River or across the City. Immediately east of downtown is an area containing several schools surrounded with single and multifamily residences. Lake Road runs to the southeast, bisecting a largely single family area containing some open space and several small farms. Island Station, lying directly south of downtown across McLoughlin Boulevard is one of the oldest residential areas in the City.*

Guideline #2 — Multifamily Housing

To ensure that new multifamily housing does not significantly alter the visual character of existing single family areas, and does not create problems of drainage, traffic, noise, and light to adjacent properties. Important considerations regarding multifamily development are:

- *Projects should not be located randomly throughout the neighborhood.*

Response: The proposed development is adjacent to other multifamily apartment buildings and borders single family residences. The project will serve as a transition between the housing types and will take advantage of increased setbacks and vegetated buffer to help mitigate the change from multifamily to single family.

- *Projects should have close proximity to major streets and public transit, and should not cause through traffic in the neighborhood*

Response: The proposed development is adjacent to similar apartment communities and is not routing traffic through single family residential neighborhoods. Traffic will pass by multifamily apartment residences on the way to the property.

- *Projects should have adequate off-street parking*

Response: The proposed development is locating the majority of tenant parking below each building (108 covered spaces) with limited surface parking for visitors (30 spaces). In total, the 138 off-street parking spaces exceeds the minimum parking requirement of 125 spaces.

- *Projects should be designed to be aesthetically pleasing*

Response: The buildings in the development were designed with entrances set back at the middle of the buildings to break up the façade into two smaller masses. The project seeks to provide condominium-quality apartments for tenants who desire premium features and amenities. Large windows and high-quality materials will make these buildings the premier rental residences in the City.

- *A design review process should be developed and implemented with provisions for local neighborhood input*

Response: The proposed development was presented to the Historic Milwaukie NDA in July 2020. The Planning Commission held a public hearing for the proposed development and opportunity for public input was provided. After receiving comments from the October 27, 2020 public hearing, the owners have been working with neighbors to address their concerns.

Guideline #3 — Residential Open Space

To ensure that new residential development, especially multifamily development, provides adequate open space and facilities for the children expected in the project, and provides open space and landscaping to create an aesthetically pleasing transition to adjacent properties.

Response: The proposed development will feature several walking paths through the wooded areas on site and a Community Garden. The project is planning to preserve the natural forested area to the extent possible and allow exploration with paths rather than develop significant landscaped areas.

Guideline #6 — Willamette Greenway

To maintain the present Willamette Greenway boundary and establish the Willamette Riverfront as a focal point for the community.

Response: The proposed development is located with the Willamette Greenway and will provide better access to views of the river from the property. Tenants will enjoy views from their residential units and all Waverley Greens residents will be able to access a series of walking paths and river overlooks on the property. Also, the project will include a landscaped sitting area at the entrance off Waverly Court which will provide additional river views. For additional information on compliance, refer to section 19.401 Willamette Greenway Zone WG in Planned Development Preliminary Submission dated July 28, 2020.

Guideline #8 — Walkways

To ensure adequate walkways are provided in both old and new residential areas, and once installed, are adequately maintained. Homeowners should assume the major responsibility to maintain and upgrade walkways on their property.

Response: The proposed development will be making improvements along Waverly Ct that provide additional sidewalks and cross walks that will connect to the existing Waverley Greens apartments. This will allow for a pedestrian connection to the major arterial roads and public transportation. Also, the project will include walking paths within the wooded areas of the site that take advantage of views of the Willamette River.

Chapter 5 — Transportation, Public Facilities and Energy Conservation

Objective #6 — Drainage and Streets

To improve the storm drainage and collection system within the City in order to alleviate seasonal flooding problems and to allow for permanent street and sidewalk improvements.

1. *New and redevelopment will be designed to limit storm drainage runoff outside project boundaries and will provide a storm drainage and collection system within the project area boundary*

Response: The proposed development will direct all stormwater from impervious surfaces, including roofs and paving, and route to a lower level stormwater facility that collects and detains the storm water and slowly releases it to ultimately the existing underground storm waters system in Lava Drive.

Objective #7 — Solid Waste

To continue to ensure that solid waste services are made available to City residents.

1. *The City will continue to support the collection of solid waste and recyclable materials through private operators.*

Response: Trash and recycling collection will be provided in the trash/recycling room located on the parking level of each building. Residents will be responsible to bring their waste to that location and maintenance staff will collect and transport the material off site.

Energy Conservation Element

To conserve energy by encouraging energy efficient land use patterns and transportation systems, and by encouraging the construction industry and private homeowners to participate in energy conservation programs.

Objective #1 — Land Use

To encourage an energy efficient land use pattern.

- *Increased density and intensity of residential development in areas adjacent to transit corridors, employment and commercial centers.*

Response: The proposed development is located near major transit corridors, close to downtown Milwaukie and only a few miles from Portland.

Objective #2 — Transportation System

To encourage an energy efficient transportation system.

Response: The proposed development will include electrical vehicle charging stations on the parking levels.

Objective #4 — Site and Building Design

To encourage site design practices resulting in energy efficiency.

2. *The City will encourage street and site design which allows the orientation of structures to take maximum advantage of solar energy potential. Access to sunlight will be safeguarded.*

3. *The City will encourage the innovative use of alternative energy sources such as solar, wind, etc., on all existing and new residential, commercial and industrial developments.*

Response: Building orientation and solar access along with passive strategies have been the first step of our design analysis. A preliminary solar study has already been completed, and the owners are committed to installing solar panels on the roofs. Each unit is provided with operable windows and overhangs, and sunscreens will be studied to maximize efficiency as part of the building design. Retaining and replanting the surrounding tree canopy is a key component to maintaining a cool site that takes advantage of the breezes flowing down the Willamette River and through the tree canopy to provide passive cooling for the units.

Objective #5 — Coordination

To participate in local, regional and state-wide energy conservation programs.

4. *The City will encourage residents and local businesses to conserve energy, to use renewable resources, and to recycle materials. The City will coordinate its efforts with those of local organizations, special districts, utility companies and State, regional and federal agencies.*

Response: The project has already worked with the Energy Trust of Oregon during the Development Planning phase and has consulted with an energy and solar consultant to discuss energy efficiency strategies and propose a preliminary solar design for the development.

Item 4) Tree Removal within Willamette Greenway Zone

Response: The project team reviewed multiple building layouts within the site to minimize tree removal. The final design represents the design team's best effort to reduce the total building footprint while providing the unit density that will allow the project to be financially feasible given the high construction costs associated with building on a steep slope. A majority of this cost is the parking level built into the slope that allows trees to be saved in areas that would have been utilized for surface parking. An arborist was involved from the beginning of the planning process to survey the site and provide a tree assessment that would assist the design team in locating the buildings while minimizing impacts to trees. The arborist has also provided tree protection details that will provide direction for the contractor to adequately protect all existing trees that will remain. The owners have had this property in their family for decades and appreciate the natural beauty of these wooded areas. They take this issue very seriously and have committed significant resources to maintaining and protecting the existing trees. After discussions with adjacent property owners, the owners agreed to shift Building A.2 6-feet away from the property line to save additional trees and increase the vegetated buffer along the single family residential area. Section 19.401.8.B.3.C *Grading or tree removal is allowed in conjunction with establishing a permitted use. Only the area necessary to accommodate the permitted use shall be altered.* The City will have multiple opportunities to review the design and approve the building permits associated with each phase.

Item 5) Combined Preliminary and Final Development Plan Approval and concurrent Land-use Applications

Response: The City has previously determined that an applicant can apply for both preliminary and final planned development approval as a consolidated process and can combine a land division application with the planned development/zone change applications. The City adopted this position for the Kellogg Creek Planned Development (PD-2017-001), which proposed a 92-unit planned development that included a request for both preliminary and final planned development approval, zone change, subdivision and related approvals. We attached a copy of the staff report to the City Council, dated August 29, 2017, in which both the City staff and the Planning Commission recommended approval. The applicant subsequently withdrew the application on January 22, 2018, before the City Council could render its decision, but this application demonstrates that there is City precedent for allowing an applicant to apply for both preliminary and final planned development approval and combine a land division (subdivision) application with the planned development/zone change applications.

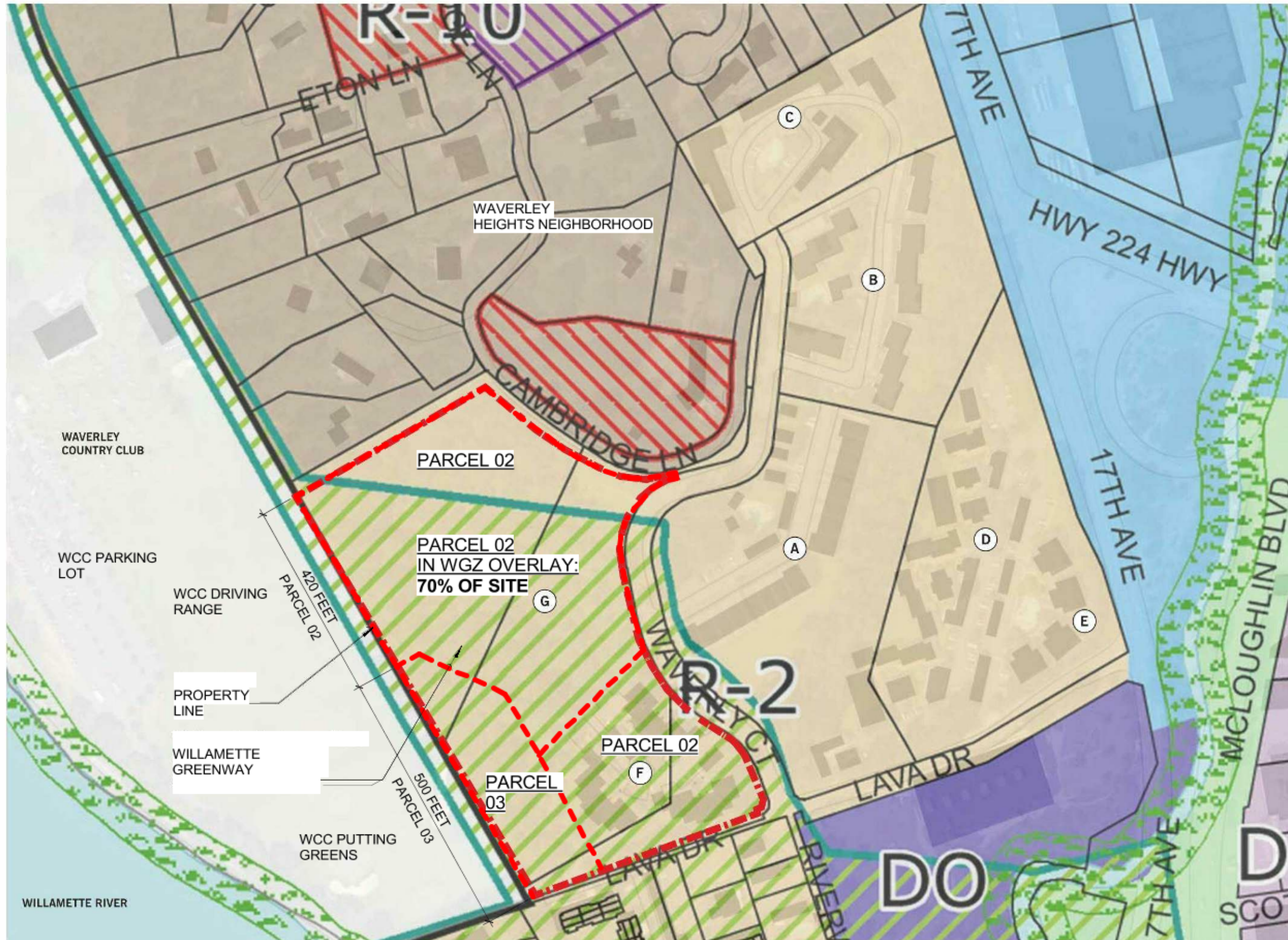
Supplemental Drawings:

Attached are revised and/or new Waverley Woods PD graphic plans and sections prepared to support the written responses provided by YGH and the owners as follows:

Page:

1. **Zoning Plan** showing 70% of Parcel 02 project site to be within Willamette Greenway Zone with 30% excluded along northern portions of the site abutting the Waverly Heights neighborhood. The plan also notes the 920 ft. common property line between the Waverley Country Club (WCC) and the project is divided into two segments. 420 ft. of Parcel 02 frontage is the subject of this PD request. The remaining 500 ft. of Parcel 03 frontage is not subject to the PD request and is not planned for development.
2. **Site Plan** showing overall 3-phase project on Parcel 02. The plan shows Building A.2, part of Phase 02 in the PD plan moved 6 ft. further from the property line abutting Waverley Heights neighborhood residences. The shift in building siting will reduce visual impact to adjoining properties as well as reduce shadow impact. The 6 ft. shift in Building A.2 will also enable retention of additional existing trees in the enlarged buffer zone.
3. **Site Plan** showing approximate residences and setbacks with Building A.2 moved 6 ft. away from property line. The overall distances between additional residences to the north are also shown in relation to Phase 03 Buildings B.1 and B.2 which remain unchanged in site location.
4. **Site Plan** showing site perimeter and forest buffer zone (with Building A.2 moved 6 ft. away from property line. The resulting buffer zone area equates to 40% of the site which will not be disturbed by construction and will be maintained as a forest reserve area.

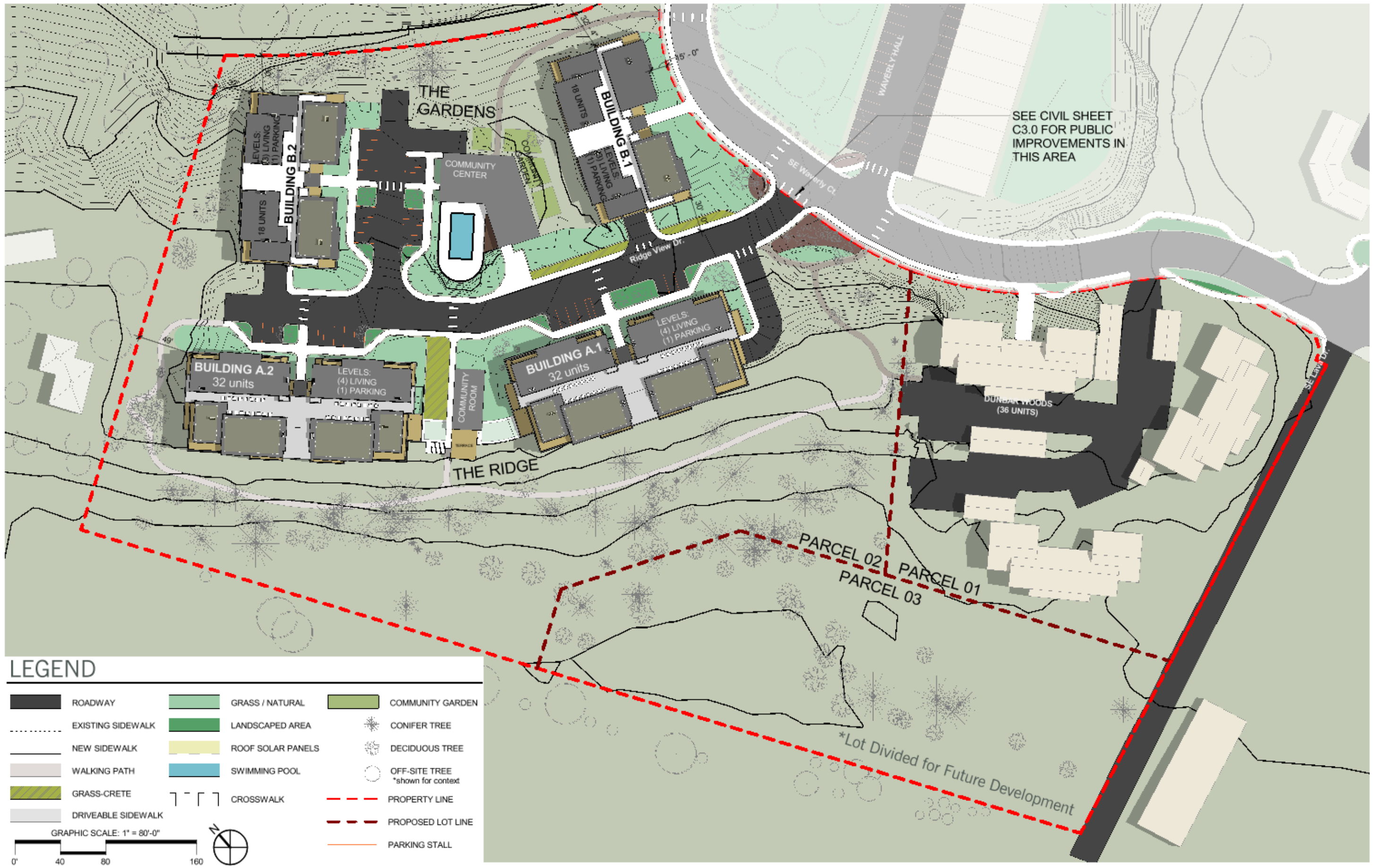
5. **Building Sections** showing Ridge Building calculated height limits to be 8 ft. 5 in. above the Willamette Greenway Zone height limit.
6. **Solar shading studies** showing existing and new development conditions at 11:30 am on the June 21 Summer Solstice. The studies, completed with accurate 3-dimensional computer modeling, **show no impact by the project development to adjacent properties.**
7. **Solar shading studies** showing existing and new development conditions at 11:30 am on the December 21 Winter Solstice. The studies also using 3-dimensional computer modeling show existing modeled tree shadows with darker residence and new development shadows. **The shadow impact of the Phase 02 Building A.2 shows minor shading of the adjacent residence** (at the entry porch and garage area) at the point of maximum winter solar shadows.



- Communities**
- (A) Waverley & Stuart Hall
 - (B) Dundee
 - (C) The Highlands
 - (D) Banbury
 - (E) Stonehaven
 - (F) Dunbar Woods
 - (G) Waverley Woods (proposed)

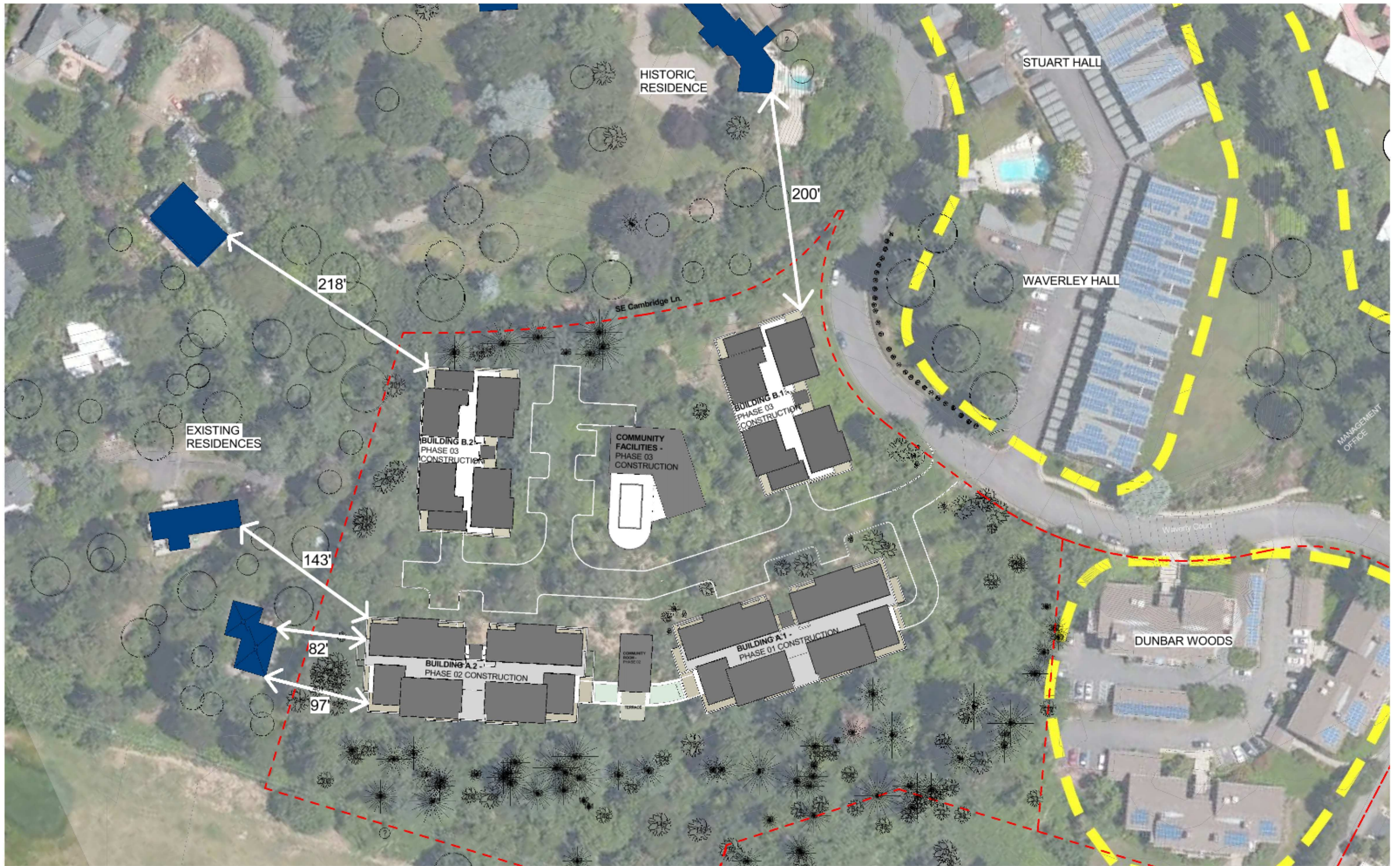
Industrial	Commercial
BI	C-N
M	C-L
Residential	C-G
R-1	C-CS
R-1-B	Downtown
R-2	DS
R-2.5	DC
R-3	DO
R-5	DR
R-7	DOS
R-7PD	
R-10	
R-10PD	
R-O-C	
Mixed Use Overlay	
Vegetated Corridor*	
Wetland Buffer*	
Willamette Greenway	
Significant Historic Resource	
Contributing Historic Resource	
Unranked Historic Resource	
City Boundary	





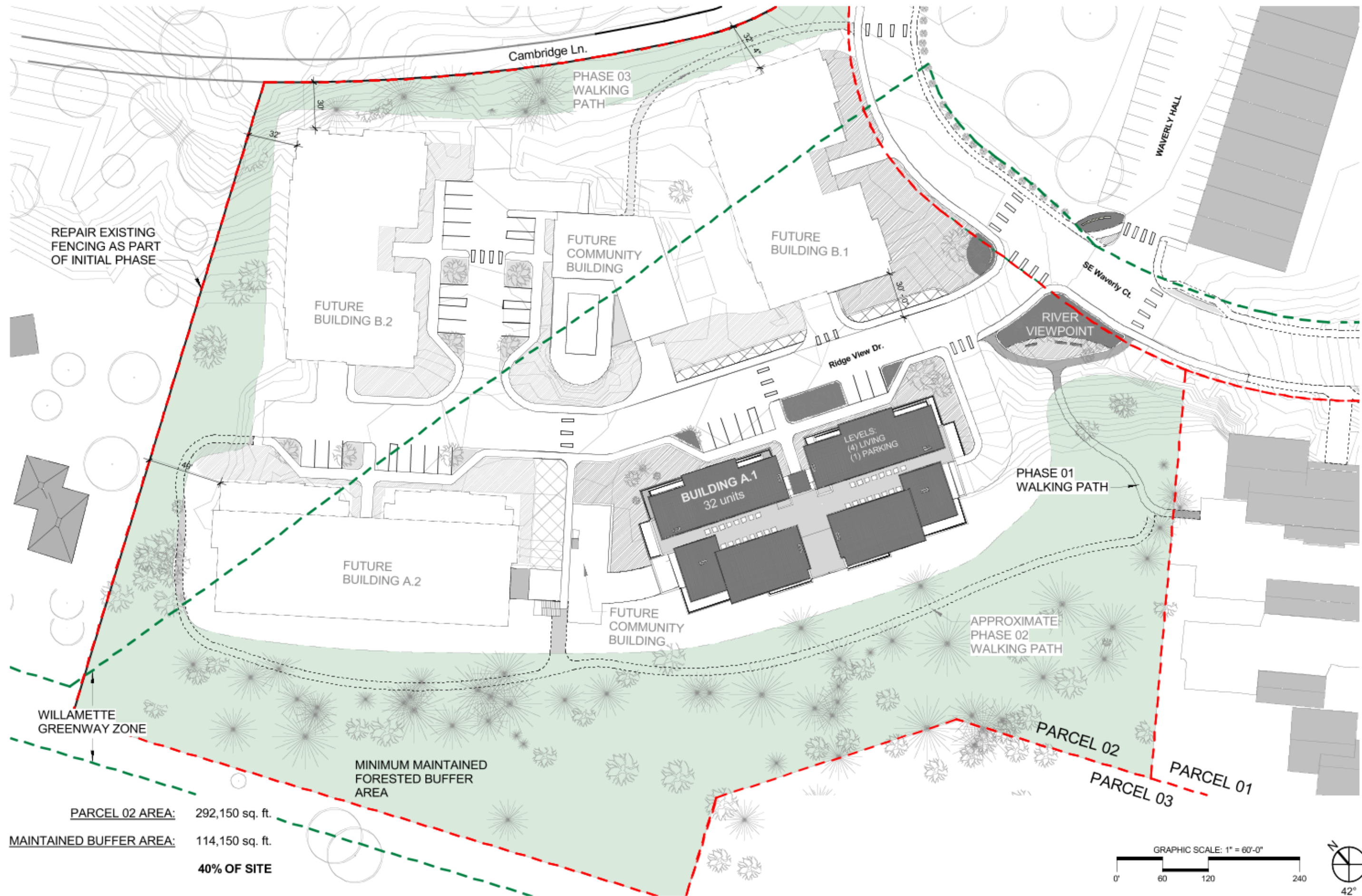
2 - SITE PLAN - SHOWING 3 PHASE PROJECT WITH BUILDING A.2 (PHASE 02) SHIFTED 6' FURTHER FROM PROPERTY LINE

11/10/2020

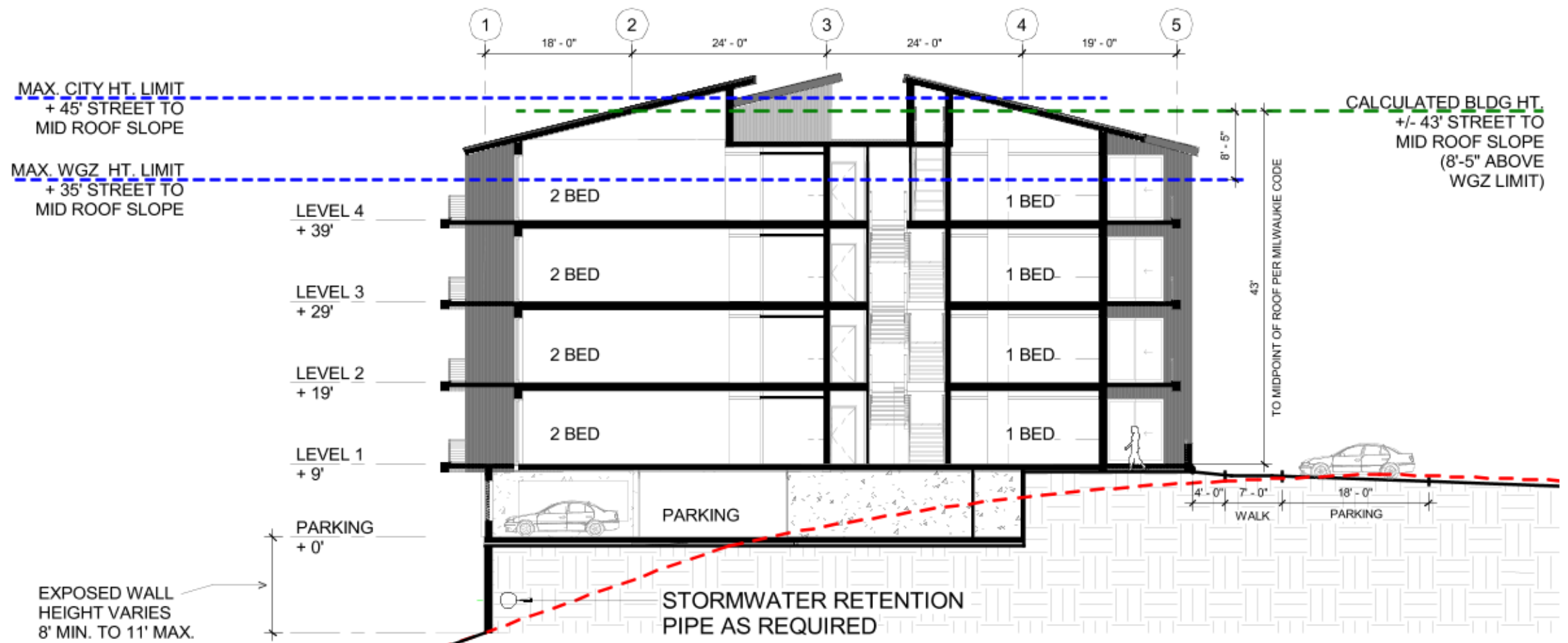


3 - SITE PLAN SHOWING PROXIMATE RESIDENCES AND SETBACKS WITH 6' SHIFT OF BUILDING A.2

11/10/2020

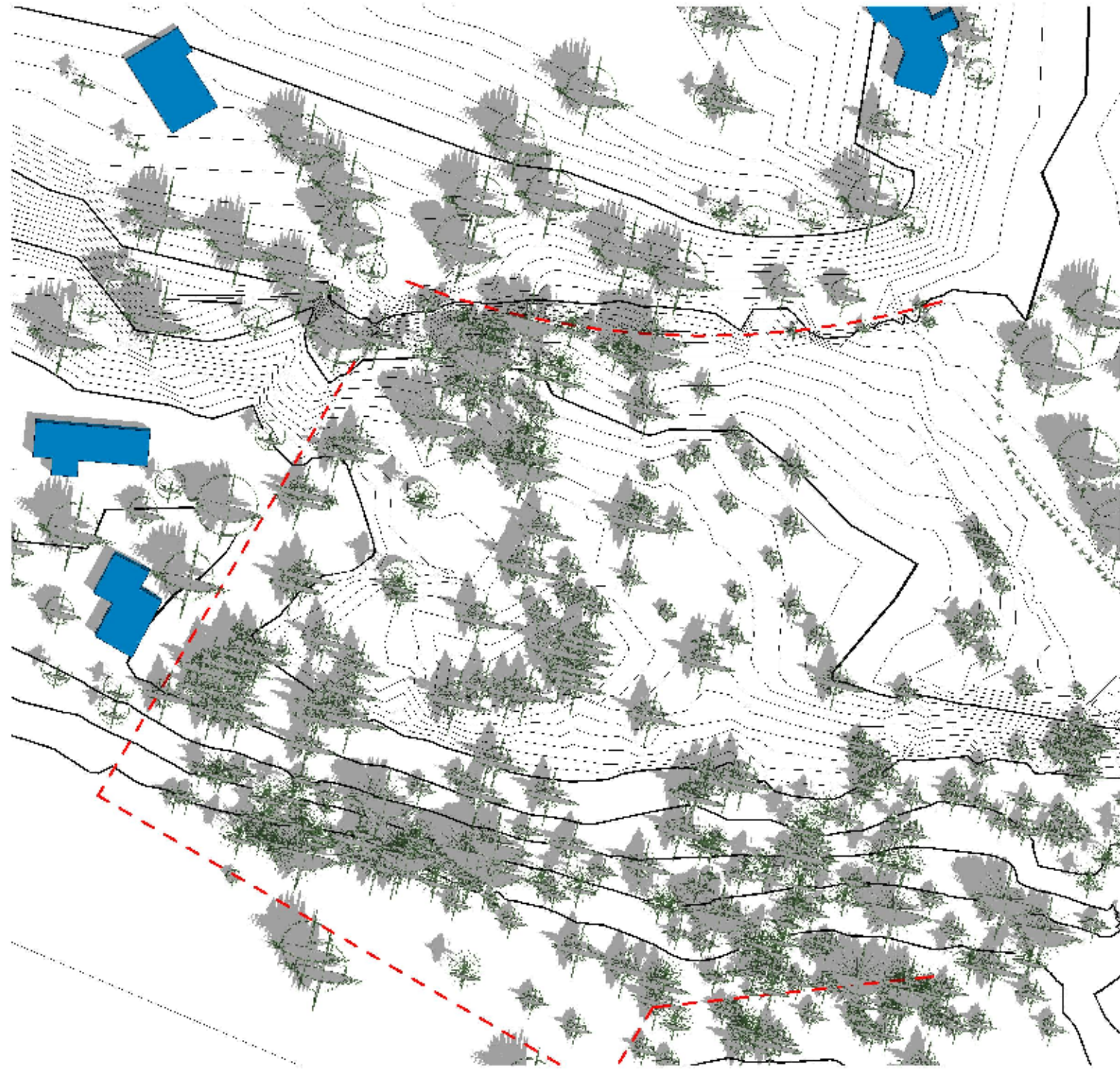


PARCEL 02 AREA: 292,150 sq. ft.
 MAINTAINED BUFFER AREA: 114,150 sq. ft.
 40% OF SITE



1 BUILDING A.1 (A.2 SIM) - SECTION DIAGRAM
1/16" = 1'-0" --- EXISTING TOPOGRAPHY



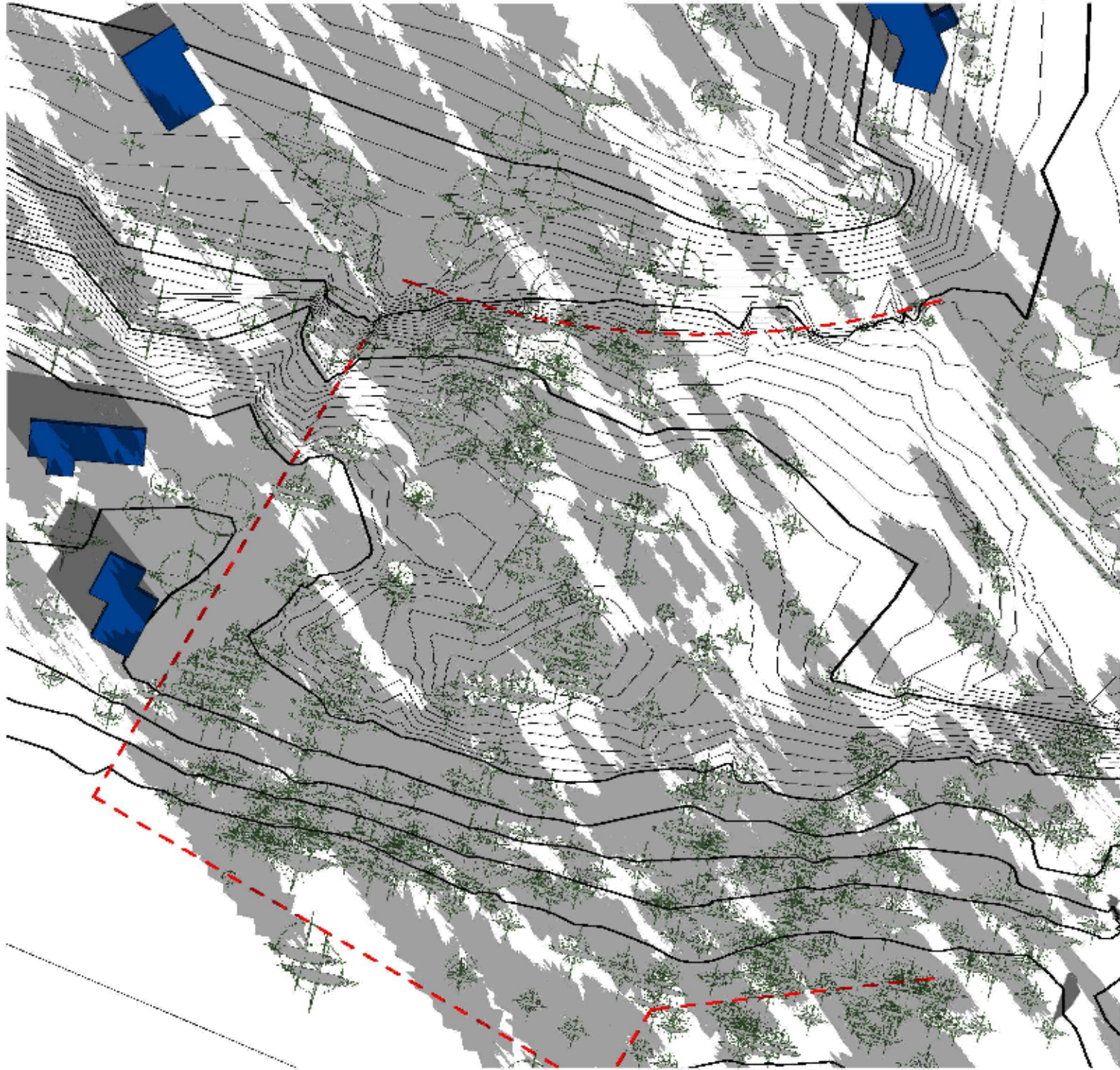


1 EXISTING CONDITIONS - SUMMER SOLSTICE SUN AT 11:30 AM
NTS

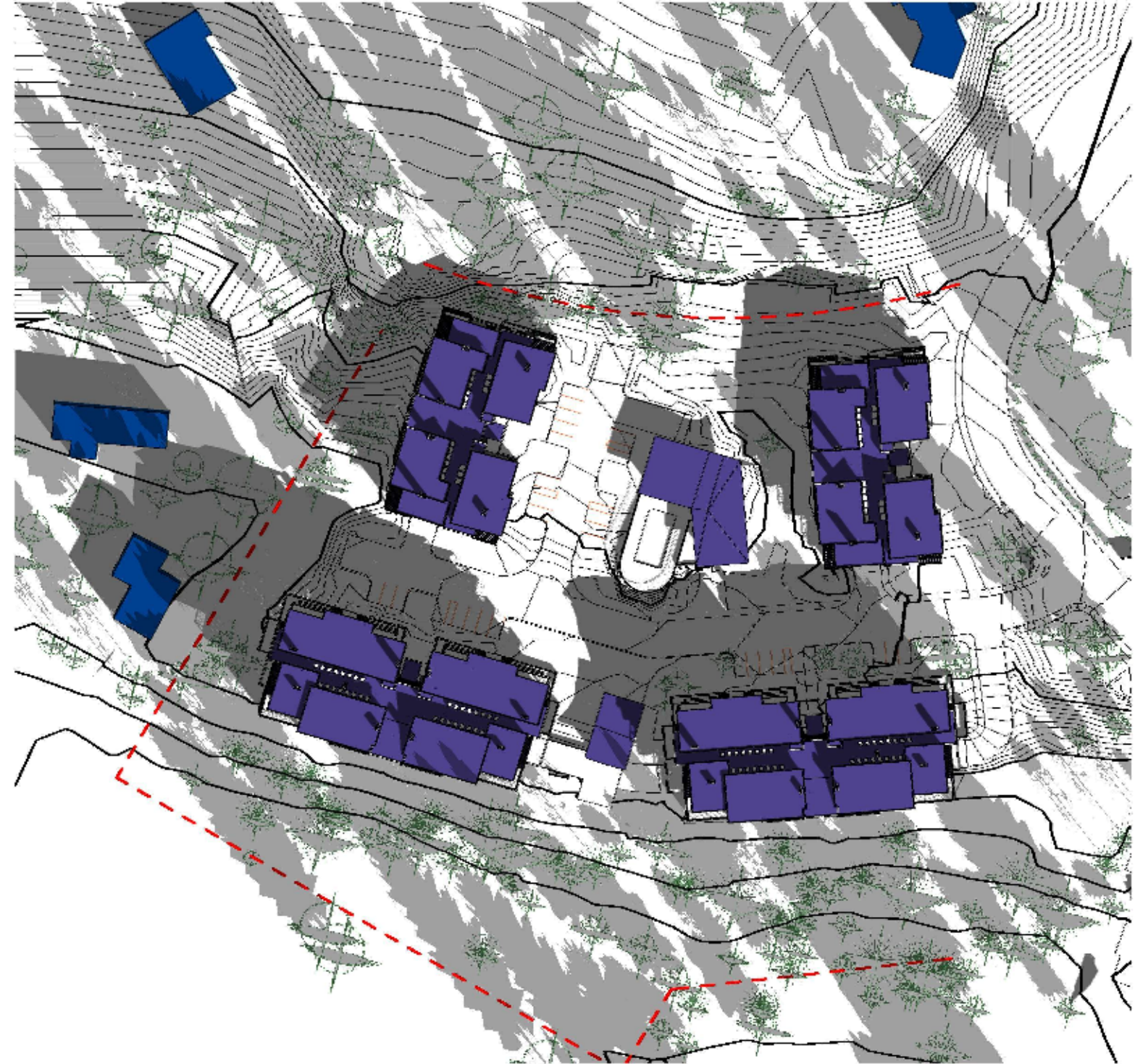


2 NEW DEVELOPMENT - SUMMER SOLSTICE SUN AT 11:30 AM
NTS





1 EXISTING CONDITIONS - WINTER SOLSTICE SUN AT 11:30 AM
NTS



2 NEW DEVELOPMENT - WINTER SOLSTICE SUN AT 11:30 AM
NTS



 CITY OF MILWAUKIE
COUNCIL STAFF REPORT

To: Mayor and City Council

Date: August 29, 2017, for September 5,
2017, Public Hearing

Through: Ann Ober, City Manager

Reviewed: Denny Egner, Planning Director

From: Brett Kelper, Associate Planner

Subject: **Kellogg Creek Planned Development**

ACTION REQUESTED

Adopt the proposed ordinance found in Attachment 1 regarding the proposed 92-unit planned development subdivision on the Turning Point Church site at 13333 SE Rusk Rd (land use application master file #PD-2017-001), including the Final Development Plan and Program found in Attachment 1-b. The action would change the zoning map to add the Planned Development designation to the subject property as shown in Attachment 1-d.

In addition, adopt the Final Decision and Order presented in Attachment 2 to approve the applications for the proposed subdivision, natural resource review, transportation facilities review, variance request, and minor modification to a community service use, as addressed in the recommended Findings and Conditions of Approval found in Attachments 1-a and 1-c, respectively.

HISTORY OF PRIOR ACTIONS AND DISCUSSIONS

No City Council action or discussion has occurred. The Council is the final decision-maker for Planned Development projects. Planning Commission review of the project to date is summarized below.

- **May 23, 2017** – The Planning Commission opened the public hearing for PD-2017-001 and heard presentations from City staff and the applicant. The public testimony portion of the hearing was opened, but the hearing was continued due to the lateness of the hour and the presence of many people waiting to testify. (<https://www.milwaukieoregon.gov/planning/planning-commission-170>)
- **May 25, 2017** – At a special session, the hearing was reopened to complete the public testimony and begin Commission deliberations. The Commission confirmed that it preferred the applicant's revised site plan, requested more information about several items, and continued the hearing again. (<https://www.milwaukieoregon.gov/bc-pc/planning-commission-special-session>)
- **June 27, 2017** – At the applicant's request, and without any further deliberation, the Commission continued the hearing to July 25, 2017. (<https://www.milwaukieoregon.gov/planning/planning-commission-172>)
- **July 25, 2017** – The Commission re-opened the hearing on July 25, took additional public testimony on the new information, deliberated, and voted 3-1 to recommend that City Council approve the project with the revised site plan and recommended conditions of approval. (<https://www.milwaukieoregon.gov/planning/planning-commission-174>)

ANALYSIS

On August 17, 2017, City staff met with staff from the North Clackamas Parks & Recreation District (NCPRD) to discuss issues related to ownership and management of the open space tract. That conversation prompted staff to propose a few revisions to the Findings and Conditions that were

recommended for approval by the Planning Commission. "Track Changes" (i.e., ~~strikeout~~/underline) versions of those documents are included as Attachments 3-a and 3-b, respectively.

See Attachment 4 for a report with background and analysis similar to that which was provided to the Planning Commission over the course of its three meetings.

BUDGET IMPACTS

A decision to approve the proposed planned development subdivision will result in the addition of 92 new housing units to the City's various infrastructure systems. System Development Charges (SDCs) will be collected as per City policy to address future needed improvements to the City infrastructure. The establishment of new housing units on the previously underdeveloped site will increase tax revenues from the subject property.

WORKLOAD IMPACTS

The proposed development will not disproportionately affect City staff workload compared to other new development projects. The processes for final plat, development review and permitting, and monitoring of construction of public and private improvements will be proportional to the scale of the proposed development.

COORDINATION, CONCURRENCE, OR DISSENT

As per the standard land use referral and review process, various City departments and other agencies have had an opportunity to review and comment on the proposed development. Comments on the application have been provided by the City Engineering Department, City Public Works Department (Stormwater Division), Clackamas Fire District #1, Clackamas County Department of Transportation and Development, North Clackamas Parks and Recreation District, Metro, Oregon Department of Transportation, and Oregon Department of Fish and Wildlife. In addition, comments have been received from the Lake Road Neighborhood District Association, Oak Grove Community Council, and North Clackamas Urban Watersheds Council. Comments have been incorporated into the recommended findings and conditions as appropriate.

STAFF RECOMMENDATION

Adopt the proposed ordinance found in Attachment 1 to approve the proposed final development plan as recommended by the Planning Commission and with modified Findings and Conditions as presented in Attachments 3-a and 3-b, respectively; and to change the zoning map to add the Planned Development designation to the subject property.

In addition, adopt the Final Decision and Order presented in Attachment 2 to approve the applications for the proposed subdivision, natural resource review, transportation facilities review, variance request, and minor modification to a community service use, as addressed in the recommended Findings and Conditions of Approval found in Attachments 1-a and 1-c, respectively.

ALTERNATIVES

1. Approve the proposed planned development with modifications, including an adjustment in the number of units or other specific details. Such modifications need to be read into the record and incorporated into the Findings and Conditions.
2. Continue the hearing to allow time for the provision of additional information (if needed) to Council and/or for additional public testimony.
3. Continue consideration of the proposal and refer the application back to Planning Commission with recommendations for amendment.
4. Deny the application, ending the hearing process.

ATTACHMENTS

Attachments are provided as indicated by the checked boxes. All material is available for viewing upon request.

	Early CC Mailing	Public Copies	E-Packet
1. Ordinance	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
a. Exhibit A – Findings in Support of Approval (<i>clean version</i>)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
b. Exhibit B – Final Development Plan and Program	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
1) Attachment 1 – Development Plan Set	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
a) C000 Cover Sheet			
b) C100 Existing Conditions			
c) C101 & 102 Tree Protection & Removal Plan			
d) C200 Preliminary Lot Line Adjustment			
e) C201 Preliminary Plat			
f) C202 Typical Street Sections			
g) C300 Grading Plan			
h) C400 Composite Utility Plan			
i) C500 Public Improvement Plan			
j) L100 & 110 Landscape Plan & Enlargements			
k) A100 Building Plans & Elevations			
l) A2, A4, & A6 Alley-facing unit plans			
m) 2.0, 4.0, 6.0, 7.0, & 7.1 Street-facing unit plans			
c. Exhibit C – Conditions of Approval (<i>clean version</i>)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
d. Exhibit D – Existing and Proposed Zoning	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
2. Final Order			
3. Track Changes Versions (<i>modified after July 25 PC hearing</i>)			
a. Findings in Support of Approval	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
b. Conditions of Approval	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
4. Background and Analysis Report	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
5. Applicant's Narrative and Supporting Documentation (<i>all materials received July 11, 2017, unless otherwise noted</i>)			
a. Narratives	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
1) Planned Development, Variance, Zone Change			
2) Minor Modification to Community Service Use, Subdivision Preliminary Plat, Transportation Facilities Review, Natural Resources Review			
b. Exhibit A – Development Plan Set (<i>same as Att. 1-b(1), above</i>)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
c. Exhibit B – Preapplication Notes from August 2016	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
d. Exhibit C – City Planning Process Memo, dated October 4, 2016	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
e. Exhibit D – Wetland Delineation Report by Pacific Habitat Services	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
f. Exhibit E – Drainage Report prepared by DOWL	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
• Exhibit E-1 – Stormwater Response Memo from DOWL (<i>received April 7, 2017</i>)			
• Exhibit E-2 – Floodplain Analysis Memo from DOWL, dated January 23, 2017 (<i>received April 7, 2017</i>)			
• Exhibit E-3 – Floodplain Mitigation Exhibit (<i>received July 17, 2017</i>)			

	Early CC Mailing	Public Copies	E-Packet
g. Exhibit F – Geotechnical Evaluation prepared by GEO Consultants Northwest	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
h. Exhibit G – Traffic Impact Study prepared by Kittleson & Associates (including appendices and supplemental memo dated June 12)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
i. Exhibit H – Neighborhood Meeting Materials prepared by DOWL	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
j. Exhibit I – Arborist Report prepared by Morgan Holen & Associates (including supplemental memo dated June 11)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
k. Exhibit J – Natural Resource Review report prepared by Pacific Habitat Services	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
l. Exhibit K – Memo from Johnson Economics	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
6. Comments Received as part of Planning Commission hearing			
a. Michelle Wyfells, Metro (April 20, 2017)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
b. Matt Amos, Clackamas Fire District #1 (April 25 & May 4)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
c. Rob Livingston, City Public Works Dept. (April 25 & 27)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
d. Paul Hawkins, Lake Road NDA (April 28)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
e. Rebecca Hamilton, Metro (May 1)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
f. Joseph Edge, Oak Grove Community Council (May 1)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
g. Sarah Hartung, ESA (City consultant) (May 1)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
h. Marah Danielson, ODOT Region 1 (May 3)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
i. Alex Roller, City Engineering Dept. (May 5)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
j. Kenneth Kent, Clackamas County Engineering (May 8)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
k. Kathryn Krygier and Tonia Williamson, North Clackamas Parks & Recreation District (May 11)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
l. Laura Hickman, area resident (May 11)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
m. Ray Olma, area resident (May 15)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
n. Jamie Marshall, area resident (May 15)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
o. Melanie Frisch, area resident (May 15)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
p. Alex Roller, City Engineering Department, revised memo (May 16)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
q. Dan Sweet, area resident (May 18)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
r. Vince Alvarez, Lake Road NDA (May 18)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
s. Bruce Reiter, area resident (May 22)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
t. John Green-Hite, area resident (May 22)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
u. Joan Young, area resident (May 22)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
v. Howard Lanoff, area resident (May 22)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
w. Georgia Bogner, area resident (May 22)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
x. Chris Runyard, ecological restoration specialist (May 22)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
y. Linda Huntley, area resident (May 22)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
z. Jennifer Stipetic, area resident (May 22)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
aa. Terry Gibson, North Clackamas Urban Watersheds Council (May 22)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

	Early CC Mailing	Public Copies	E-Packet
bb. Linda Huntley, area resident (May 23)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
cc. Sara Miller, area resident (May 23)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
dd. Dick Shook, area resident (May 23)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
ee. Matt Menely, area resident (May 23)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
ff. Laura Hickman, area resident (May 23)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
gg. Todd Alsbury, Oregon Department of Fish & Wildlife (May 23)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
hh. Lisa Kennedy, area resident (May 24)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
ii. Sue Hayes, area resident (May 24)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
jj. Bev St. John, area resident (May 25)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
kk. Randy Day, area resident (May 25)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
ll. Jarrod Allen, area resident (May 25)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
mm. Lois Keiser, area resident (May 25)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
nn. Ben Geertz, area resident (May 25)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
oo. Lois Herring, area resident (May 25)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
pp. Linda & Roger Huntley, area residents (May 25)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
qq. Joseph Edge, Oak Grove Community Council (May 26)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
rr. Chris Runyard, ecological restoration specialist (June 7)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
ss. Kathryn Krygier, North Clackamas Parks & Recreation District (July 11)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
tt. Alex Roller, City Engineering Department, revised memo (July 18)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
uu. Marah Danielson, ODOT Region 1 (July 21)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
vv. Todd Alsbury, Oregon Department of Fish & Wildlife (July 25)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
ww. Mat Dolata, DKS (City consultant) (July 25)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
7. Staff responses to Planning Commission questions between hearings	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
8. Minutes from May 23 Planning Commission meeting	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
9. Comments Received after Planning Commission hearing			
a. Kenneth Kent, Clackamas County Engineering (July 26)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
b. Nancy Pierce, area resident (July 31)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
c. Chris Runyard, ecological restoration specialist (Aug 25)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
d. Mary Zellharie, area resident (Aug 28)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
e. Judy Sherley, area resident (Aug 28)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
f. Ed Hacmac, area business owner (Aug 28)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

Key:

Early CC Mailing = paper materials provided to City Council at the time of public notice 20 days prior to the hearing (August 16, 2017).

Public Copies = paper copies of the packet available for review at City facilities and at the City Council meeting.

E-Packet = packet materials available online at <https://www.milwaukieoregon.gov/citycouncil/city-council-regular-session-212>.

 CITY OF MILWAUKIE
COUNCIL ORDINANCE No.

AN ORDINANCE OF THE CITY OF MILWAUKIE, OREGON, ADOPTING THE FINAL DEVELOPMENT PLAN AND PROGRAM FOR THE KELLOGG CREEK SUBDIVISION (FILE #PD-2017-001) AND AMENDING THE CITY'S ZONING MAP TO ADD THE "PD" DESIGNATION TO THE SUBJECT PROPERTY AS SHOWN IN EXHIBIT D BELOW (FILE #ZA-2017-001).

WHEREAS, the approved final development plan and program will establish the standards and requirements for development within the Kellogg Creek subdivision; and

WHEREAS, the proposed amendments to the Zoning Map will result in residential development that is compatible with the surrounding neighborhood; and

WHEREAS, legal and public notices have been provided as required by law; and

WHEREAS, on July 25, 2017, the Milwaukie Planning Commission conducted a public hearing as required by MMC 19.1007.5 and adopted a motion in support of the final development plan and program and proposed amendments; and

WHEREAS, the Milwaukie City Council finds that the final development plan and program and proposed amendments are in the public interest of the City of Milwaukie.

Now, Therefore, the City of Milwaukie does ordain as follows:

Section 1. Findings. Findings of fact in support of the final development plan and program amendments are adopted by the City Council and are attached as Exhibit A.

Section 2. Final Development Plan and Program. The final development plan and program for the Kellogg Creek subdivision are adopted by the City Council and are attached as Exhibit B.

Section 3. Conditions. Conditions of approval related to the final development plan and program are adopted by the City Council and are attached as Exhibit C.

Section 4. Amendments. The Milwaukie Zoning Map is amended as described in Exhibit D (Proposed Zoning Map Amendments).

Section 5. Acceptance of Open Space Dedication. On behalf of the City of Milwaukie, the City Council accepts the proposed dedication of the open space tract (Tract E), as shown on the final development plans attached as Exhibit B, and directs the City Manager to proceed with the necessary arrangements to complete the dedication.

Section 6. Effective Date. The amendments shall become effective 30 days from the date of adoption.

Read the first time on _____, and moved to second reading by _____ vote of the City Council.

Read the second time and adopted by the City Council on _____.

Signed by the Mayor on _____.

Mark Gamba, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Ramis PC

Scott S. Stauffer, City Recorder

City Attorney

EXHIBIT A
Findings in Support of Approval
Master File #PD-2017-001
Kellogg Creek Planned Development

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, Brownstone Development, Inc., has applied for approval to create a 92-unit Planned Development subdivision on property currently addressed at 13333 SE Rusk Rd. The site is split zoned Medium Density Residential R-3 on the western half and Low Density Residential R-10 on the eastern half. The land use application master file number is PD-2017-001, with accompanying file numbers ZA-2017-001, S-2017-001, NR-2017-001, TFR-2017-001, VR-2017-003, and CSU-2017-001.
2. The subject property is comprised of a single lot that is the result of a recent lot consolidation and property line adjustment process (land use files PLA-2017-001 and LC-2017-001). Previously, the subject property was comprised of four lots totaling 17.55 acres, with the Turning Point Church located in the southeastern corner of the site and addressed as 13333 SE Rusk Rd. Three of the lots on the western side of the original property were consolidated, and the property line between this new lot and the remaining church lot was subsequently adjusted to accurately reflect the location of the church building and accompanying off-street parking areas. The resulting church site is approximately 3.7 acres, and the subject property being subdivided is approximately 13.8 acres.
3. The applicant has proposed to divide the subject property into 92 lots for 4-unit rowhouse development, with tracts for stormwater (3 facilities), open space (nearly 7 acres), a community garden, and a pedestrian connection to Kellogg Creek Drive along the eastern edge of the development. A network of new public streets will provide access to the new development, with two points of vehicle access to Kellogg Creek Drive and pedestrian and bicycle access to an existing sidewalk at the intersection of Rusk Road and Highway 224. Private alleys will provide additional access to the rear of some of the proposed rowhouses. Previously, the church site depended on an access through the subject property; access to the church site will be retained through one of the new public streets. The proposal includes a variance request for locating the driveway access for one of the proposed lots slightly closer to a street intersection than the City code allows.
4. Mount Scott Creek flows across the northern portion of the subject property, and a large wetland (approximately 0.7 acres) is located within the 100-year floodplain designated over most of the western half of the site. Water Quality Resource (WQR) and Habitat Conservation Area (HCA) designations exist around the creek and wetland, and portions of these natural resource areas will be disturbed by the proposed development. The applicant has proposed mitigation plantings within the WQR and HCA and to balance cut and fill within the floodplain. The proposal includes a variance request for configuring several of the new lots in such a way that there is little or no buildable area outside the WQR or HCA.
5. The proposal is subject to the following provisions of the Milwaukie Municipal Code (MMC):
 - MMC Section 19.1007 Type IV Review
 - MMC Section 19.311 Planned Development Zone (PD)
 - MMC Section 19.301 Low Density Residential Zones (including R-10)
 - MMC Section 19.302 Medium and High Density Residential Zones (including R-3)

- MMC Section 19.902 Amendments to Maps and Ordinances
 - MMC Title 17 Land Division
 - MMC Title 18 Flood Hazard Regulations
 - MMC Section 19.402 Natural Resources
 - MMC Chapter 19.500 Supplementary Development Regulations
 - MMC Chapter 19.600 Off-Street Parking and Loading
 - MMC Chapter 19.700 Public Facility Improvements
 - MMC Section 19.904 Community Service Uses
 - MMC Section 19.911 Variances
 - MMC Chapter 19.1200 Solar Access Protection
6. The application submittal includes a proposed Planned Development, Zoning Map Amendment, Subdivision (preliminary plat), Natural Resource Review, Transportation Facilities Review, Variance Request, and minor modification to the church as an existing Community Service Use. Of all of the application components, the Planned Development and Zoning Map Amendment require the highest level of review (Type IV); as per MMC Subsection 19.1001.6.B, all are being processed with Type IV review.

The application has been processed and public notice provided in accordance with MMC Section 19.1007 Type IV Review. As required by MMC Subsection 19.1002.2, a preapplication conference was held on August 11, 2016. Public notice was sent to property owners and current residents within 500 ft of the subject property. MMC Subsection 19.1007.3.D requires a 400-ft radius for public notice, but the applicant requested a broader notice radius to correspond with the notice sent for the applicant's voluntary neighborhood meeting prior to submittal. As required by law, a public hearing with the Planning Commission was opened on May 23, 2017; continued to May 25; continued again to June 27 (where it was only nominally re-opened); and continued again to July 25, 2017. The Planning Commission hearing resulted in a recommendation for final decision by the City Council. A public hearing with the City Council was held on September 5, 2017, as required by law.

These findings are worded to reflect the City Council's role as final decision-maker; they represent the Planning Commission's recommendation to the City Council.

7. MMC Chapter 19.300 Base Zones

As a Planned Development, the proposed subdivision is subject to the requirements for Planned Developments as established in MMC Section 19.311. The Planned Development (PD) zone is a superimposed zone applied in combination with regular existing zones. The subject property is split-zoned R-10 and R-3, so the underlying zone requirements of MMC Sections 19.301 and 19.302, respectively, are relevant and must be addressed as well.

- a. MMC Section 19.311 Planned Development Zone (PD)

The purpose of a PD zone is to provide a more desirable environment than is possible through the strict application of Zoning Ordinance requirements, encouraging greater flexibility of design and providing a more desirable use of public and private common open space. PD zones can promote variety in the physical development pattern of the city and encourage a mix of housing types.

(1) MMC Subsection 19.311.2 Use

The City Council approves the final development plan of a PD zone, in consideration of the proposal's conformance to the following standards:

(a) Conformance to the City's Comprehensive Plan

As addressed in more detail in Finding 8, the proposed Planned Development conforms to the City's Comprehensive Plan and is consistent with the relevant policies and goals.

(b) Formation of a compatible and harmonious group

As proposed, the development will provide 92 single-family attached units in the form of 23 four-unit rowhouses. Approximately half of the units will be alley-loaded, with driveways and garages located in the rear; the other half will be front-loaded, with driveways and garages accessing the streets. Although the two types of structures will have different front facades, according to the applicant's submittal materials, the size, orientation, architecture, color palette, and articulating features will be similar and will lend a sense of group compatibility.

(c) Suitability to the capacity of existing and proposed community utilities and facilities

The existing public utilities and facilities in the vicinity of the subject property are all of sufficient size and capacity to support the proposed development. As required, the new streets and utilities provided within the proposed development itself will be suitable to serve it.

(d) Cohesive design and consistency with the protection of public health, safety, and welfare in general

The proposed street network, comprised of public streets, a public alley, and pedestrian and bicycle paths, is cohesively designed and meets the various applicable City standards for spacing and sight-distance. Frontage improvements on the new public streets and along the subject property's frontage on Kellogg Creek Drive, including sidewalks, landscaping, and streetlights will meet applicable City standards. A soft-surface trail system through a portion of the open space area will offer recreational opportunities while limiting impacts to natural areas.

(e) Affordance of reasonable protection to the permissible uses of properties surrounding the site

No commercial or other nonresidential uses are proposed as part of the development. Surrounding properties are zoned for low-density residential uses, and the proposed development will not limit any future development or redevelopment of those properties. Access to the adjacent church site will be modified to allow a safe connection to Kellogg Creek Drive through the new street system of the proposed development. Future redevelopment of the church site may require further modifications to its access, but the proposed development does not preclude such redevelopment. The northern portion of the site, which is adjacent to the rear of several residential lots on Kayla Court, will not be accessible across Mount Scott Creek and will not present any new impacts as a result of the proposed development.

(2) MMC Subsection 19.311.3 Development Standards

MMC 19.311.3 establishes that the various applicable standards and requirements of MMC Title 19, including those of the underlying zone(s), are applicable in a PD zone, unless the Planning Commission grants a variance from said standards in its approval of the PD or the accompanying subdivision plat. The City Attorney has concurred with the conclusion of City staff that a formal variance request is not required for adjustments related to the flexibility inherent in the stated purpose of the PD zone to encourage greater flexibility of design and provide a more efficient and desirable use of common open space, with an allowance for some increase in density as a reward for outstanding design (e.g., housing type, lot size, lot dimension, setbacks, and similar standards).

(a) Minimum Size of a PD Zone

MMC Subsection 19.311.3.A requires a minimum of 2 contiguous acres of land for a Planned Development.

The subject property is approximately 13.8 acres in size and provides an adequate area for development.

(b) Special Improvements

MMC Subsection 19.311.3.B establishes the City's authority to require the developer to provide special or oversize sewer lines, water lines, roads and streets, or other service facilities.

The City's Engineering Department has determined that no special or oversize facilities are required to ensure that the proposed development provides adequate public facilities.

(c) Density Increase and Control

MMC Subsection 19.311.3.C allows an increase in density of up to 20% above the maximum allowed in the underlying zone(s), if the City Council determines that the proposed Planned Development is outstanding in planned land use and design and provides exceptional advantages in living conditions and amenities not found in similar developments constructed under regular zoning.

Subtracting the area occupied by floodplain, proposed rights-of-way, and required open space, as required by the density-calculation standards provided in MMC Subsection 19.202.4, the maximum allowable density for the net area of the subject property is 82 units. The applicant has proposed a total of 92 units, which is a 12% increase. The applicant has listed the following elements as evidence of the project's outstanding design and exceptional advantages:

- *Over 7 acres of open space, which will protect natural resource and floodplain areas on the site and provide recreational opportunities with a soft-surface trail system. The open space tract includes a stand of mature Oregon white oak trees that have been identified by public testimony as a priority for preservation. As proposed, the open space tract will be dedicated to the City.*

- *Overall site design that provides a sense of openness and visual permeability between the natural open space tract and the residential lots, nearly half of which will have backyards that are directly adjacent to the open space. A condition has been established to require fencing that along the boundaries of lots adjacent to the open space tract (Tract E), to maintain views of the open space but prevent uncontrolled access.*
- *Unfenced stormwater facilities planted with low-lying grasses that maintain views of the open space and provide connection points between the trail system and the rest of the development*
- *A community garden for use by residents, located in the northeastern portion of the site*
- *Trees planted as screening between Highway 224 and the adjacent lots in the northeast corner of the site*
- *92 units of attached single-family housing offered at a price point that is affordable for working people with moderate incomes*
- *Compact development in proximity to a large public park (North Clackamas Park) and with access to a major roadway (Highway 224)*

The applicant has asserted that, without the Planned Development process, the site would be difficult to develop at a level that would meet the City's minimum density standard, at least without resulting in greater impacts to the designated natural resources on the site and a loss of some of the proposed amenities like the soft-surface trails and community garden. In effect, the proposed development is outstanding by virtue of being the only practicable and feasible layout for the site that provides new housing targeted at working people with moderate incomes.

As per the recommendation of the Planning Commission, the City Council finds that the proposed development provides sufficiently outstanding design features and extraordinary amenities to justify the proposed density increase.

(d) Peripheral Yards

MMC Subsection 19.311.3.D requires that yards along the periphery of any Planned Development zone be at least as deep as the front yard required in the underlying zone(s). Open space may serve as peripheral yard.

The front yard requirements of the underlying zones are 20 ft for R-10 and 15 ft for R-3. The large open space tract on the north and west sides of the proposed development provides a buffer of well over 20 ft. Where the proposed development is adjacent to the church property on the east, a 22-ft-wide public alley provides a peripheral buffer for Lots 45 and 57, and the 20-ft-wide pedestrian connection on tracts E and F provides a peripheral buffer for Lots 1 and 17. The pedestrian-bicycle connection between the cul-de-sac and the sidewalk at Rusk Road, in the northeastern corner of the site, provides 15 ft of separation for Lot 92; together with the proposed 5-ft side yard, a total of 20 ft will be provided as a buffer for this lot.

(e) Open Space

MMC Subsection 19.311.3.E requires that a Planned Development set aside land as open space, for scenic, landscaping, or other recreational purposes within the development. A minimum of one-third of the gross area of the site must be provided as open space and/or outdoor recreational areas, with at least half of this area being of the same general character as the area containing dwelling units.

The gross area of the subject property is approximately 13.8 acres, so a minimum of 4.6 acres must be provided as open space, with at least 2.3 acres available for recreational purposes. The applicant has proposed to establish an open space tract of approximately 7 acres, with a soft-surface trail system making approximately 2.5 acres available for recreation.

(3) MMC Subsection 19.311.6 Planning Commission Review of Preliminary Development Plan and Program

MMC 19.311.6 establishes that the Planning Commission shall review an applicant's preliminary development plan and program for a PD and shall notify the applicant whether the proposal appears to satisfy the provisions of this section or has any deficiencies. Upon the Commission's approval in principle of the preliminary plan and program, the applicant shall file a final development plan and program and an application for zone change.

The applicant has submitted a development plan and program for the proposed PD and has requested that the Commission consider it to be the final development plan and program submittal, along with the accompanying application for zone change.

(4) MMC Subsection 19.311.8 Subdivision Plat

MMC 19.311.8 requires that the submittal of a final development plan and program be accompanied by an application for subdivision preliminary plat, where the PD involves the subdivision of land.

The proposal involves a 92-unit subdivision, and the applicant has included an application for subdivision preliminary plat with the submittal of a final development plan and program.

(5) MMC Subsection 19.311.9 Application for Zone Change

MMC 19.311.9 requires that an application for zone change accompany the submittal of a final development plan and program.

Along with the final development plan and program, the applicant has included an application for zone change to apply the PD zone to the subject property.

(6) MMC Subsection 19.311.10 Planning Commission Action on Final Development Plan and Program

MMC 19.311.10 requires that the Planning Commission hold a public hearing using Type IV review to consider a final development plan and program, zone change application, and subdivision preliminary plat. If the Planning Commission finds that the final development plan and program is in compliance with the preliminary approval and with the intent and requirements of the applicable provisions of the zoning ordinance, it shall forward a recommendation for approval to the City Council for adoption.

As required, the Planning Commission opened a public hearing on May 23, 2017, in accordance with the Type IV process outlined in MMC Section 19.1007, and considered the proposed development plan and program, zone change application, subdivision preliminary plat, and other accompanying reviews. The hearing was continued to May 25, again to June 27, and again to July 25, 2017. The Planning Commission found that the development plan and program is in compliance with the intent and requirements of the applicable provisions of MMC Title 19 Zoning and forwarded a recommendation of approval to the City Council for adoption.

(7) MMC Subsection 19.311.11 Council Action on Final Development Plan and Program

MMC 19.311.11 requires that the City Council consider the final development plan and program and zone change application through the Type IV review process, upon receipt of a recommendation from the Planning Commission. Upon consideration of the proposal, the Council may adopt an ordinance applying the PD zone to the subject property and adopt the final development plan and program as the standards and requirements for that PD zone. The Council may also continue consideration and refer the matter back to the Planning Commission with recommendations for amendment, or may reject the proposal and abandon further hearings and proceedings.

The Council considered the final plan and program and zone change application, as well as the accompanying applications for subdivision preliminary plat and associated reviews, in accordance with the Type IV review process outlined in MMC Section 19.1007. The Council held a public hearing on September 5, 2017, and adopted an ordinance applying the PD zone to the subject property, which adopted the final development plan and program as the standards and requirements for the new PD zone (Ordinance ____).

The City Council finds that the applicable standards and requirements of MMC 19.311 are met. As per Ordinance ____, the final development plan and program is adopted as the standards and requirements and the PD zone designation is applied to the subject property.

b. MMC Sections 19.301 Low Density Residential Zones (including R-10) and 19.302 Medium and High Density Residential Zones (including R-3)

The subject property is split-zoned Residential R-10 and Residential R-3. MMC 19.301 and 19.302 establish the allowable uses and development standards for the residential R-10 and R-3 zones, respectively. As noted in Finding 7-a(2), although the underlying zone standards are primarily applicable, the PD zone allows adjustment to some of those standards. This applies to such underlying zone limitations as housing type, lot size, lot dimension, setbacks, and similar standards that relate to flexibility of design, greater efficiency in the use of common open space, and minor increases in density allowed as a reward for outstanding design.

(1) Permitted Uses

As per MMC Table 19.301.2, rowhouse development is not a permitted use in the R-10 zone; rowhouses are an outright permitted use in the R-3 zone (as per MMC Table 19.302.2). As noted in Finding 7-a, the primary purposes of the PD zone include encouraging greater flexibility of design and providing a more

efficient use of common open space, so housing types not ordinarily permitted in the base zone may be proposed.

The applicant has proposed a 92-unit development comprised of 23 four-unit rowhouse buildings. The proposed design maximizes the development potential of the subject property, providing a public street network and utility infrastructure while minimizing impacts to the natural resource and floodplain areas on the site, which will remain protected in open space.

(2) Lot and Development Standards

The applicant has proposed to apply a single set of lot and development standards across the entire site, which is zoned R-3 on the western half and R-10 on the eastern half. As discussed in Finding 7-a(2), above, adjustments to underlying zone standards that are related to the flexibility of design afforded by the PD process are allowed and do not require a formal variance request. Table 7-b(2) compares the applicable standards for development in the R-10 and R-3 zones with the standards proposed as the final development plan and program for this PD zone.

Table 7-b(2) Lot and Development Standards			
Standard	R-10 Requirement	R-3 Requirement¹	Proposed PD Requirement
1. Minimum Lot Size	10,000 sq ft	3,000 sq ft	Lots range from 1,600 sq ft to approx. 2,500 sq ft
2. Minimum Lot Width	70 ft	30 ft	Lot widths range from 20 ft to 28 ft
3. Minimum Lot Depth	100 ft	80 ft	Lot depths range from 80 to 87.25 ft
4. Minimum street frontage	35 ft	30 ft	Typical range is 20 to 25 ft; three lots on cul de sac are <20 ft
5. Front Yard	20 ft	15 ft	Front-loaded lots = 18 ft Alley-loaded lots = 10 ft
6. Side Yard	10 ft	0 ft (common) 5 ft (exterior)	Common wall = 0 ft Exterior wall = 5 to 6 ft
7. Street-Side Yard	20 ft	15 ft	8 ft
8. Rear Yard	20 ft	15 ft	Front-loaded lots = 15 ft Alley-loaded lots = 20 ft
8. Maximum Building Height	2.5 stories or 35 ft (whichever is less)	2.5 stories or 35 ft (whichever is less)	2 stories, <35 ft
9. Side yard height plane limit	45-degree slope at 20 ft height	45-degree slope at 20 ft height	≤20 ft
10. Maximum lot coverage	30%	40% (+20% for rowhouses)	Lots range from 46% to 59%

11. Minimum vegetation	35%	35%	Small vegetated areas on each lot, with access to large open space area to west
12. Front yard minimum vegetation	40%	40%	Front yard areas not occupied by driveways and walkways will be vegetated
13. Minimum density	3.5 units per acre	11.6 units per acre	Minimum of 67 units for entire site
14. Maximum density	4.4 units per acre	14.5 units per acre	Maximum of 82 units for entire site (Applicant has requested a 12% density increase to a total of 92 units)

¹ R-3 requirements from MMC Table 19.302.2 for rowhouses

The lot and development standards that will govern development on the subject property are shown in Table 7-b(2) and effectively establish a component of the final development plan and program for this PD zone.

8. MMC Section 19.902 Amendments to Maps and Ordinances

MMC 19.902 establishes the process for amending the City's Comprehensive Plan and land use regulations, including the zoning map. Specifically, MMC Subsection 19.902.6 establishes the review process and approval criteria for zoning map amendments.

a. MMC Subsection 19.902.6.A Review Process

MMC 19.902.6.A provides that, generally, changes to the zoning map that involve 5 or more properties or encompass more than 2 acres of land are legislative and are therefore subject to Type V review; otherwise, they are quasi-judicial in nature and subject to Type III review. The City Attorney has the authority to determine the appropriate review process for each proposed zoning map amendment.

The proposed zoning map amendment encompasses a single property of approximately 13.8 acres and is related to a proposed planned development, which requires Type IV review. The City Attorney has determined that the proposed zoning map amendment is quasi-judicial in nature and requires Type III review. The concurrent planned development requires Type IV review, which is also a quasi-judicial process. The City Council finds that the Type IV review process is appropriate for the proposed zoning map change.

b. MMC Subsection 19.902.6.B Approval Criteria

MMC 19.902.6.B establishes the following approval criteria for zoning map amendments:

- (1) The proposed amendment is compatible with the surrounding area based on the following factors:
 - (a) Site location and character of the area
 - (b) Predominant land use pattern and density of the area
 - (c) Expected changes in the development pattern for the area

The area surrounding the subject property includes North Clackamas Park and low to moderate density residential development, as well as the Deerfield Village assisted living center (40 apartment units) located directly across Kellogg Creek Drive from the site. The proposed development will preserve over half of the site

area as natural open space with access through soft-surface trails for low-impact recreational use. The location offers easy access to Highway 224, North Clackamas Park, several nearby schools, and employment centers along the Highway 224 and Interstate 205 corridors.

The 92 units of proposed rowhouses will be arranged in a compact pattern accessible by fully constructed local streets, with landscape strips, street trees, and on-street parking. Although the residential portion of the proposed development will be denser than most of the surrounding neighborhood, the Deerfield Village assisted living center is similar in density and aesthetic to an apartment or multifamily development. The proposed development is consistent with the single-family attached housing that Milwaukie's 2016 Housing Needs Analysis predicts will be developed over the next 20 years.

The proposed zoning amendment is compatible with the surrounding area based on the factors listed above.

- (2) The need is demonstrated for uses allowed by the proposed amendment.

The draft 2016 Housing Needs Analysis prepared for Milwaukie notes a particular need for single-family attached units like the proposed rowhouses.

- (3) The availability is shown of suitable alternative areas with the same or similar zoning designation.

Functionally, the PD designation is a form of overlay zone designation that can be applied to sufficiently sized properties for greater flexibility in developing the site. This criterion is more applicable to standard base zone designations and is intended to ensure that a suitable number of other properties with the same base zone designation will remain available for development.

This criterion is not applicable to a proposal to add the PD designation to a base zone.

- (4) The subject property and adjacent properties presently have adequate public transportation facilities, public utilities, and services to support the use(s) allowed by the proposed amendment, or such facilities, utilities, and services are proposed or required as a condition of approval for the proposed amendment.

The applicant's submittal materials include a traffic impact study, utility plans, and preliminary stormwater drainage report to demonstrate that public facilities are or will be made adequate to serve the proposed development.

Existing water and sanitary sewer services in Kellogg Creek Drive are provided by Clackamas River Water (CRW) and Clackamas County's Water and Environment Services (WES), respectively, and are adequate to serve the proposed new units. Within the public rights-of-way that will serve the proposed development, new water and sanitary sewer mains will be constructed as per City standards and will be maintained by the City, though they will connect to the CRW and WES facilities in Kellogg Creek Drive.

The applicant proposes to manage stormwater runoff from the new public streets with three large, shallow bioswale facilities. The applicant's preliminary drainage report, prepared by a qualified professional engineer, explains in more detail how stormwater will be managed and demonstrates that post-development runoff will not exceed the applicable pre-development standards.

Within the newly dedicated public rights-of-way that will serve the proposed lots, public streets will be constructed to meet applicable City standards, with paved travel lanes, curb and gutter, landscape planter strips, and sidewalks. On Kellogg Creek Drive along the subject property frontage, the existing right-of-way will be also be improved to provide the required width travel lane, striped bicycle lane, on-street parking strip, curb and gutter, landscape planter strip, and setback sidewalk.

The subject property and adjacent properties presently have adequate public transportation facilities, public utilities, and services to support the proposed development.

- (5) The proposed amendment is consistent with the functional classification, capacity, and level of service of the transportation system. A transportation impact study may be required subject to the provisions of Chapter 19.700.

The applicant prepared a traffic impact study (TIS) to evaluate the proposed development's anticipated impacts on the transportation system. The TIS concluded that traffic volumes from the proposed development will not cause any of the intersections in the study area to fall below acceptable levels of service.

As discussed in Finding 14-c, the City's traffic consultant has reviewed the applicant's TIS and concluded that, with the exception of one error related to measurement of the northbound right-turn lane on Rusk Road at the Highway 224 intersection, the methodology and conclusions of the TIS are sound. As proposed, the northbound right-turn leg of the Rusk Road/Highway 224 intersection would fall below the acceptable level of service. A condition has been established to require extension of the northbound right-turn lane on Rusk Road so the Highway 224 intersection maintains an acceptable level of service.

As conditioned, the proposed amendment is consistent with the functional classification, capacity, and level of service of the transportation system.

- (6) The proposed amendment is consistent with the goals and policies of the Comprehensive Plan, including the Land Use Map.

The Land Use Map within the City's Comprehensive Plan (Comp Plan) reflects the split zoning of the subject property, with a Low Density designation for the portion zoned R-10 and a Medium Density designation for the portion zoned R-3. The proposed amendment would add the Planned Development (PD) designation to each of the zone designations for the subject property but would not affect the designations on the Land Use Map.

The Comp Plan includes a number of goals and policies that are applicable to the proposed development.

- (a) Chapter 1 Citizen Involvement

The goal of Chapter 1 is to encourage and provide opportunities for citizens to participate in all phases of the planning process. Prior to submitting the application, the applicant held an open meeting to present and discuss the project. The Lake Road Neighborhood District Association and to property owners and residents within 500 ft of the site were invited. According to the applicant's submittal materials, approximately 30 people attended the meeting, held on November 3, 2016. The applicant noted the various

concerns raised by neighbors and has noted that several aspects of the original plan were revised as a result.

The Type IV review process utilized for consideration of any Planned Development provides for public hearings by both the Planning Commission and City Council, where citizens have the opportunity to present testimony and participate in the decision-making process. A public hearing on the proposed development was opened by the Planning Commission on May 23, 2017; continued to May 25; continued again to June 27 (where it was only nominally re-opened); and continued again to July 25, 2017. A public hearing was held by the City Council on [month/day], 2017. The Commission and Council considered testimony from citizens en route to reaching the decision reflected in these findings.

(b) Chapter 2 Plan Review and Amendment Process

The goal of Chapter 2 is to establish a process for review and amendment of the Comp Plan, as a basis for land use decisions and with public participation. Policies related to the objective of implementing the Comp Plan include a requirement that zone changes and other planning actions be consistent with the intent of the Comp Plan. The applicant's narrative and supporting materials are evidence of the required review process at work, with opportunities for public involvement at Commission and Council hearings as noted above.

(c) Chapter 3 Environmental and Natural Resources

Chapter 3 focuses on conservation of the City's remaining natural resources.

(i) Natural Hazards Element

The goal of the Natural Hazards element is to provide appropriate safeguards for development in areas of known natural hazards, such as floodplains. Policies include the direction to establish regulations to prevent development from increasing stormwater runoff and standards to ensure the strength and quality of construction materials within the floodplain. The finished elevations of the lowest floors of buildings and streets must be a minimum of 1 ft above the 100-year flood elevation, and actions are encouraged to retain the floodplain as minimally undeveloped open space.

The subject property includes a designated floodplain area, and the proposed development involves some alteration of the floodplain. As discussed in Finding 10, the applicant proposes to balance the amount of fill that will be added within the floodplain with the removal of an equal amount of material. The fill will raise those areas of residential construction and streets at least 1 ft above the base flood elevation. The remaining floodplain areas on the site will be included in a large open space tract.

(ii) Open Spaces, Scenic Areas, and Natural Resources Element

The goal of the Open Spaces element is to conserve open space and protect and enhance natural resources to create an aesthetically pleasing urban environment. Policies include the protection of natural

resources through conservation and mitigation, designation of riparian area buffers, regulation of the placement and design of stormwater drainage facilities, and protection of existing upland areas and values related to wildlife habitat and erosion control.

As discussed in more detail in Finding 11, the applicant's submittal materials include a natural resource report that analyzes practicable alternatives to the proposed development and demonstrates that its proposal does the most to avoid impacts to the WQR and HCA parts of the site, minimizes impacts where unavoidable, and sufficiently mitigates for the allowed disturbance. The applicant's submittal materials include a preliminary drainage report that explains how the proposed stormwater management facilities are designed to ensure that post-development runoff will not exceed pre-development levels.

(d) **Chapter 4 Land Use**

Chapter 4 provides objectives and policies to guide the development of vacant lands and redevelopment of existing features, considering a variety of needs such as housing, employment, and recreation.

(i) **Residential Land Use and Housing Element**

The goal of the Residential Land Use element includes the provision of new housing that is adequate to meet the needs of local residents and the regional housing market.

Policies related to buildable lands include the use of zoning to implement the policies and standards of various other elements of the Comp Plan and requirement of a report demonstrating consistency with the policies of Chapter 3 (Environmental and Natural Resources) for sites with special resource designations. Policies related to residential land use design include an allowed density bonus of up to 20% for Planned Unit Developments in exchange for exceptional design quality or special project amenities, a requirement that Planned Unit Developments provide areas dedicated to open space and/or outdoor recreation, and encouragement for preservation of existing tree canopy and connected vegetated corridors. Policies related to housing choice include the development of larger subdivisions and Planned Unit Developments that use innovative techniques for the purpose of reducing housing costs while creating an attractive living environment.

The applicant's narrative includes an address of the proposal's consistency with the various applicable goals, objectives, and policies of the Comp Plan, including those of Chapter 3. As addressed in Finding 7-a-(2)(c), the applicant has proposed a density increase of 12%, based on the exceptional design and special amenities of the proposed development. The proposed development includes nearly half of the overall site retained as open space, with the developable lots configured in such a way as to preserve as many of the existing trees on the site as practicable and to avoid impacts to the riparian corridor along Mount Scott Creek. The applicant asserts that the number of proposed lots will create a certain economy of scale that

will allow the new units to be sold at an affordable price and meet one of the community's housing needs.

(ii) Recreational Needs Element

The goal of the recreational needs element is to provide for the recreational needs of current and future city residents by maximizing the use of existing public facilities, encouraging the development of private recreational facilities, and preserving the opportunity for future public recreational use of vacant private lands.

The subject property is adjacent to the eastern edge of North Clackamas Park, and future residents in the proposed development will have easy access to this existing public facility. Within the proposed open space tract, a soft-surface trail system will be available for recreational use by both future residents and the public at large (through a public access easement).

(e) Chapter 5 Transportation, Public Facilities, and Energy Conservation

Chapter 5 addresses the City's responsibility to provide its current and future residents with a full range of urban services, including streets, sewer, and water.

(i) Transportation Element

The City's Transportation System Plan (TSP) is an ancillary Comp Plan document that contains the City's long-term transportation goals and policies. The applicant's TIS demonstrates consistency with the TSP and asserts that the proposed development will not result in significant impacts to the surrounding transportation system. As discussed in Finding 14-c, the City's traffic consultant has reviewed the applicant's TIS and concluded that, with the exception of one adjustment related to measurement of the northbound right-turn lane on Rusk Road at the Highway 224 intersection, the methodology and conclusions of the TIS are sound. A condition has been established to address this error.

(ii) Public Facilities and Services Element

The goal of the Public Facilities element is to provide for the orderly and efficient arrangement of public facilities and services to serve urban development. The proposed development includes the extension of existing water and sewer services to serve the new lots, as well as stormwater facilities designed to ensure that post-development runoff does not exceed pre-development levels.

(iii) Energy Conservation Element

The goal of the Energy Conservation element is to conserve energy by encouraging energy-efficient land use patterns and transportation systems. The proposed development is a compact arrangement of 92 units of rowhouse housing that is located close to large employment corridors across Highway 224 and along Interstate 205.

As conditioned, the proposed amendment is consistent with the goals and policies of the Comprehensive Plan, including the Land Use Map.

- (7) The proposed amendment is consistent with the Metro Urban Growth Management Functional Plan and relevant regional policies.

The Metro Urban Growth Management Functional Plan includes a number of titles that address various aspects of the region's goals and policies for urban development.

- (a) *Title 1 Housing Capacity*

The proposed development will provide a large number of needed housing units in a compact urban form.

- (b) *Title 3 Water Quality and Flood Management*

The proposed development is configured to avoid and/or minimize impacts to the designated natural resources on the site. Proposed alterations to the floodplain will be done in accordance with local and federal requirements.

- (c) *Title 7 Housing Choice*

The proposed development will provide single-family attached housing and will support Metro's policies for expanding housing choice with a needed housing type in Milwaukie.

- (d) *Title 13 Nature in Neighborhoods*

The proposed development supports Metro's policies for conserving and enhancing habitat areas by avoiding and minimizing impacts to the designated natural resources on the site, as well as by establishing a large open space tract that includes wetlands, floodplain, existing mature native trees, and the riparian corridor along Mount Scott Creek.

The proposed amendment is consistent with the Metro Urban Growth Management Functional Plan and relevant regional policies.

- (8) The proposed amendment is consistent with relevant State statutes and administrative rules, including the Statewide Planning Goals and Transportation Planning Rule.

Several of the Statewide Planning Goals are relevant to the proposed amendment:

- (a) *Goal 2 Citizen Involvement*

Prior to submitting the application, the applicant held an open meeting to present and discuss the proposed development with neighbors. The applicant made several revisions to the original concept plan as a direct result of the discussion at that meeting. The Type IV review process for Planned Development proposals requires public hearings with both the Planning Commission and the City Council, allowing additional opportunities for citizens to submit written and oral testimony before the decision-makers. A public hearing on the proposed development was held by the Planning Commission on May 23, 2017; continued to May 25; continued to June 27 (where it was only nominally re-opened); and continued again to July 25, 2017. A public hearing with the City Council was held on September 5, 2017.

(b) *Goal 5 Natural Resources*

The proposed development is subject to the applicable standards of MMC Section 19.402 Natural Resources, which provide protections for designated natural resource areas. As discussed in more detail in Finding 11, the applicant has proposed to avoid impacts to WQR and HCA parts of the site as much as practicable, to minimize impacts where unavoidable, and to sufficiently mitigate for the allowed disturbance.

(c) *Goal 7 Areas Subject to Natural Hazards*

The subject property includes a significant area of floodplain. As addressed in Finding 10, the applicant proposes substantial alteration of the floodplain in accordance with local and federal requirements, including the provision that the amount of fill material placed in the floodplain must be balanced by an equal removal of material from within the floodplain.

(d) *Goal 12 Transportation and Transportation Planning*

As addressed in Finding 14 and elsewhere in these findings, with the conditioned correction of one minor error noted by City staff, the applicant's TIS demonstrates that the proposed development will not require changes to the functional classification of existing or planned transportation facilities and will not result in significant impacts on the transportation system.

As conditioned, the proposed amendment is consistent with relevant State statutes and administrative rules, including the Statewide Planning Goals and Transportation Planning Rule.

The proposed amendment, as conditioned, is consistent with the applicable criteria for zoning map amendments.

As conditioned, the City Council finds that the proposed amendment to the City's Zoning Map is approvable.

9. **MMC Title 17 Land Division**

MMC Title 17 establishes the City's regulations and procedures for lot consolidations, land divisions, property boundary changes, and creation of streets and rights-of-way. As per MMC Section 17.04.050, all decisions on boundary changes and land divisions expire 1 year after the date of approval, with one 6-month extension allowed upon submission of a formal request to the original decision-making authority.

a. **MMC Chapter 17.12 Application Procedure and Approval Criteria**

MMC 17.12 establishes the application procedures and approval criteria for land divisions and property boundary changes. Specifically, MMC Subsection 17.12.020.E provides that applications for subdivision preliminary plat are subject to Type III review.

MMC Section 17.12.040 establishes the following approval criteria for preliminary plat:

- (1) The proposed preliminary plat complies with Title 19 of this code and other applicable ordinances, regulations, and design standards.

The proposed preliminary plat is for a planned development subdivision of 92 lots for rowhouse development, with tracts for stormwater facilities, open space, a community garden, and a pedestrian connection to Kellogg Creek Drive along

the eastern edge of the development. The subject property is a 13.8-acre parcel that was created from a larger 17.5-acre property by a Property Line Adjustment and Lot Consolidation application (file #s PLA-2017-001 and LC-2017-001) approved in July 2017.

As addressed throughout these findings, the proposed subdivision complies with the applicable standards of Title 19 and other applicable ordinances, regulations, and design standards.

The City Council finds that this standard is met.

- (2) The proposed division will allow reasonable development and will not create the need for a variance of any land division or zoning standard.

The proposed division will allow reasonable development on all developable lots, without creating the need for any additional variances of land division or zoning standards beyond those addressed in these findings.

The City Council finds that this standard is met.

- (3) The proposed subdivision plat name is not duplicative and the plat otherwise satisfies the provisions of ORS 92.090(1).

The proposed subdivision name, Kellogg Creek, is not duplicative, and the plat otherwise satisfies the provisions of ORS 92.090(1).

The City Council finds that this standard is met.

- (4) The streets and roads are laid out so as 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 Whitman's Lake-East Heights subdivision of 2001 is adjacent to the subject property to the north, across Mount Scott Creek from the proposed development. The Whitman's Lake-East Heights subdivision includes a public street (Madeira Drive) that bends away from the subject property and does not provide a connection point to the subject property. The proposed development does not include a crossing of Mount Scott Creek nor any developable lots or streets adjacent to the adjoining subdivision to the north.

The City Council finds that this standard is not applicable.

- (5) A detailed narrative description demonstrating how the proposal conforms to all applicable code sections and design standards.

The applicant has provided a detailed narrative description that demonstrates how the proposal conforms to all applicable standards and addresses variance requests as needed.

The City Council finds that this standard is met.

The City Council finds that the applicable procedures and approval criteria for the proposed subdivision, as outlined in MMC 17.12, are met.

- b. MMC Chapter 17.16 Application Requirements and Procedures

MMC 17.16 establishes application requirements for land divisions and property boundary changes, including for preliminary plat for subdivision. The application must

include all required forms and fees, as well as the information specified on the Submittal Requirements and Preliminary Plat checklists.

The applicant's submittal materials include all required forms and fees for the proposed subdivision, as well as plan sheets, narratives addressing the various applicable standards and criteria, and supporting documents and reports.

The City Council finds that the application requirements and procedures of MMC 17.16 are met.

c. MMC Chapter 17.20 Preliminary Plat

MMC 17.20 establishes the information required with the preliminary plat, including existing and proposed conditions, a drainage summary report, proposed deed restrictions (if any), and proposed public improvements.

The applicant's preliminary plat materials include existing and proposed conditions, a preliminary drainage report, and plans for proposed improvements (including grading, landscaping, public utilities, and frontage improvements). No deed restrictions are proposed.

The City Council finds that the preliminary plat requirements of MMC 17.20 are met.

d. MMC Chapter 17.28 Design Standards

MMC 17.28 establishes general design standards for land divisions and property boundary changes.

(1) MMC Section 17.28.020 Public Facility Improvements

MMC 17.28.020 requires that all land divisions that increase the number of lots are subject to the requirements and standards of MMC Chapter 19.700 Public Facility Improvements.

The proposed subdivision will increase the number of lots. The applicable standards of MMC 19.700 are addressed in Finding 12.

(2) MMC Section 17.28.030 Easements

MMC 17.28.030 requires that easements for public utilities (including sewers and water mains) be dedicated wherever necessary.

The proposed subdivision will establish new public streets, where the public utility infrastructure will be located. Three tracts for stormwater facilities and three tracts for pedestrian and/or bicycle access will be established and dedicated to the public. A condition has been established to ensure that easements for stormwater outfalls, for public access across private alleys, or for any other public utilities will be dedicated as needed.

(3) Specifically, MMC Section 17.28.040 provides standards for general lot design, including a requirement for rectilinear lots and a 10% limit on the cumulative lateral shift of compound lot line segments.

Lots 88-92, which are located in the curve of the proposed cul-de-sac, each have at least one compound lot line segment. None of the compound segments are greater than 10% of the distance between opposing lot corners.

The City Council finds that the applicable lot design standards of MMC 17.28 are met.

The City Council finds that the proposed subdivision meets all applicable land division standards of MMC Title 17.

10. MMC Title 18 Flood Hazard Regulations

MMC Title 18 provides standards intended to minimize public and private losses due to flood conditions in specific areas. The regulations established in MMC Title 18 do this in part by controlling the alteration of natural floodplains, stream channels, and natural protective barriers, which help accommodate or channel flood waters; controlling filling, grading, dredging, and other development 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 Maps prepared by the Federal Emergency Management Agency (FEMA) and acknowledged by the City for the purposes of implementing this title. The applicant is proposing a revision to the FIRM map, to demonstrate that new lots will not be in the modified floodplain. Although no buildings will be built below the floodplain elevation, the proposed development includes cut and fill within the floodplain.

The proposed development is subject to the applicable provisions of MMC Title 18.

a. MMC Section 18.04.150 General Standards

MMC 18.04.150 provides general standards for all special flood hazard and all flood management areas.

(1) MMC Subsection 18.04.150.C Utilities

MMC 18.04.150.C requires that all new water and sanitary sewer systems be designed to minimize or eliminate infiltration of floodwaters into the system.

A condition has been established to ensure that all new utilities are installed underground and shall otherwise be designed to minimize or eliminate infiltration of floodwaters into the system, including stubs for utility service prior to surfacing any streets.

(2) MMC Subsection 18.04.150.D Subdivisions

MMC 18.04.150.D requires that all subdivision proposals must be consistent with the need to minimize flood damage. Public utilities and facilities shall be located and constructed to minimize or eliminate flood damage. Adequate drainage shall be provided to reduce exposure to flood damage. Base flood elevation data shall be provided for subdivision proposals that contain at least 50 lots or 5 acres.

The base flood elevation is 69.9 located at cross section C on FEMA map number FM41005C0036D (NAVD 1988 datum). The proposed development would establish 92 units on approximately 13.8 acres and was designed to minimize flood damage by elevating the developable portions of the site at least 1 ft above base flood elevation. As proposed, all public utilities are located outside the floodplain, except for the sanitary sewer connection to the existing sanitary sewer located within the existing floodplain and those public utilities that will be in Kellogg Creek Drive, a portion of which lies within the existing floodplain. The site will be graded to provide positive drainage to reduce

exposure to flood damage. Proposed street grades meet or exceed the minimum grade allowed by the City's Public Works Standards, and street cross sections match typical sections provided by the City to ensure proper drainage.

(3) MMC Section 18.04.150.F Balanced Cut and Fill

MMC 18.04.150.F provides requirements for the displacement of flood storage area by the placement of fill or structures.

As per the applicant's submittal materials, all fill added to the floodplain will be balanced with an equal amount of soil removed from the floodplain meeting the "no net fill" requirement. Excavation will occur on the same parcel as the proposed development and will not occur below the bankfull stage.

As conditioned, the proposed development is consistent with the applicable general standards for all special flood hazard and all flood management areas.

b. MMC Section 18.04.160 Specific Standards

MMC Subsection 18.04.160.A provides specific standards for residential construction, including a requirement that new construction of any residential structure shall have the lowest floor, including basement, elevated 1 ft above base flood elevation.

As proposed, all new primary residential structures will have the lowest floor elevated at least 1 ft above base flood elevation.

The City Council finds that, pending approval of the applicant's proposed revision to the appropriate FIRM map and as conditioned, the proposed development is consistent with the applicable standards of MMC Title 18.

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

Mount Scott Creek flows across the northern portion of the subject property, and a large wetland (approximately 0.7 acres) is located within the 100-year floodplain designated over most of the western half of the site. The City's NR Administrative Map shows WQR and HCA designations around the creek and wetland, and portions of these natural resource areas will be disturbed by the proposed development.

As presented in the applicant's submittal materials, the proposed development will temporarily or permanently disturb approximately 115,700 sq ft of WQR and/or HCA area. At that scale, the proposed activity is not listed as exempt according to the standards outlined in MMC 19.402.4.

The City Council finds that the requirements of MMC 19.402 are applicable to the proposed activity.

b. 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.E, this includes boundary verifications that propose substantial corrections to the NR Administrative Map, including identifying the precise location of wetlands, as required by MMC 19.402.15.A.

The subject property includes a delineated wetland. As provided in MMC Subsection 19.402.15.A, the Type II review process is required to confirm the specific location of wetlands. However, the proposed activity requires other applications that are being processed concurrently with Type IV review. As provided in MMC Subsection 19.1001.6.B.1, concurrent applications are processed according to the highest numbered review type, with a single decision to be issued that includes findings for all concurrent applications.

The City Council finds that the boundary verification for wetlands shall be processed concurrently with Type IV review.

c. MMC Subsection 19.402.8 Activities Requiring Type III Review

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

The subdivision of land containing a WQR and/or HCA is subject to Type III review and the standards established in MMC Subsections 19.402.13.H and 13.I. The level of disturbance proposed within the designated WQR and HCA areas on the subject property exceeds the levels allowed by Type I and II review, as provided in MMC 19.402.6 and 402.7, respectively. As such, the activity is subject to Type III review and the discretionary process established in MMC 19.402.12. As noted in Finding 11-b above, the Natural Resource review is associated with other applications being processed concurrently with Type IV.

The City Council finds that the proposed activity is subject to Type III review and will be processed concurrently with other applications requiring Type IV review.

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 Natural Resource Review report includes 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 development permits.

e. MMC Subsection 19.402.11 Development Standards

MMC 19.402.11 establishes development standards for projects that impact a designated natural resource, including requirements to protect natural resource areas during development and general standards for required mitigation (e.g., plant species, size, spacing, and diversity).

In particular, MMC Subsection 19.402.11.C establishes mitigation requirements for disturbance within WQRs. The requirements vary depending on the existing condition of the WQR, according to the categories established in MMC Table 19.402.11.C. For Class A "Good" WQR conditions, MMC Table 19.402.11.C requires that the applicant submit a plan for mitigating water quality impacts related to the development; for Class C "Poor" WQR conditions, the table requires restoration and mitigation with native species using a City-approved plan.

The proposed development will permanently disturb approximately 32,800 sq ft and temporarily disturb approximately 8,350 sq ft within the WQR. The portion of the WQR closest to Mount Scott Creek is categorized as Class A ("Good"); other portions are categorized as Class C ("Poor"). In addition, the proposed development will permanently disturb approximately 40,700 sq ft and temporarily disturb approximately 5,500 sq ft within the HCA-only areas on the site.

Using the mitigation planting ratio provided in MMC Subsection 19.402.11.D.2.b as a guide, the applicant proposes to plant 5 trees and 25 shrubs per 500 sq ft of disturbance area. For the total WQR and HCA disturbance of approximately 86,350 sq ft (both permanent and temporary disturbance), the applicant proposes to plant 863 native trees and 4,317 native shrubs within a specific mitigation area. As proposed, the mitigation plantings will meet the minimum requirements established in MMC Subsection 19.402.11.B. Mitigation trees will be of at least ½-in caliper (measured at 6 ft above the ground level after planting) and shrubs will be of at least 1-gallon size and at least 12-in height.

ESA, the City's consultant for on-call natural resource services, has evaluated the proposed mitigation plan and concluded that, with a few adjustments, it adequately addresses the proposed WQR and HCA disturbance. ESA provided a few additional recommendations to improve the mitigation plan, including retaining the existing white oak saplings that appear to have been planted on the site as part of an ongoing restoration effort and re-evaluating the assessment of WQR classification at several of the sample points to ensure that mitigation plantings are distributed appropriately. Conditions have been established to ensure that these recommendations are implemented. In addition, conditions have been established to require a maintenance plan ensuring that the mitigation effort is successful and ongoing and to limit the impact of lights shining directly into WQR or HCA locations.

As conditioned, the City Council finds that the applicable development standards of MMC 19.402.11 are met.

f. MMC Subsection 19.402.12 General Discretionary Review

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

(1) Impact Evaluation and Analysis

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

- Identification of ecological functions
- Inventory of vegetation

- Assessment of water quality impacts
- Alternatives analysis
- Demonstration that no practicable alternative method or design exists that would have a lesser impact on the resource and that impacts are mitigated to the extent practicable
- Mitigation plan

The applicant's submittal materials include a technical report prepared by Pacific Habitat Services, Inc., a private firm providing a range of environmental consulting services including natural resource assessment, wetland delineation, and environmental restoration. The technical report includes an impact evaluation and alternatives analysis consistent with the required components listed above, as well as an inventory of existing vegetation and discusses the ecological function of the existing WQR and HCA areas within the project area. The report also provides a mitigation plan for permanent and temporary impacts to the WQR and HCA.

The technical report considers two alternatives to the proposed development configuration: (1) another planned development scenario with no regard for natural resources on the site (resulting in greater impacts to the WQR and HCA) and (2) a subdivision following the existing split zoning of the site and configured to produce almost no disturbance of the WQR and HCA. The report concludes that the proposed development is the most practicable alternative that results in the least impact to the natural resources on the site.

The City Council finds that the applicant's impact evaluation and alternatives analysis is sufficient for purposes of reviewing the proposed activity against the approval criteria provided in MMC 19.402.12. This standard is met.

(2) Approval Criteria

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

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

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

Mount Scott Creek cuts across the northern portion of the nearly 14-acre development site, resulting in significant areas of designated WQR and HCA. Developing the site to achieve even the minimum density without any impacts to the WQR and HCA is difficult. The applicant has proposed a Planned Development instead of a conventional subdivision to have the flexibility to blend the densities allowed by the split R-10 and R-3 zoning of the site. This flexibility allows the applicant to direct the development generally away from the WQR and HCA. By using 4-unit rowhouse structures, the applicant is able to provide a larger number of units in a more compact form than a conventional subdivision would allow. Considering the other alternatives noted in Finding 11-f(1) above, the proposed development will have less detrimental impact to the natural resource areas on the site than other practicable alternatives.

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

As noted in the above discussion of avoiding impacts, the proposed development is configured to reduce impacts to the WQR and HCA to the greatest extent practicable. The proposed development is compact by design and focuses major site impacts away from the WQR and HCA where practicable.

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

As noted in Finding 11-e, the applicant's submittal includes a mitigation plan for the WQR and HCA disturbance that will accompany the proposed development. The applicant has proposed to plant 863 native trees and 4,317 native shrubs in the areas of permanent and temporary disturbance, and to remove nuisance plants and noxious material and debris. Conditions have been established to ensure that all mitigation plantings are species from the Milwaukie Native Plants List, that existing restoration plantings are preserved where possible, and that a long-term maintenance plan is in place. To further mitigate future impacts to the WQR and HCA, conditions have been established to demarcate the boundary of the delineated wetland and provide pet-waste bag dispensing devices dispersed along the soft-surface trail system. In addition, to ensure the long-term maintenance of all mitigation areas, the applicant has proposed to dedicate the open space tract to the City. A condition has been established to ensure that the proposed dedication is finalized.

As conditioned, the City Council finds that the proposed development meets the approval criteria for discretionary review as established in MMC 19.402.12.B.

(3) Limitations and Mitigation for Disturbance of HCAs

MMC Subsection 19.402.12.C establishes the discretionary review process for mitigation of more HCA disturbance than would be allowed by the nondiscretionary standards of MMC Subsection 19.402.11.D.1. In such cases, the applicant must submit an Impact Evaluation and Alternatives Analysis consistent with the standards established in MMC 19.402.12.A and subject to the approval criteria established in MMC 19.402.12.B.

As discussed in Finding 11-f(1), the applicant's submittal materials include a technical report that provides an evaluation of impacts to the WQR as well as to those impacted HCA areas beyond the WQR, consistent with the standards established in MMC 19.402.12.A. As discussed in Finding 11-f(2), the proposed development, with the conditions noted therein, meets the approval criteria established in MMC 19.402.12.B.

As conditioned, the City Council finds that the proposed development meets the discretionary standards for disturbance of HCAs as established in MMC 19.402.12.C.

The City Council finds that, as conditioned, the proposed development meets the applicable discretionary review standards of MMC 19.402.12.

g. MMC Subsection 19.402.15 Boundary Verification and Map Administration

MMC 19.402.15 establishes standards for verifying the boundaries of WQRs and HCAs and for administering the City's Natural Resource (NR) Administrative Map.

The locations of WQRs are determined based on the provisions of MMC Table 19.402.15. For streams, the WQR includes the feature itself and a vegetated corridor that extends 50 ft from the ordinary high water mark or 2-year recurrence interval flood elevation. Where the slope exceeds 25% for less than 150 ft, the vegetated corridor is measured with a 50-ft width from the break in the 25% slope. For wetlands, a wetland delineation report prepared by a professional wetland specialist and approved by the Department of State Lands (DSL) is required.

For HCAs, the City's NR Administrative Map is assumed to be accurate with respect to location unless challenged by the applicant, using the procedures outlined in either MMC Subsection 19.402.15.A.1 or MMC Subsection 19.402.15.A.2.b.

The technical report provided by the applicant includes a detailed topographic map showing the accurate boundaries of the WQR using the provisions of MMC Table 19.402.15, as well as a wetland delineation report prepared in accordance with the standards of DSL. A revised version of the report includes a formal letter of concurrence by DSL.

The applicant is not challenging the accuracy of the NR Administrative Map with respect to the HCA location on the site. However, as a result of the disturbance allowed by the approval of the proposed development, the NR Administrative Map shall be adjusted accordingly to remove those HCA locations that will be permanently disturbed by the proposed development.

In addition, the City has conducted a review of the mapped HCA in accordance with the detailed verification procedures provided in MMC 19.402.15.A.2.b and confirmed that the NR Administrative Map is inaccurate with respect to the HCA boundary in the southwestern corner of the subject property. The City's documentation of this boundary verification was provided as an exhibit at a public hearing with the City Council on September 5, 2017, and demonstrates where the HCA boundary shall be extended to include the tree canopy provided by the existing white oak trees in the southwestern portion of the site.

The City Council finds that the City's NR Administrative Map shall be adjusted to reflect the detailed information provided by the applicant with respect to the location of the delineated wetland on the site and the permanent disturbance to the HCA, as well as to reflect the adjusted HCA boundary based on information provided by the City.

The City Council finds that, as conditioned, the proposed development, including disturbance of the designated natural resource area on the subject property, meets all applicable standards of MMC 19.402.

12. MMC Chapter 19.500 Supplementary Development Regulations

MMC 19.500 provides supplementary standards for development.

a. MMC Subsection 19.504.9 On-Site Walkways and Circulation

MMC 19.504.9 establishes standards for on-site walkways, including requirements that on-site walkways be at least 5 ft wide, constructed of hard surface materials that are permeable for stormwater, and lighted to a minimum level of 0.5 footcandles.

The proposed development includes pedestrian connections on Tracts H and I, as well as a 10-ft-wide pedestrian/bicycle path in the northeast corner of Tract E. A condition has been established to ensure that all such on-site pathways are designed and constructed to meet the applicable standards of MMC 19.504.9.

As conditioned, the City Council finds that this standard is met.

b. MMC Subsection 19.505.5 Building Design Standards for Rowhouses

MMC 19.505.5 establishes design standards for rowhouse development.

(1) MMC Subsection 19.505.5.C Rowhouse Design Standards

As per MMC Subsection 19.505.5.C.1, rowhouses are subject to the design standards for single-family housing as established in MMC Subsection 19.505.1. As per MMC Subsection 19.505.5.C.2, rowhouses shall include either a vertical or horizontal transition area between the public right-of-way and the private entry of the dwelling.

The proposed development's compliance with the applicable standards of MMC 19.505.5.C will be confirmed through the development review process outlined in MMC Section 19.906 at the time of development. As proposed, the new rowhouse units will have covered front porches that appear to meet the standards for providing a horizontal transition between the right-of-way and the front entry.

(2) MMC Subsection 19.505.5.D Number of Rowhouses Allowed

As per MMC 19.505.5.D, no more than 4 consecutive rowhouses may share a common wall, though sets of 4-unit rowhouse structures may be adjacent to one another.

The proposed development is comprised of 23 structures with 4 rowhouse units each. No more than 4 consecutive rowhouses will share a common wall.

(3) MMC Subsection 19.505.5.E Rowhouse Lot Standards

MMC 19.505.5.E establishes standards for the size and dimension of rowhouse lots in various zones. Generally, rowhouse development is not allowed on lots less than 35 ft wide.

As discussed in Finding 7-b, the Planned Development process allows some flexibility of design, including in lot size and dimension. As proposed, the new lots will range in width from 20 to 28 ft and in size from 1,600 sq ft to approximately 2,500 sq ft. Approval of the final development plan and program effectively makes the standards of MMC 19.505.5.E inapplicable.

(4) MMC Subsection 19.505.5.F Driveway Access and Parking

MMC Subsection 19.505.5.F.1 establishes restrictions on garages on the front façade of a rowhouse as well as on off-street parking areas and driveway accesses in the front yard. A minimum of 30 ft of street frontage is required, no more than 2 shared accesses are allowed for 4 rowhouses, and outdoor on-site parking areas and garage door width shall not exceed 10 ft. For rowhouses that do not provide garages or parking areas on the front façade, MMC Subsection 19.505.5.F.2 establishes standards for consolidated access.

As discussed in Finding 7-b and noted in Finding 12-c above, the Planned Development process allows for reduced lot widths. The proposed development's compliance with the other applicable standards of MMC 19.505.5.F will be confirmed through the development review process outlined in MMC Section 19.906 at the time of development. As proposed, the new 4-unit rowhouse structures with front-facing garages will share 2 driveway accesses, with on-site parking and maneuvering areas no wider than 10 ft and garage doors no wider than 10 ft. The new rowhouse structures with rear-facing garages will share access off private alleys.

(5) MMC Subsection 19.505.5.G Accessory Structure Setbacks

MMC 19.505.5.G provides that there is no required side yard setback between an accessory structure and a side lot line abutting another rowhouse lot, though all other accessory structure regulations in MMC Subsection 19.502.2.A apply.

No accessory structures are proposed as part of the proposed development, and the applicant has not requested any adjustment to this standard.

The City Council finds that the proposed development meets the standards of MMC 19.505.5 that are applicable to the subdivision and final development plan and program of the Planned Development, noting that consistency with all applicable standards will be confirmed as part of the development review process outlined in MMC Section 19.906 at the time of submittal for development permits for the new rowhouses.

The City Council finds that, as conditioned, the proposed development is consistent with the applicable standards of MMC Chapter 19.500.

13. MMC Chapter 19.600 Off-Street Parking and Loading

MMC 19.600 regulates off-street parking and loading areas on private property outside the public right-of-way. The purpose of these requirements includes providing adequate space for off-street parking, minimizing parking impacts to adjacent properties, and minimizing environmental impacts of parking areas.

MMC Section 19.605 establishes standards to ensure that development provides adequate vehicle parking based on estimated parking demand. MMC Table 19.605.1 provides minimum and maximum requirements for a range of different uses. For rowhouses, a minimum of 1 off-street parking space is required per dwelling unit, with no maximum limit.

MMC Section 19.607 establishes standards for off-street parking areas for residential uses, including for rowhouses. Standards include minimum dimensions for off-street parking spaces and limitations on required spaces being located in the front yard setback.

As proposed, all rowhouse units will have attached garages. Units with front-facing garages have a single-car garage; units with rear-facing garages have a two-car garage.

As proposed, all garages will be located outside the front yard setback and of adequate dimension. A final determination of the proposed development's consistency with the applicable standards of MMC 19.600 will be made as part of the development review process outlined in MMC Section 19.906 at the time of submittal for development permits for the new rowhouses.

The City Council finds that the proposed development meets the standards of MMC 19.600 that are applicable to the subdivision and final development plan and program of the Planned Development, noting that consistency with all applicable standards will be confirmed as part of the development review process outlined in MMC Section 19.906 at the time of submittal for development permits for the new rowhouses.

14. MMC Chapter 19.700 Public Facility Improvements

MMC 19.700 establishes provisions to ensure that development provides public facilities that are safe, convenient, and adequate in rough proportion to their public facility impacts.

a. MMC Section 19.702 Applicability

MMC 19.702 establishes the applicability of the provisions of MMC 19.700, including land divisions, 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 subdivide the subject property to create 92 lots for rowhouse development as well as several other tracts for open space, stormwater facilities, and pedestrian/bicycle connections. The proposed land division triggers the requirements of MMC 19.700.

b. MMC Section 19.703 Review Process

MMC 19.703 establishes the review process for development that is subject to MMC 19.700, including requiring a preapplication conference, establishing the type of application required, and providing approval criteria.

The applicant had a preapplication conference with City staff prior to application submittal, on August 11, 2016. The proposed development triggers a Transportation Impact Study (as addressed in Finding 14-c). The proposal's compliance with MMC 19.700 has been evaluated through a concurrent Transportation Facilities Review application. Finding 14-f addresses the proposal's compliance with the approval criteria established in MMC Subsection 19.703.3, particularly the required transportation facility improvements.

c. MMC Section 19.704 Transportation Impact Evaluation

MMC 19.704 establishes the process and requirements for evaluating development impacts on the surrounding transportation system, including determining when a formal Transportation Impact Study (TIS) is necessary and what mitigation measures will be required.

The proposed development will trigger a significant increase in trip generation above the existing church use on a portion of the site and therefore requires a TIS. City Engineering staff and the City's on-call traffic consultant (DKS) provided the applicant with a scope of work for the TIS. Kittleson & Associates, the applicant's traffic consultant, prepared the TIS that was included with the applicant's larger submittal for the proposed planned development. To ensure accuracy, the original TIS was updated with additional counts for the intersections of Rusk Road and Highway 224,

Rusk Road and Ruscliff Road, Rusk Road and Kellogg Creek Drive, and Kellogg Creek Drive and the proposed Street A.

The TIS concluded that the proposed development does not trigger mitigation of impacts beyond the required frontage improvements and bike lane requirements, for which conditions of approval have been established. The TIS also concluded that the surrounding transportation system will continue to operate at the same level of service as before the proposed development.

However, ODOT and Clackamas County have expressed concern regarding the analysis performed for the right-turn lane for northbound traffic at the Rusk Road/Highway 224 intersection. The TIS indicates a turn lane with a queuing length of 50 ft. City Engineering staff agrees with ODOT and Clackamas County that this value may be overestimated. The TIS also indicates that the right-turn-on-red allowance is 50 vehicles per hour, which likely is not how this intersection functions where one through-vehicle can block the entire turn lane.

DKS, the City's consultant, has re-analyzed this intersection with the left turn, through movement, and right turn all together as a single lane. Also, the right-turn-on-red movement was reduced to zero vehicles, which is a more accurate representation of how the intersection currently functions. With these adjustments, the resulting volume-to-capacity ratio (v/c) of the single lane is greater than 1.0, indicating a need for mitigation requirements. A condition has been established to require extension of the right-turn lane on Rusk Road at the Highway 224 intersection, to ensure that the surrounding transportation system will continue to operate at the same level of service as before the proposed development

As conditioned, the applicant's TIS is sufficient to meet the requirements of MMC 19.704.

d. MMC Section 19.705 Rough Proportionality

MMC 19.705 requires that transportation impacts of the proposed development be mitigated in proportion to its potential impacts.

The City has determined that conditions established to require improvements on Kellogg Creek Drive and in the right-turn lane on Rusk Road at the Highway 224 intersection meet the proportionality requirements for the proposed development.

As conditioned, the proposed development is consistent with MMC 19.705.

e. MMC Section 19.707 Agency Notification and Coordinated Review

MMC 19.707 establishes provisions for coordinating land use application review with other agencies that may have some interest in a project that is in proximity to facilities they manage.

The application was referred to the Oregon Department of Transportation (ODOT), Clackamas County, Metro, and TriMet for comment. The section of Kellogg Creek Drive fronting the subject property is under the jurisdiction of Clackamas County. The County has regulatory authority where transportation impacts and improvement standards are concerned, and the County's Department of Transportation and Development (DTD) provided comments that have been incorporated into these findings and the associated conditions of approval as appropriate.

f. MMC Section 19.708 Transportation Facility Requirements

MMC 19.708 establishes the City's requirements and standards for improvements to public streets, including pedestrian, bicycle, and transit facilities. However, the subject property's public street frontage is along Kellogg Creek Drive, which is under the jurisdiction of Clackamas County. Where the City has more restrictive standards than the County for certain elements, it is the City's practice to defer to the County standards when the proposed development demonstrates that there is no practicable alternative and that the proposal presents the minimum exception necessary to provide a safe and functional design. Such situations are evaluated at the time of development permit review.

The County DTD provided comments on the application, with recommended findings and conditions that address the County's requirements for such elements as access management, clear vision, street design, and bicycle and pedestrian facilities. Those comments have been incorporated into these findings and conditions of approval as appropriate.

(1) MMC Subsection 19.708.1 General Street Requirements and Standards

MMC 19.708.1 provides general standards for streets, including for access management, clear vision, street layout and connectivity, and intersection design and spacing.

As proposed, the development is consistent with the applicable standards of MMC 19.708.1.

(2) MMC Subsection 19.708.2 Street Design Standards

MMC 19.708.2 provides design standards for streets, including dimensional requirements for the various street elements (e.g., travel lanes, bike lanes, on-street parking, landscape strips, and sidewalks).

The street to the east of Lots 45 and 57 does not comply with minimum City standards, as the required sidewalk and planter strips are not proposed. The City has allowed this reduced cross section because of the pending adoption of a low-volume residential standard cross section with pedestrian routes on the street surface. The 22-ft right-of-way width accommodates the minimum 10-ft travel lanes, curb, and separation from the private property.

The proposed cross sections for Kellogg Creek Drive and all remaining internal streets conform to applicable requirements and are consistent with MMC 19.708.2.

(3) MMC Subsection 19.708.3 Sidewalk Requirements and Standards

MMC 19.708.3 provides standards for public sidewalks, including the requirement for compliance with applicable standards of the Americans with Disabilities Act (ADA).

As proposed, the development is consistent with all applicable standards of MMC 19.708.3.

(4) MMC Subsection 19.708.4 Bicycle Facility Requirements and Standards

MMC 19.708.4 provides standards for bicycle facilities.

Per Milwaukie's Transportation System Plan (TSP), a bike lane is required connecting the northeast corner of the property to the southwest corner of the

property. The applicant has proposed to construct an on-street bike route through the development. A multiuse path will connect the northeast turnaround on Street B to the Rusk Road/Highway 224 intersection.

As proposed, the development is consistent with all applicable standards of MMC 19.708.4.

- (5) MMC Subsection 19.708.5 Pedestrian/Bicycle Path Requirements and Standards

MMC 19.708.5 provides standards for pedestrian and bicycle paths.

Pedestrian access is required at the end of the proposed cul-de-sac, which is satisfied through a 15-ft multiuse path extended to Rusk Road. Pedestrian access is also required from the east end of Street A to Kellogg Creek Drive, which is satisfied through a pedestrian connection in Tracts E and F.

As proposed, the development is consistent with all applicable standards of MMC 19.708.5.

- (6) MMC Subsection 19.708.6 Transit Requirements and Standards

MMC 19.708.6 provides standards for transit facilities.

The portion of Kellogg Creek Drive fronting the proposed development is classified as a transit route in the Milwaukie TSP. However, transit facilities are already in place. As a result, transit facility improvements are not required for the proposed development.

As proposed, the development is consistent with all applicable standards of MMC 19.708.6.

Conditions have been established in response to these County findings, to ensure that the proposed development will meet all applicable standards of MMC 19.708, the Clackamas County Roadway Standards, and any other applicable County requirements.

As conditioned, the City Council finds that the proposed development meets the applicable public facility improvement standards of MMC 19.700.

15. MMC Section 19.904 Community Service Uses

MMC 19.904 establishes standards for community service uses, including churches, schools, and parks. MMC Subsection 19.904.5.C authorizes the approval of minor modifications to an approved community service, provided that such modification:

- a. Does not increase the intensity of any use.

The proposed modification includes reconfiguring the existing driveway at Rusk Road to reinforce its status as an ingress-only access (left and right turns in), removing some existing parking spaces along the western edge of the parking lot to create access points between the church and the proposed development, and removal of the existing play area adjacent to the western edge of the parking area. The proposed modification will not add square footage to the church use or otherwise result in an increase in activity or use of the church site.

- b. Meets all requirements of the underlying zone relating to building size and location and off-street parking and the standards of Title 19.

The applicable standards of Title 19 are those related to off-street parking (MMC Chapter 19.600) and access (MMC Section 19.708 and MMC Chapter 12.16).

As proposed, 10 existing parking spaces will be eliminated from the church parking lot. The church, which has 400 seats, has a minimum parking requirement of 100 spaces (at a ratio of 1 space for every 4 seats, as per MMC Table 19.605.1) and a maximum allowance of 200 spaces (at a ratio of 1 space for every 2 seats). There are currently 225 spaces in the church parking lot. Removal of 10 spaces will bring the church site closer to conformance with the current standards.

In addition, the proposal includes a 6-ft landscape buffer along the northern and western perimeter of the existing parking area, adjacent to the proposed development, which will bring the site closer to conformance with the perimeter landscaping standards of MMC Subsection 19.606.2 and will screen the parking area from the proposed development.

One of the purposes of MMC Section 19.708 Transportation Facility Requirements, and the intent of MMC Chapter 12.16, is to ensure safe access to public streets. The proposed modifications to the existing church driveway at Rusk Road will ensure that the driveway is used for ingress only, which will improve safety on Rusk Road by reducing potential conflicts due to poor sight distance at that location.

- c. Does not result in deterioration or loss of any protected natural feature or open space, and does not negatively affect nearby properties.

The proposed modifications to the existing church parking lot and driveway access at Rusk Road do not impact any designated natural resource area or open space feature.

- d. Does not alter or contravene any conditions specifically placed on the development by the Planning Commission or City Council.

The property was annexed into the city limits in 1981 (land use file #A-80-07). In 1983, use of the site for pasture land and grazing for horses was approved as a conditional use (file #C-83-08); however, the conditional use application was subsequently withdrawn.

The site was approved as a CSU for church use by the Milwaukie Assembly of God in 1984 (file #CS-84-02). Conditions of approval included requirements to provide plans for landscaping, public facilities, and exterior lighting, as well as a traffic study and right-of-way dedication along Rusk Rd and Kellogg Creek Dr.

In 1987, the City Council approved a zone change for the western portion of the property, from R-10 to R-3, along with a conditional use approval for senior housing and an amendment to the Comprehensive Plan map (file #CPA-87-01, ZC-87-05, CU-87-05, with Ordinance #1639). The senior housing project (called Parkside Village) was never developed.

In 1992, the City approved a 5,500-sq-ft addition to the church building (file #CSO-92-03, NR-92-01). Conditions of approval included requirements to install the approved landscaping and to direct lighting away from the designated natural resource area.

In 1997, the Planning Commission denied a sign permit request to locate an electronic reader board sign on the property near the intersection of Highway 224 and Rusk Rd (file #SP-97-01).

In 2014, the Planning Director approved a minor modification to the existing CSU for the church, for removal of approximately 75 of 300 existing parking spaces as part of a natural resource restoration effort near Mount Scott Creek (file #s CSU-14-06 and NR-14-06). There were no conditions of approval.

The proposed modification does not alter or contravene any of the past conditions placed on the church development by the Planning Commission.

- e. Does not cause any public facility, including transportation, water, sewer and storm drainage, to fail to meet any applicable standards relating to adequacy of the public facility.

With regard to public facilities, the proposed modification will affect only the existing church driveway at Rusk Road. As proposed, the driveway will be modified to further limit egress movements at that location, which, due to limited sight distance and the proximity to the intersection of Rusk Road and Highway 224, will improve public safety. A new in/out access to the church site will be established through the proposed development and will be designed to meet applicable standards. The new access will focus more church trips on Kellogg Creek Drive, a local street, instead of on Rusk Road, a collector. The proposed modification will not cause any public facility to fail to meet any applicable standards relating to adequacy.

As proposed, the City Council finds that the proposed development meets the approval criteria for a minor modification to the existing community service use.

16. MMC Section 19.911 Variances

MMC Section 19.911 establishes the variance process for seeking relief from specific code sections that have the unintended effect of preventing reasonable development or imposing undue hardship.

- a. MMC Subsection 19.911.2 Applicability

MMC 19.911.2 establishes applicability standards for variance requests.

Variances may be requested to any standard of MMC Title 19, provided the request is not specifically listed as ineligible in MMC Subsection 19.911.2.B.

The applicant has requested two variances: (1) to allow more than 20 dwellings to be served by a closed-end street system as limited by MMC Subsection 19.708.1.E.5; and (2) to exempt 23 of the 92 proposed lots from the requirement of MMC Subsection 19.402.13.I.2 to provide adequate buildable area outside of the WQR and HCA. The second variance request would permit an additional number of units to be constructed through a 12% increase in density, as allowed in a Planned Development zone (MMC Section 19.311).

The request would not eliminate the restriction on a prohibited activity, change a required review type, allow a use not allowed outright in the R-10 or R-3 zone, or otherwise produce any of the results listed in MMC Subsection 19.911.2.B. The requests are each eligible for a variance as per MMC 19.911.2.

- b. MMC Subsection 19.911.3 Review Process

MMC 19.911.3 establishes review processes for different types of variances. MMC Subsection 19.911.3.C establishes the Type III review process for larger or more complex variations to standards than those allowed through the Type II review process as per MMC Subsection 19.911.3.B, variations that require additional discretion and warrant a public hearing.

The applicant has requested variances to the closed-end street standard established in MMC Subsection 19.708.1.E.5 and to the requirement that all new lots have adequate buildable area outside of the WQR and HCA. These requests are not eligible for Type II review as provided in MMC 19.911.3.B and so are subject to Type III review as per MMC 19.911.3.C. As noted in Finding 6, since the variance requests are associated with a proposed Planned Development, which itself requires Type IV review, the variances are also subject to Type IV review as per MMC Subsection 19.1001.6.B.

c. MMC Subsection 19.911.4 Approval Criteria

MMC 19.911.4 establishes approval criteria for variance requests. Specifically, MMC Subsection 19.911.4.B.1 provides approval criteria for Type III variances where the applicant elects to utilize the Discretionary Relief Criteria:

- (1) 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.

Closed-End Street System: In order to preserve the existing white oak trees in the southwestern corner of the site and to maintain 92 dwelling units as originally proposed, the development plan was shifted approximately 40 ft to the east and removed one of the two street connections to Kellogg Creek Drive. Although this effectively makes the street system a dead-end one serving all 92 units, the revised network maintains safe internal circulation and sufficient fire and emergency service access for the proposed development because access is available through the adjacent church property.

Adequate Buildable Area Variance: As noted above, 23 of the 92 proposed lots are affected by the requested variance. Eliminating the lots in question would reduce the proposed development below the minimum density of 66 units required for the site with the proposed street configuration. In addition, eliminating those lots would remove the need for the requested density bonus, which was being justified by the inclusion of several amenities (e.g., community garden, additional landscaping) that would likely be removed from the proposal. The proposed disturbance to the WQR and HCA will be mitigated with native plantings to enhance the remaining natural resource areas.

The City Council finds that the applicant's analysis of alternatives is sufficient to address the impacts and benefits of both of the proposed variances. This criterion is met.

- (2) The proposed variance is determined to be both reasonable and appropriate, and it meets one or more of the following criteria:
 - (a) The proposed variance avoids or minimizes impacts to surrounding properties.
 - (b) The proposed variance has desirable public benefits.
 - (c) The proposed variance responds to the existing built or natural environment in a creative and sensitive manner.

Closed-End Street System: The proposed variance will not have any negative impacts on surrounding properties and helps ensure that the existing white oak trees in the southwestern corner of the site will not be removed.

Adequate Buildable Area Variance: The requested variance does not affect any adjacent properties outside the proposed development. Approval of the variance allows the development of 92 units of housing instead of 61 units, which helps address an identified housing need for the community. The overall development layout is configured to minimize intrusion into the floodplain and designated natural resource areas on the site, and to focus impacts on WQR and HCA resources that are of lower ecological value and/or that have already been impacted by past development activity. Mitigation plantings will enhance remaining natural resources on the site.

The City Council finds that the requested variances are reasonable and appropriate and that they both meet one or more of the criteria provided in MMC Subsection 19.911.B.1.b.

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

Closed-End Street System: To address potential impacts of the proposed variance on fire and emergency service access, the design of the revised street system incorporates comments received from Clackamas Fire District #1 to provide adequate access for fire and emergency service vehicles.

Adequate Buildable Area Variance: The applicant has provided a mitigation plan for disturbed natural resource areas that includes removal of nuisance plants, noxious materials, and debris within the WQR and HCA areas on the site. As proposed, 863 native trees and 4,317 native shrubs will be planted. Two other areas beyond the disturbance zones will be enhanced with removal of nuisance plants and debris and additional native plantings. As proposed, the mitigation plan will enhance the natural resource areas that remain.

The City Council finds that both variance requests will be mitigated to the extent practicable.

The City Council finds that the proposed development meets the approval criteria for a Type III variance request, as provided in MMC 19.911.4.B.

As proposed, the City Council finds that both of the requested variances are allowable as per the applicable standards of MMC 19.911.

17. MMC Chapter 19.1200 Solar Access Protection

A primary purpose of MMC 19.1200 is to orient new lots and parcels to allow utilization of solar energy. In particular, MMC Section 19.1203 establishes solar access provisions for new development. In particular, MMC Subsection 19.1203.2 establishes the applicability of MMC Subsection 19.1203.3 as applications for the creation of lots in single-family zones. Exceptions are allowable to the extent the Planning Director finds that the applicant has shown one or more of the conditions listed in MMC Subsections 19.1203.4 and 19.1203.5 exist and that exemptions or adjustments are warranted.

a. MMC Subsection 19.1203.3 Design Standard

MMC 19.1203.3 establishes a solar design standard for at least 80% of the lots in any proposed development, including basic requirements for north-south dimension and front-lot-line orientation with respect to a true east-west axis. There are two other options for compliance, either establishing a protected solar building line or demonstrating a level of performance with respect to protection from shading.

The proposed development is for 92 lots, none of which have a minimum north-south dimension of at least 90 ft. However, 76 lots (approximately 82%) have a minimum north-south dimension of at least 80 ft and have the front lot line oriented within 30 degrees of a true east-west axis. Of the remaining 16 lots, all have their long axis oriented within 30 degrees of a true east-west axis, but due to the attached nature of the rowhouses in the proposed development, the ground floor south wall of most of the units will be shaded by the adjacent unit to the south.

The applicant has requested an adjustment to the design standard of MMC 19.1203.3.

b. MMC Subsection 19.1203.5 Adjustment to Design Standard

MMC 19.1203.5 allows the reduction of the number of lots that must comply with MMC 19.1203.3 to the minimum extent necessary, if the applicant demonstrates that the standard would cause or is subject to certain conditions, such as adverse impacts on density, cost, or amenities.

Considering the flexibility of design afforded to planned developments in MMC Section 19.311, the allowance for a density bonus as discussed in Finding 7-a, and the site constraints presented by natural resources and floodplain on the site, the design standard of MMC 19.1203.3 presents a particular challenge for the subject property. To configure more lots with a north-south axis of at least 90 ft would result in additional disturbance to natural resources or the floodplain. Reducing the number of lots accordingly would substantially reduce the effectiveness of the Planned Development option for a site that is otherwise well suited for flexible design.

As proposed, 76 of the 92 proposed lots (approximately 82%) are close to meeting the design standard of MMC 19.1203.3, with a north-south dimension of at least 80 ft. In a planned development scenario, where adjustments to conventional lot size and dimensional requirements are expected, and where strict adherence to the design standard would result in a significant decrease in density or increase in disturbance to natural resource and floodplain areas, a request to reduce the number of lots that must comply is reasonable.

The City Council finds that the request to adjust the number of lots that must comply with the design standard of MMC 19.1203.3 is warranted. The 76 lots with a north-south axis of at least 80 ft are sufficient to meet the requirements of MMC 19.1200.

As proposed, and with the approved reduction noted above, the City Council finds that the proposed development complies with the applicable standards of MMC 19.1200.

18. The application was referred to the following departments and agencies on April 13, 2017, with additional materials sent on April 26, 2017:
- Milwaukie Building Department
 - Milwaukie Engineering Department
 - Milwaukie Public Works Department
 - ESA (City's on-call consultant for natural resource review)
 - Clackamas Fire District #1
 - Lake Road Neighborhood District Association (NDA) Chairperson and Land Use Committee (LUC)
 - Clackamas County Department of Transportation and Development
 - Metro

- Oregon Department of Transportation (ODOT)
- TriMet
- North Clackamas Parks & Recreation District
- Oak Grove Community Council

The comments received are summarized as follows, including comments received in response to the public notice posted on the site and mailed to property owners and residents within 500 ft of the site:

- Michelle Wyfells, Planner II, TriMet:** Given the imminent changes to re-route the existing bus service on Kellogg Creek Drive (Line 152), TriMet has no comments on the proposal.
- Matt Amos, Fire Inspector, Clackamas Fire District #1 (CFD#1):** Comments related to fire access and water supply requirements, including notes on required turning radii and approvable turnarounds.
- Rob Livingston, Erosion Control Specialist, City of Milwaukie Public Works:** Due to the site being over 5 acres, a 1200C construction stormwater permit from DEQ will be required. A maintenance agreement with the City must be established for the stormwater facilities on site. For the City's erosion control permit, more information will be required on how hydric soils will be managed during excavation of the wetland area. Given the number of new households proposed and the accompanying number of anticipated household pets, a dispensing device(s) for pet-waste bags should be required in the large natural open space area. There is also concern for the likelihood of negative impacts to water quality and fish habitat from household pets recreating in Mount Scott Creek.

The proposed stormwater facilities do not show details for detention prior to discharge into Mount Scott Creek, particularly regarding how or where stormwater discharge will be mitigated. Many of the proposed plantings are near buildings and sidewalks—tree plantings closer to the creek would improve shade, reducing stream temperatures and mitigating for the development's removal of large mature trees from the site. The plantings proposed in Additional Enhancement Areas A and B do not provide meaningful streambank enhancement or vegetative shading for the creek.

- Paul Hawkins, Land Use Chair, Lake Road NDA:** The FEMA flood data for this location is dated, so it is unclear whether the three proposed detention ponds will be adequate. The "Y" intersection of Rusk Road and Kellogg Creek Drive is less than ideal, and traffic currently backs up on Rusk Road at the Highway 224 intersection during weekday commuting hours.
- Rebecca Hamilton, Regional Planner, Metro:** Metro notes that the application would require a Type III Variance to allow impacts to designated natural areas for creating 31 of the 92 proposed lots. The City of Milwaukie's Municipal Code is consistent with Metro's Functional Plan. If the City of Milwaukie is satisfied that the application has met its requirements for a Type III Variance, and if there is no request for an amendment to the City's comprehensive plan or zoning code, then Metro has no comment on this application.
- Joseph Edge, Director, Oak Grove Community Council:** The trip estimates for the proposed development appear to be low, as the proposed units will perform more like single-family detached dwellings than townhouses, given their proposed price point and the likelihood that two wage-earners employed outside the household will live in

each unit. The stormwater calculations are based on a pre-development curve number that is too high and does not accurately represent the pre-development conditions that should be more conservatively assumed for the site, especially considering the flood potential of the area. The loss of large white oak trees in the southwestern corner of the site is unacceptable, as these mature, old-growth trees cannot be sufficiently replaced with new trees. An alternative that preserves those trees and combines the 12 units in the southwestern portion of the site into a multifamily building elsewhere on the site would be more acceptable.

- g. **Sarah Hartung, Senior Biologist, ESA (City's On-Call Natural Resource Consultant):** A report providing peer review of the applicant's Natural Resource Review report has been provided to City staff and has been integrated into the Recommended Findings and Conditions of Approval.
- h. **Marah Danielson, Development Review Planner, ODOT Region 1:** The proposed zone change results in only a small increase in additional trips to the state highway. The applicant's Traffic Impact Analysis (TIA) shows a high number of crashes at both the Rusk Road and Webster Road intersections with Highway 224. Since the TIA analyzed the northbound right-turn movement at the Rusk Road/Highway 224 intersection as a right-turn lane where there is only a flare for a turn lane, ODOT recommends a condition requiring installation of a northbound right-turn lane at the Rusk Road/Highway 224 intersection.
- i. **Alex Roller, Engineering Tech II, City of Milwaukie Engineering Department:** Comments related to the proposal's compliance with Milwaukie Municipal Code (MMC) Title 12 Streets, Sidewalks, and Public Places; MMC Title 18 Flood Hazard Regulations; and MMC Chapter 19.700 Public Facility Improvements, with relevant recommended conditions of approval.
- j. **Kenneth Kent, Senior Planner, Clackamas County Department of Transportation and Development (DTD), Engineering Division:** Both Kellogg Creek Drive and Rusk Road are under the County's jurisdiction, so County standards and requirements apply where frontage improvements are concerned. On Kellogg Creek Drive, half-street improvements are required (minimum 16-ft roadway, curb or curb and gutter, 5-ft landscape strip, 5-ft sidewalk), with no bike lane striping. Recommendation that the existing church driveway at Rusk Road be closed, due to poor sight-distance and the difficulty of ensuring one-way ingress to the site without a median on Rusk Road. Recommendation that the applicant's traffic impact study be updated to (1) evaluate the study intersections to include estimated summer traffic volumes from North Clackamas Park, (2) include impacts of closure of the existing church driveway at Rusk Road, (3) reevaluate queuing on Rusk Road at the Highway 224 intersection using the SimTraffic program, and (4) evaluate the need for a northbound left-turn lane at the Rusk Road intersection with Kellogg Creek Drive. Suggestion that an analysis or evaluation of parking availability within the proposed development (in driveways, garages, and on-street) be conducted to understand the potential impacts of overflow parking in the adjacent neighborhood.
- k. **Kathryn Krygier, Planning and Development Manager, and Tonia Williamson, Natural Resource Coordinator, North Clackamas Parks & Recreation District (NCPRD):** Concern that increased traffic resulting from the proposed development will impact access to nearby NCPRD facilities. Note that the applicant's Traffic Impact Study (TIS) was not conducted during the time when activity at the ballfield complex in North Clackamas Park is at its peak (April through July). Concerns about safety at

the intersection of Rusk Road and Kellogg Creek Drive. Suggestion that a parking study be conducted to examine the issue of visitor parking within the proposed development. Concern that the bike lane between Rusk Road and Street B appears to dead-end. Questions about the soft-surface trail system, including public accessibility, maintenance, and assessment of natural resource impacts, with a note that the trails are short and discontinuous. Request for a phasing plan, if phasing is proposed. Concern about the potential for increased flooding resulting from development within designated natural resource areas on the site. Suggestion that the applicant has not sufficiently demonstrated that impacts to natural resources will be minimized.

- l. **Laura Hickman, area resident:** Concern about traffic impacts resulting from the proposed development; including pedestrian and bicycle safety to and from area homes, North Clackamas Park, and nearby schools. Questions about the methodology and assumptions of the TIS.
- m. **Ray Olma, area resident:** Traffic on Highway 224 and Rusk Road is already bad and will be made worse by trips from the proposed development. Concern for pedestrian safety on and crossing Rusk Road, which does not have sidewalks.
- n. **Jamie Marshall, area resident:** Existing infrastructure (including water treatment facilities and I-205) is inadequate to support the proposed development.
- o. **Melanie Frisch, area resident:** Concern about traffic impacts (inadequate infrastructure) and impacts to natural resources.
- p. **Alex Roller, Engineering Tech II, City of Milwaukie Engineering Department:** Revisions to comments provided in the earlier memo related to MMC Title 12 Streets, Sidewalks, and Public Places; MMC Title 18 Flood Hazard Regulations; and MMC Chapter 19.700 Public Facility Improvements.
- q. **Dan Sweet, area resident:** Comments in opposition to the proposed development, based on concerns about traffic, flooding, and stormwater runoff.
- r. **Vincent Alvarez, Chair, Lake Road NDA:** Concerns about the proposed destruction of existing wetlands and removal of healthy white oak trees, flooding potential, and traffic impacts.
- s. **Bruce Reiter, area resident:** Concerns about traffic impacts and potential impacts to the wetland's role in flood management.
- t. **John Green-Hite, area resident:** Concerns about impacts to the watershed and flooding as well as to traffic.
- u. **Joan Young, area resident:** Concerns about impacts to the broader community beyond city limits, including impacts to traffic, the environment in general, the white oak trees in particular, and flooding. Reports a history of illegal fill activity on the site.
- v. **Howard Lanoff, area resident:** Concern about increased density and its impacts on livability.
- w. **Georgia Bogner, area resident:** Wait times at the light at Rusk Road and Highway 224 are already bad. The proposed 92-unit development will add more than 1 vehicle each during peak times.
- x. **Chris Runyard, ecological restoration specialist:** Submitted a 3-minute video posted online in opposition to the proposed development, citing concerns about impacts to the white oak trees, wetlands, and flooding.

- y. **Linda Huntley, area resident:** Comments in opposition to the proposed development, based on concerns about traffic (accidents and congestion).
- z. **Jennifer Stipetic, area resident:** Concerns about impacts on area traffic and the environment, including a desire to preserve the existing white oak trees and avoid any fill in the wetlands.
- aa. **Terry Gibson, Board Chair of North Clackamas Urban Watersheds Council:** The applicant has failed to show that the proposed development avoids or minimizes impacts to surrounding properties, has desirable public benefits, or responds to the existing built or natural environment in a creative or sensitive manner. The application does not address the potential for increased flooding in North Clackamas Park or the public benefit currently provided by the natural resource area on the site (including the white oak trees). The watershed council is heavily invested in the restoration of the natural resource area on site through its Streamside Stewards Program and believes the proposed mitigation plantings would be redundant of these earlier efforts.
- bb. **Linda Huntley, area resident:** Additional note that traffic from ball field activity in the park (Spring through Fall) already presents significant congestion and safety issues.
- cc. **Sara Miller, area resident:** The proposed development does not promote several of the goals identified in Milwaukie's 2040 Vision, particularly where it proposes to remove existing white oak trees and fill in the wetland and floodplain. The proposal does not appear to include sidewalks or address sidewalk gaps and ADA deficiencies. There are better locations in Milwaukie to develop townhomes.
- dd. **Dick Shook, area resident:** Concerns about impacts on area creeks and wetlands (flooding), the old-growth white oak trees, and the number of proposed units.
- ee. **Matt Menely, area resident:** The proposed development does not reflect the community values that have been expressed over time—walkable communities, more open space, and housing developments that create a sense of community. Wetlands and trees provide benefits to the community and should be preserved.
- ff. **Laura Hickman, area resident:** Submitted a report from the North Clackamas School District that included a detailed review of pedestrian conditions on Rusk Road. Walking conditions on Rusk Road are unsafe.
- gg. **Todd Alsbury, District Fish Biologist, Oregon Department of Fish & Wildlife (ODFW):** ODFW has conducted a preliminary review of the proposed project and asks for additional time for review. Priority and/or special status fish and wildlife species are known to occur on and near the property, and Mount Scott Creek is considered Essential Salmonid Habitat. Flowing water, riparian zones, wetlands, and Oregon white oak habitat are identified as Strategy (Priority) Habitats in the Oregon Conservation Strategy. ODFW is concerned about siting infrastructure within an active floodplain, encroachment into the riparian zone, loss of existing wetlands, and loss of Oregon white oak trees that would result from the proposed development. ODFW recommends that new infrastructure be sited outside floodplains, wetlands, and other priority fish and wildlife habitats, that those habitats be adequately buffered, and that the white oak trees be retained.
- hh. **Lisa Kennedy, area resident:** Comments in favor of the proposed development, including that it provides plenty of open space with affordable housing.

- ii. **Sue Hayes, area resident:** Comments in opposition to the proposed development, including that 92 units are too many, the lots are too small, the site is in a flood zone, and that it would increase traffic and be dangerous for pedestrians.
- jj. **Bev St. John, area resident:** Concerns about traffic impacts and pedestrian safety (lack of sidewalks in the area).
- kk. **Randy Day, area resident:** The proposed development is too much for this site, considering the impact to adjacent sensitive lands and the fact that it will be an auto-dependent development. The traffic impacts will be significant and a right-turn lane on Rusk Road at Highway 224 is needed now; increased trips would seem to necessitate a left-turn lane and signal as well.
- ll. **Jarrod Allen, area resident:** Opposition to the proposed development, due to traffic impacts and a lack of pedestrian facilities. The wetland area should remain undeveloped.
- mm. **Lois Keiser, area resident:** Concerns about general impacts to neighborhood (density, water/sewer infrastructure, and traffic).
- nn. **Ben Geertz, area resident:** Concerns for pedestrian and other non-motorized safety, as Rusk Road is currently very unsafe (no shoulder, blind corners, limited pedestrian facilities).
- oo. **Lois Herring, area resident:** Support for May 25 comment by Joseph Edge that traffic study calculations for the proposed development should be done using the assumption that the proposed rowhouses will function in similar fashion to single-family detached dwellings.
- pp. **Linda and Roger Huntley, area residents:** Additional concerns related to the need to preserve salmon habitat and the white oak trees.
- qq. **Joseph Edge, Director, Oak Grove Community Council:** There is no guarantee that the market rate for the proposed units will remain within the price range of modest-income people, so the promotion of the proposed units as workforce housing should not be the basis for granting a density bonus. To be more affordable, at least some of the housing should be proposed as rental units in multifamily buildings. This would also reduce the aggregate footprint of structures on the site and thus further avoid and minimize impacts to natural resources.

The site is not ideal for lower income affordable housing, due to the expense of motor-vehicle ownership and the fact that the lack of safe transportation options at this location means that the people who live at the site will likely have 1 or 2 vehicles and therefore will not likely be lower income people. One suggestion is to have the new homeowners association provide a car-sharing service to help reduce the number of resident-owned vehicles in the new development. Such a car-sharing service, together with a multifamily configuration of buildings to reduce impacts to natural resources, could arguably be viewed as the kind of creative and outstanding amenities that would warrant a density bonus.

- rr. **Chris Runyard, ecological restoration specialist:** It is not the role of the Planning Commission or City staff to ensure that developers make a profit. Ninety-two (92) units are not necessary for the developer to make a profit. The new units will not be "affordable housing" but will be sold at the market rate. The developer would benefit from giving the open space tract to the North Clackamas Parks & Recreation District (NCPRD), so the wetlands should not be negotiated away in exchange for the higher

density (92 units). The City does have a responsibility to protect the public good (e.g., wetlands, trees, housing, and reduced flooding) and should be more concerned with protecting natural resources than with the developer's profit margin.

- ss. Kathryn Krygier, Planning and Development Manager, North Clackamas Parks & Recreation District (NCPRD):** NCPRD is willing to acquire and manage the proposed open space tract. No funds are available for NCPRD position to purchase the tract or to provide System Development Charge (SDC) credits in exchange, but NCPRD would accept the tract if offered at no cost. The District's interest extends only to the open space tract and not to the community garden or play area.

If acquired, NCPRD would manage the tract to be compatible with the master plan for North Clackamas Park, including approval of the location and specifications of the trail and review of the mitigation plan. NCPRD would either accept the tract after the mitigation plantings had been installed and approved by the City or could implement the mitigation plan itself with the funding provided by the developer. The District is also amenable to having the City take ownership of the tract and amending the Intergovernmental Agreement (IGA) as needed to have NCPRD manage and maintain the tract.

Pedestrian and bicycle routes through and within the site are critical to the development's success. To provide for complete connectivity throughout the site, the path shown on the revised site plan where a road was shown on the original plan should be public and meet ADA requirements.

- tt. Alex Roller, Engineering Tech II, City of Milwaukie Engineering Department:** Revised comments related to the proposed variance to the number of lots allowed to be served by a closed-end street system (MMC Subsection 19.708.1.E.5).
- uu. Marah Danielson, Development Review Planner, ODOT Region 1:** Comments on the revised traffic information, concluding that the intersection of Rusk Road and Highway 224 meets ODOT standards under the proposed development scenario but will continue to experience congestion. ODOT agrees that the addition of a northbound right-turn lane on Rusk Road will improve present and future operation.
- vv. Todd Alsbury, District Fish Biologist, (ODFW):** Significant concerns from a water quality perspective and for the potential for direct impacts if the riparian area is compromised. Concern that developments of this size provide too much risk to be located within 100 ft of salmon-bearing streams, particularly ones that are the focus of recovery efforts.
- ww. Mat Dolata, DKS (City's On-Call Traffic Consultant):** Adjustment to an earlier memo provided to City Engineering staff in response to the updated traffic information. No change in recommendation—no significant off-site traffic impacts are anticipated as a result of the proposed development.
- xx. Kenneth Kent, Senior Planner, Clackamas County DTD:** Additional comments in response to the revised site plan. With the single point of access to Kellogg Creek Drive, use of the church driveway on Rusk Road may increase, including as an exit (even if modified to be enter-only). The supplemental traffic report does not discuss the church driveway at Rusk Road and the County continues to recommend closure of that access point. In addition, the County notes that bike lanes are not usually recommended on local streets like Kellogg Creek Drive; to preserve existing white oak trees in the public right-of-way, the County recommends eliminating the bike lane and replacing it with a curb-tight sidewalk.

- yy. Nancy Pierce, area resident:** Opposition to the proposed development, citing concerns about inadequate infrastructure and traffic impacts.
- zz. Chris Runyard, ecological restoration specialist:** Assertion that the proposed development is too large for the site, that no impacts to designated natural resources should be allowed, and that all white oak trees and associated habitat should be preserved.
- aaa. Mary Zellharie, area resident:** Opposition to the proposed development due to concerns about traffic impacts.
- bbb. Judy Sherley, area resident:** Opposition to the proposed development, citing concerns about natural resource impacts and traffic impacts, with several suggestions for traffic mitigation.
- ccc. Ed Hacmac, area business owner:** Concerns about traffic impacts, with a suggestion to consider constructing a roundabout at the intersection of Kellogg Creek Drive and Rusk Road.

EXHIBIT B
Final Development Plan and Program
Master File #PD-2017-001
Kellogg Creek Planned Development

The purpose of a Planned Development (PD) zone is to provide a more desirable environment than is possible through the strict application of Zoning Ordinance requirements. PD zones encourage greater flexibility of design and a mix of housing types.

The PD zone is a superimposed zone applied in combination with regular existing zones. The subject property was previously split-zoned R-10 and R-3, so the underlying zone requirements of Milwaukie Municipal Code (MMC) Sections 19.301 (Low Density Residential Zones, including R-10) and 19.302 (Medium and High Density Residential Zones, including R-3), respectively, were considered in determining the final development plan and program.

1. Final Development Plan

The final development plan of the Kellogg Creek planned development subdivision shall be comprised of the final revised development plan set stamped received by the Planning Department on July 11, 2017 (see Attachment 1). This includes such details as building locations and elevations.

2. Final Development Program

The final development program of the Kellogg Creek planned development subdivision shall be comprised of the following requirements and standards. These requirements and standards shall be applicable to development and activity on the planned development site (as shown in Attachment 1) and supersede the related provisions of MMC Title 19 Zoning.

a. Permitted Uses

Rowhouses are permitted on all lots in the Kellogg Creek subdivision.

b. Lot and Development Standards

Table 7-b(2) compares the applicable standards for development in the R-10 and R-3 zones with the standards approved as the final development plan and program for this PD zone.

Table 7-b(2) Lot and Development Standards			
Standard	R-10 Requirement	R-3 Requirement¹	Approved PD Requirement
1. Minimum Lot Size	10,000 sq ft	3,000 sq ft	Lots range from 1,600 sq ft to approx. 2,500 sq ft
2. Minimum Lot Width	70 ft	30 ft	Lot widths range from 20 ft to 28 ft
3. Minimum Lot Depth	100 ft	80 ft	Lot depths range from 80 to 87.25 ft
4. Minimum street frontage	35 ft	30 ft	Typical range is 20 to 25 ft; three lots on cul de sac are <20 ft
5. Front Yard	20 ft	15 ft	Front-loaded lots = 18 ft Alley-loaded lots = 10 ft