



# CITY OF MILWAUKIE

August 24, 2022      Land Use File(s):    NR-2022-001; WG-2022-001; DR-2022-001; VR-2022-006

## NOTICE OF DECISION

This is official notice of action taken by the Milwaukie Planning Commission on August 23, 2022.

*Traducciones de este documento e información sobre este proyecto están disponibles en español. Para solicitar información o preguntar en español, favor de email [espanol@milwaukieoregon.gov](mailto:espanol@milwaukieoregon.gov).*

<b>Applicant(s):</b>	Heather Koch, NCPRD
<b>Location(s):</b>	Milwaukie Bay Park – 11211 SE McLoughlin Blvd
<b>Tax Lot(s):</b>	11E35AD 00900, 01000, and 01001; 11E35AA 02200, 02300, 02400, 02500, 02600, 02700, 02800, 04700, 04800, 04900, and 05000
<b>Application Type(s):</b>	Natural Resources Review; Willamette Greenway Review; Downtown Design Review; Variance
<b>Decision:</b>	Approved with Conditions
<b>Review Criteria:</b>	Milwaukie Municipal Code: <ul style="list-style-type: none"><li>• MMC 18: Flood Hazard Regulations</li><li>• MMC 12: Streets, Sidewalks, and Public Places</li></ul> Milwaukie Zoning Ordinance: <ul style="list-style-type: none"><li>• MMC 19.304: Downtown zones including OS</li><li>• MMC 19.401: Willamette Greenway</li><li>• MMC 19.402: Natural Resources</li><li>• MMC 19.504: Site Design</li><li>• MMC 19.508: Downtown Building and Site Design Standards</li><li>• MMC 19.600: Parking</li><li>• MMC 19.700: Public Facility Improvements</li><li>• MMC 19.911: Variances</li><li>• MMC 19.1006 Type III Review</li></ul>
<b>Neighborhood(s):</b>	Historic Milwaukie; Island Station

**Appeal period closes: 5:00 p.m., September 8, 2022**

This notice is issued in accordance with Milwaukie Municipal Code (MMC) Section 19.1006 Type III Review. The complete case file for this application is available for review by appointment between 8:00 a.m. and 5:00 p.m. on regular business days at the Planning Department, Johnson Creek Facility, 6101 SE Johnson Creek Blvd. Please contact Laura Weigel, Planning Manager, at 503-786-7654 or [weigell@milwaukieoregon.gov](mailto:weigell@milwaukieoregon.gov), if you wish to view this case file.

**This decision may be appealed by 5:00 p.m. on September 8, 2022, which is 15 days from the date of this decision.**<sup>1</sup> (Note: Please arrive by 4:45 p.m. for appeal payment processing.) Only persons who submitted comments or made an appearance of record at the public hearing have standing to appeal the decision by filing a written appeal. An appeal of this decision would be heard by the Milwaukie City Council following the procedures of MMC Section 19.1010 Appeals. This decision will become final on the date above if no appeal is filed during the appeal period. Milwaukie Planning staff can provide information regarding forms, fees, and the appeal process at 503-786-7630 or [planning@milwaukieoregon.gov](mailto:planning@milwaukieoregon.gov).

Per MMC Subsection 19.1001.7.E, this land use approval expires unless the applicant has: (1) obtained and paid for all necessary development permits and started construction within 2 years of land use approval, and (2) passed final inspection and/or obtained a certificate of occupancy within 4 years of land use approval. Extensions can be granted per MMC Section 19.908.

**Findings in Support of Approval**

The Findings for this application are included as Exhibit 1.

**Conditions of Approval**

1. Applicant must construct the project in compliance with all Public Works Standards and the requirements identified in Other Requirements.
2. Building Permit Submittal

At the time of submittal of the associated development permit application(s), the following must be resolved:

- a. Final plans submitted for development permit review must be in substantial conformance with the plans and drawings approved by this action, which are the revised plans and drawings received by the City on July 6, 2022, except as otherwise modified by these conditions of approval.

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

- b. Provide a detailed narrative describing all actions taken to comply with these conditions of approval. In addition, describe any changes made after the issuance of this land use decision that are not related to these conditions of approval.
    - c. Final plans submitted for construction permit review must include details of the bike stall dimensions to confirm that the applicable standards are met.
    - d. Final plans submitted for construction permit review must include a photometric plan showing compliance with lighting standards.
    - e. Final plans submitted for construction permit review must include details of the multi-use path. The multiuse path must be constructed of pervious material.
3. Prior to issuance of development permits, the following must be resolved:
  - a. Prior to commencement of any earth-disturbing activities, the applicant must obtain an erosion control permit from the City.
  - b. Prior to commencement of any earth-disturbing activities, tree protection measures must be in place and maintained throughout construction. Tree protection fencing is required to be installed a minimum of 10 ft from the trunk of the existing trees on the site. Fencing must be maintained throughout the duration of construction and will be inspected. No disturbance is permitted within the fenced area.
4. Prior to final inspection of the required building permit and issuance of a certificate of occupancy, the following must be resolved:
  - a. Completion of all Public Improvements as shown on approved plans:
    - (1) A clear vision area shall be maintained at all intersections, driveways, and accessways.
    - (2) Stormwater improvements must be reviewed and deemed compliant with MMC 12.02 and MMC 13.14, including locating assets where inspection and maintenance activities can feasibly occur.
5. Landscaping Maintenance

As per MMC Subsection 19.402.11.B.9, a minimum of 80% of all required mitigation plantings for WQR or HCA disturbance must remain alive on the second anniversary of the date the planting is completed. An annual report on the survival rate of all plantings must be submitted for two years.
6. Conditional Use Permit

As per MMC Subsection 19.905.6, the City will issue a conditional use permit upon the approval of this application to establish a conditional use. The conditional use permit will include the following information:

  - a. A description of the use that has been approved by the City.
  - b. Restrictions and/or conditions of approval placed upon the use.

- c. Ongoing responsibilities required for the operation of the conditional use.
- d. Allowance for the transfer of rights and responsibilities upon change in ownership of either the use or the property containing the use.
- e. Procedures for review, revisions, and suspension of the conditional use permit.

The applicant must record the conditional use permit with the Clackamas County Recorder's Office and provide a copy to the City prior to commencing operations allowed by the conditional use permit.

### **Other requirements**

The following items are not conditions of approval necessary to meet applicable land use review criteria. They relate to other development standards and permitting requirements contained in the Milwaukie Municipal Code (MMC) and Public Works Standards that are required at various points in the development and permitting process.

1. The level of use approved by this action shall be permitted only after issuance of a certificate of occupancy.
2. Limitations on Development Activity.  
Development activity on the site shall be limited to 7:00 a.m. to 10:00 p.m. Monday through Friday and 8:00 a.m. to 5:00 p.m. Saturday and Sunday, as provided in MMC Subsection 8.08.070(I).
3. Applicant must submit an access and water supply plan as required by the Clackamas Fire District #1 for full review and approval.
4. Prior to, or concurrent with, building permit submittal, the following must be resolved:
  - a. Submit full-engineered plans for construction of all required public improvements, which must be reviewed and approved by the City of Milwaukie Engineering Department.
  - b. Obtain a right-of-way permit for construction of all required public improvements listed in these recommended conditions of approval.
  - c. Pay an inspection fee equal to 5.5% of the cost of the public improvements; at time of plan submittal, a plan review fee of 1.5% is required, the balance of the 5.5% is required at time of issuance of the right-of-way permit.
  - d. Provide a payment and performance bond in the amount of 130 percent of the approved engineer's estimate or contractor's bid cost of the required public improvements.
5. Prior to final inspection, the following must be resolved:
  - a. Provide a final approved set of electronic PDF red-lined "As Constructed" drawings to the City of Milwaukie.

- b. Install all underground utilities, including stubs for utility service, prior to surfacing any streets.
  - c. Clear vision areas shall be maintained at all driveways and accessways and on the corners of all property adjacent to an intersection.
6. Prior to final acceptance, the following must be resolved:
- a. Provide a final approved set of digitally signed, electronic PDF “As Constructed” drawings to the City of Milwaukie.
  - b. Provide a 2-year maintenance bond in the amount of 10 percent of the approved engineer’s estimate or contractor’s bid cost of the required public improvements.

7. Other Engineering Requirements.

Submit a final stormwater management plan to the City of Milwaukie Engineering Department for review and approval. The plan shall be prepared in accordance with Section 2 - Stormwater Design Standards of the City of Milwaukie Public Works Standards. In the event the stormwater management system contains underground injection control devices, submit proof of acceptance of the storm system design from the Department of Environmental Quality.

The stormwater management plan shall demonstrate compliance with water quality standards in accordance with the City of Portland Stormwater Management Manual.

Development/building permits will not be issued for construction until the stormwater management plan has been approved and deemed compliant with MMC 12.02 and MMC 13.14 by the City of Milwaukie.

Apply for required permit(s) for work that will occur within the identified Willamette River and Johnson Creek floodplains; submit all material, studies, etc. needed to comply with the requirements of the floodplain permit.

Relocation of the traffic signal at Monroe Street & McLoughlin Blvd. (controlled by Oregon Department of Transportation) may trigger sidewalk and Americans with Disabilities Act (ADA) ramp improvements at all four corners of the intersection.

All sidewalks and pathways must meet current US Access Board ADA requirements.

Review and approval process will be more efficient if Applicant submits two sets of plans: one set for improvements within the McLoughlin Blvd right-of-way (ROW, controlled by ODOT), and a second set for all work to be constructed within the park west of this ROW.

8. Expiration of Approval

As per MMC Subsection 19.1001.7.E, the land use approval granted with this decision will expire and become void unless the following criteria are satisfied. For proposals requiring any kind of development permit, the development must complete both of the following steps:

- a. obtain and pay for all necessary development permits and start construction within two years of land use approval
- b. Pass final inspection and/or obtain a certificate of occupancy within four years of land use approval.



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Laura Weigel, AICP  
Planning Manager

**Exhibits**

1. Findings in Support of Approval

cc: Heather Koch, NCPRD (via email)  
Jonathan Beaver, 2.ink Studio (via email)  
Planning Commission (via email)  
Joseph Briglio, Community Development Director (via email)  
Steve Adams, City Engineer (via email)  
Engineering Development Review (via email)  
Samantha Vandagriff, Building Official (via email)  
Stephanie Marcinkiewicz, Inspector/Plans Examiner (via email)  
Harmony Drake, Permit Technician (via email)  
Shawn Olson, CFD#1 (via email)  
NDA(s): Historic Milwaukie; Island Station (via email)  
Interested Persons  
Land Use File(s): NR-2022-001

**ATTACHMENT 1**  
**Findings in Support of Approval**  
**Primary File #NR-2022-001, Phase 3 Improvements – Milwaukie Bay Park**

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, Heather Koch representing the North Clackamas Parks and Recreation District, has applied for approval for Phase 3 improvements for Milwaukie Bay Park at 11211 SE McLoughlin Blvd. This site is in the Downtown Open Space Zone (OS). The primary land use application file number is NR-2022-001.
2. The applicant seeks approval for Phase 3 park improvements that build on previous site improvements and include: a nature-themed children’s play area; a gathering/event area with an open lawn, stage and fire pit for special events; a nature-themed interactive water feature; new pathways; picnic areas; a restroom structure and shade structure; improvements to the existing Trolley Trail; public art; vegetation plantings and new stormwater management infrastructure. A variance is requested to the requirement for pervious pavement for onsite walkways.
3. The proposal is subject to the following provisions of the Milwaukie Municipal Code (MMC):
  - MMC 12: Streets, Sidewalks, and Public Places
  - MMC 18: Flood Hazard Regulations
  - MMC 19.304: Downtown zones including OS
  - MMC 19.401: Willamette Greenway
  - MMC 19.402: Natural Resources
  - MMC 19.504: Site Design
  - MMC 19.508: Downtown Building and Site Design Standards
  - MMC 19.600: Parking
  - MMC 19.700: Public Facility Improvements
  - MMC 19.911: Variances
  - MMC 19.1006 Type III Review
4. The application has been processed and public notice provided in accordance with MMC Section 19.1006 Type III Review. A public hearing was held on August 23, 2022 as required by law.
5. MMC Title 12 Streets, Sidewalks, and Public Places
  - a. MMC Chapter 12.08 – Street & Sidewalk Excavations, Construction, and Repair

- (1) This will apply to all construction that is completed in the right of way including, but not limited to, all public utilities, construction of the on-site path, and any other pedestrian/bicycle facilities. The public improvement process will follow MMC 12.08.020.
- (2) The Trolley Trail multi-use path must be constructed of pervious pavement. Other new sidewalks/paths may be constructed of impervious pavement provided water quality facilities are provided to treat the runoff.

b. MMC Chapter 12.16.040 – Access Requirements and Standards

MMC 12.16.040 establishes standards for access (driveway) requirements.

(1) MMC 12.16.040.A – Access

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

*The proposed development has existing access to McLoughlin Blvd. No changes are proposed to the accessways as part of this development.*

*This standard is met.*

c. MMC Chapter 12.24 – Clear Vision at Intersections

MMC 12.24 establishes standards to maintain clear vision areas at intersections to protect the safety and welfare of the public in their use of city streets.

*The existing driveway approaches must conform to the clear vision requirements.*

*As conditioned, this standard is met.*

6. 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 18.16.030, a floodplain development permit is required prior to any construction or development within the flood management area.

*The subject property includes flood hazard and flood management areas as identified on the Flood Insurance Rate Map (FIRM) prepared by the Federal Emergency Management Agency (FEMA) and acknowledged by the City for the purposes of implementing MMC Title 18.*

MMC Chapter 18.16 establishes provisions for the administration of the regulations.

- a. MMC Section 18.16.020 Duties and Responsibilities of the Floodplain Administrator (including the requirement for an elevation certificate).



*An elevation certificate will be required for the proposed restroom structure.*

b. MMC Section 18.16.030 Establishment of Floodplain Development Permit

MMC 18.16.030 requires that a floodplain development permit must be obtained through application on forms furnished by the city engineer before construction or development begins within any area horizontally within the regulatory floodplain established in Section 18.12.020.A. The floodplain development permit is required for all structures, including manufactured dwellings, and for all other development, as defined in Chapter 18.08, including fill and other development activities.

*According to the submittal materials, the proposed action at Milwaukie Bay Park occurs within the established regulatory floodplain. An application for a Floodplain Development Permit will be submitted to the City for the project.*

*This standard is met.*

c. MMC Section 18.20.010 Alteration of Watercourses

MMC 18.20.010 establishes requirements for Floodways. A No-Rise Analysis must be submitted for all manmade development in the floodway. MMC 18.20.010 requires that the flood-carrying capacity within the altered or relocated portions of watercourses must be maintained. This includes the floodway, which is the channel of a watercourse and the adjacent land areas that must be reserved to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height. Encroachments within floodways, including fill and new construction, are prohibited unless they are part of an approved fish enhancement project or unless a certified professional civil engineer provides a hydrologic and hydraulic (H&H) analysis demonstrating that the encroachment will not increase flood levels during a base flood event.

*The United States Army Corps of Engineers operates a hydraulic model for the Lower Willamette River which shows the area of Milwaukie Bay Park as an ineffective flow area. This classification means that the hydraulic model assumes the area of Milwaukie Bay Park is only flood storage without any flood conveyance. City maps identify floodway on the subject property. Based on the results of this hydraulic model and the net cut affiliated with the proposed project, development at this site would result in a no-rise condition. A No-Rise Analysis will be required with the application for a Floodplain Development Permit.*

*This standard is met.*

d. MMC Section 18.20.020 Compensatory Storage (Balanced Cut and Fill)

MMC 18.20.020 establishes requirements for compensatory storage, also referred to as “balanced cut and fill.” Where the placement of fill or structures will displace more than ten (10) cubic yards of flood storage area, the development must be done in such a way as to maintain or increase flood storage and conveyance capacity and not increase design flood elevations. All fill placed at or below the design flood elevation must be balanced by at least an equal volume of material (“cut”) in a hydraulically

equivalent location, not including areas that will be filled with water in two-year rainstorm conditions or are designated for Habitat Conservation Area (HCA) mitigation.

Excavation to balance a fill must be located on the same parcel as the fill unless it is not reasonable or practicable to do so.

*The majority of the project site falls within the 1996 Flood Inundation Area. A cut and fill analysis completed by the project civil engineer, based on the site grading plan, indicated that the project will result in a net cut of approximately 200 cubic yards of material in areas below the 36-foot base flood elevation. This analysis will be documented in the application for a Floodplain Development Permit.*

*These standards are met.*

*The Planning Commission finds that the proposed development is consistent with the applicable standards of MMC Title 18.*

7. MMC 19.304 Downtown Zones (including OS)

- a. As stated in MMC 19.304.1, the Open Space Zone provides a specific zone to accommodate open space, park, and riverfront uses. The Open Space Zone is generally applied to lands that are in public ownership along the Willamette River, Kellogg Creek, Spring Creek, and Johnson Creek in the downtown area. The desired character for the Open Space Zone includes parkland, open space, and riverfront amenities.

*The proposed Phase 3 improvements to Milwaukie Bay Park are consistent with the parks and open space category descriptions and examples and are a permitted use under MMC 19.304.2.*

- b. Table 19.304.4 establishes standards for development in the OS zone.

<b>Table 19.301.4 Residential Zone R-5 Development Standards</b>			
Standard	Required	Proposed	Staff Comment
Building Height	15 ft max.	11 ft	Complies with standard.
Off-street parking required	Yes, where applicable	No additional parking proposed	Non-residential uses exempt from off-street parking requirements.

MMC Subsection 19.304.5.H establishes the standards for open space when a building is set back from the sidewalk. At least 50% of the setback area shall provide usable open space, such as a public plaza or pedestrian amenities, that meets the standards of this subsection.

*The restroom building will be set back from the McLoughlin Blvd sidewalk but will abut an on-site pedestrian access path, and the building will be surrounded by usable open space. This standard is met.*

*The Planning Commission finds that this standard would be met.*

8. MMC 19.400 Overlay Zones and Special Areas
  - a. MMC 19.401 Willamette Greenway Overlay Zone

MMC 19.401 establishes criteria for reviewing and approving development in the Willamette Greenway.

- (1) MMC Subsection 19.401.5 Procedures

MMC 19.401.5 establishes procedures related to proposed uses and activities in the Willamette Greenway zone. Development in the Willamette Greenway zone requires conditional use review, subject to the standards of MMC Section 19.905 and in accordance with the approval criteria established in MMC Subsection 19.401.6.

*The construction of new parking improvements, including a playground, picnic area, and a restroom building constitutes “development” as defined in MMC Subsection 19.401.4 and is subject to the conditional use review standards of MMC 19.905 and the approval criteria of MMC 19.401.6.*

- (2) MMC Subsection 19.401.6 Criteria

MMC 19.401.6 establishes the criteria for approving conditional uses in the Willamette Greenway zone.

- (a) Whether the land to be developed has been committed to an urban use, as defined under the State Willamette River Greenway Plan

The State Willamette River Greenway Plan defines “lands committed to urban use” in part as “those lands upon which the economic, developmental and locational factors have, when considered together, made the use of the property for other than urban purposes inappropriate.”

*An urban use is described in the Willamette River Greenway Plan as a use that is part of the built environment, as opposed to uses along a river that are natural, rural, or agricultural in nature. The project area is part of Milwaukie’s downtown zone, and the proposed park improvements are on land established as a park - Milwaukie Bay Park. The park use is an urban use in the downtown area along the Willamette River that is committed to urban use.*

- (b) Compatibility with the scenic, natural, historic, economic, and recreational character of the river

*The proposed improvements will enhance features at Milwaukie Bay Park and will be compatible with the scenic, natural, historic, economic, and recreational character of the river. Proposed site improvements will provide park users with amenities to use while enjoying the scenery and natural resources of the site. Additionally, the proposed additions will enhance connections between the river*

*and downtown Milwaukie. The site improvements will enhance recreational opportunities at the site.*

- (c) Protection of views both toward and away from the river

*The proposed work at the project site will protect views toward and away from the river. The proposed project involves construction of one building (restroom under 11 feet in height) in addition to other features which will have minimal impacts on views. Additionally, other site features, including landscape plantings and walkways, have been designed to accentuate and frame views from the site, in consideration of vegetation maturing over time.*

- (d) Landscaping, aesthetic enhancement, open space, and vegetation between the activity and the river, to the maximum extent practicable

*The proposed project includes extensive landscaping and planting to promote tree canopy coverage and vegetation diversity at the site while preserving recreational function and framing views of the river. Proposed development has been sited away from the river to the extent practicable, accommodating the programmed park amenities while balancing natural resource protections along the river with public concerns about active uses (e.g., playground) adjacent to McLoughlin Blvd. The project avoids disturbance to the existing vegetated buffer of trees, shrubs, and groundcover along the river below the existing riverside paths.*

- (e) Public access to and along the river, to the greatest possible degree, by appropriate legal means

*The proposed project includes a series of walkways that will extend throughout the park, providing users with access to the proposed site features and integrating with existing site development, including existing access to the river from the riverside path. The project includes connections between the existing riverside paths and the Trolley Trail. The project also proposes realigning, widening, and paving (with permeable pavement) a portion of the Trolley Trail extending through Milwaukie Bay Park, providing access from communities north and south along the six-mile trail and beyond. All proposed walkways will meet relevant design and accessibility requirements.*

- (f) Emphasis on water-oriented and recreational uses

*The project contains numerous proposed improvements to enhance recreational uses. These include a playground, interactive water feature (splash pad), fire pit, bicycle parking, walking and biking paths, picnic areas, open space, and a restroom. Additionally, the project is designed to frame and accentuate views of the river, and it retains existing access to the Willamette River from the riverside trail via the stone steps constructed as part of a 2018 project. No limitations to or modifications of the boat ramp constructed in 2015 are included in this project, protecting a popular access point that creates a strong water/recreation orientation on site today.*

- (g) Maintain or increase views between the Willamette River and downtown

*Existing views between the Willamette River and downtown will be maintained with this project. The aboveground features, including the restroom structure which is the only building proposed and is under 11 feet tall, will result in negligible impacts to views between the Willamette River and downtown. Proposed landscaping at the site has been designed to accentuate and frame views, highlighting the natural features of the Willamette River and its surrounding areas. The proposed landscaping, which includes tree plantings, has been planned thoughtfully to frame views as vegetation matures.*

- (h) Protection of the natural environment according to regulations in Section 19.402

*As identified in Finding 8-b, as conditioned, the application meets the applicable approval criteria for development and disturbance in mapped natural resource areas.*

- (i) Advice and recommendations of the Design and Landmarks Committee, as appropriate

*Per MMC 19.907.8, the proposed development does not require Type III downtown design review and does not trigger review by the Design and Landmarks Committee.*

- (j) Conformance to applicable Comprehensive Plan policies

The Willamette Greenway Element in the Milwaukie Comprehensive Plan includes policies related to land use, public access and view protection, and maintenance of private property. These policies include the requirement of a conditional use permit for new development and intensification of existing uses, evaluation of development impacts to visual corridors, and limitations on authorizing the unrestricted public use of private land.

The Natural Hazards Element includes policies that prohibit development in known areas of natural disasters and hazards without appropriate safeguards. The Open Spaces, Scenic Areas, and Natural Resources Element includes policies to conserve open space and protect and enhance natural and scenic resources.

*The proposed development is being reviewed through the Willamette Greenway conditional use process as provided in MMC Subsection 19.401.5. As described in Finding 9 the proposed project is consistent with Milwaukie's Downtown and Riverfront Land Use Framework Plan (last updated 2015). It is also consistent with other goals and policies of the of the Comprehensive Plan, including the overarching goal of the Parks and Recreation (Chapter 9) section and the policies of the Willamette Greenway chapter of the Plan (Chapter 4), including those related*

*to natural resource protections, recreation, public access and view protection, and connections with downtown.*

- (k) The request is consistent with applicable plans and programs of the Division of State Lands

*The proposed activity is not inconsistent with any known plans or programs of the Department of State Lands (DSL). The proposed project does not involve work below the ordinary high water (OHW) level of the Willamette River or within adjacent wetlands subject to Oregon Department of State Lands (DSL) permitting requirements under the Oregon Removal-Fill Law or state-owned aquatic lands leasing/registration programs.*

- (l) A vegetation buffer plan meeting the conditions of Subsections 19.401.8.A through C

*A buffer strip of native vegetation was established along the river as part of earlier phases of development within Milwaukie Bay Park. Prior work has included shoreline grading, bank stabilization, and native plantings/vegetation enhancement below the existing riverside path. The proposed Phase 3 improvements will observe this buffer and will preserve the vegetation within it through impact avoidance. No native vegetation removal within the buffer is proposed with this project.*

*The proposed project does not involve removal of vegetation or alteration of natural site characteristics within the vegetated buffer. The project recognizes the buffer established during previous phases of park development and intentionally avoids impacting that area. The proposed project will not place additional restrictions on ordinary pruning or vegetation maintenance.*

*The Planning Commission finds that, as conditioned, the proposed activity meets all relevant approval criteria provided in MMC 19.401.6.*

*The Planning Commission finds that the proposed activity meets all applicable standards of development activity in the Willamette Greenway zone.*

b. MMC 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.

- (1) 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.

*The project site is adjacent to the Willamette River. The City's NR Administrative Map shows WQR and HCA designations on the majority of site 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 76,197 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 Planning Commission finds that the requirements of MMC 19.402 are applicable to the proposed activity.*

(2) 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 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. The Natural Resource review is associated with other applications being processed concurrently with Type III.*

*The Planning Commission finds that the proposed activity is subject to Type III review.*

(3) 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 states that a construction management plan will be submitted for review at the time of submittal for development permits.*

(4) 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).

*MMC Subsection 19.402.11.D establishes mitigation requirements for disturbance within HCAs. Because the proposed development will not result in the removal of any trees, and the few trees on the site are on the margins, the applicant proposes to calculate*

*required mitigation via Option 2. Mitigation Option 2 calculates required mitigation based on the size of the disturbance area and assigns required trees and shrubs based on this area.*

**Table 1. Summary of impacts and mitigation**

<b>Resource</b>	<b>Total area within project limits</b>	<b>Existing disturbance</b>	<b>Proposed temporary disturbance<sup>1</sup></b>	<b>Proposed permanent disturbance<sup>2</sup></b>	<b>Proposed mitigation</b>	<b>Total Plantings</b>
<b>WQR</b>	33,758 sq ft	7,066 sq ft	25,136 sq ft	6,808 sq ft	10,200 sq ft <sup>3</sup>	165 trees
<b>HCA</b>	44,163 sq ft	2,462 sq ft	34,492 sq ft	9,671 sq ft	14,500 sq ft <sup>4</sup>	511 shrubs

*Using the mitigation planting ratio provided in MMC Subsection 19.402.11.D.2.b as a guide, for the total permanent WQR and HCA disturbance of approximately 16,479 sq ft, the applicant proposes to plant 165 native trees and 511 native shrubs. The mitigation areas total approximately 24,700 sq ft which is 1.5 times the size of the permanently impacted area. Temporary WQR/HCA disturbance areas will be restored to conditions better than the existing condition, and mitigation plantings are proposed in designated areas to compensate for permanent impacts within WQR area and HCA.*

*As proposed, the mitigation plantings will exceed 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. A full planting list was submitted identifying the proposed mix of species.*

*As detailed in the natural resources report and summarized in Table 1 above, the proposal meets or exceeds the requirements of MMC 19.402.11 – 12 resulting in a project that restores the mapped resource area and/or mitigates temporary and permanent disturbances while meeting the identified goals for a regional park along the Willamette River.*

<sup>1</sup> Due to construction; proposed to be revegetated following construction completion to better than existing condition

<sup>2</sup> Due to structures and/or pavement

<sup>3</sup> Planting area is 1.5 times the size of the permanently impacted area; see Sheet L6.00B for details; native plantings, plant/seed all bare areas to 100% coverage, inventory and remove all debris and noxious materials

<sup>4</sup> Planting area 1.5 times the size of the permanently impacted area; see Sheets L6.01 – L6.04 for detailed planting schedule



*As conditioned, the Planning Commission finds that the applicable development standards of MMC 19.402.11 are met.*

(5) 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.

(a) 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:

(i) Identification of ecological functions

*Vegetated Corridors to Separate Protected Water Feature from Development*

*The vegetated corridor along the Willamette River and Johnson Creek on the western portion of the site separates those water bodies from the existing park development, and from SE McLoughlin Blvd. and downtown Milwaukie to the east. The functional vegetated corridor, which contains native trees, shrubs, and groundcover and provides some wildlife habitat and water quality benefit, is limited to the portions of the site below the existing Riverside Path, which meanders through the park in a generally north-south direction above the top of the bank. Vegetation within the WQR/HCA above and east of the Riverside Path consists mainly of lawn.*

*Microclimate and Shade*

*The shoreline in the project area has a narrow band of riparian vegetation (~35' to 50' wide for most of its length) with intermittent large-tree canopy coverage and smaller trees and shrubs throughout. The vegetated corridor in the northern part of the project area – north of the stone access steps that were constructed in 2018 – has larger trees and more substantial canopy coverage than the corridor in the southern part of the site, which has riparian vegetation that was planted more recently as part of previous phases of park development. Larger trees along the Willamette River at the site are primarily black cottonwood, with bigleaf maple at the northern end of the site above Johnson Creek. The trees and native shrubs provide some shading and microclimate temperature regulation in a narrow band along the water. Those functions are lacking in WQR and HCA areas uphill of the Riverside Path.*

*Streamflow Moderation and Water Storage*

*The shoreline vegetation along the Willamette River through the project area provides some bank roughness for attenuating high-flow velocities. Moderate bank slopes for portions of the shoreline accommodate some water storage function during high flows, with water levels maintained below the Riverside Path during ordinary high-water flows. Much of the site within and outside of WQR and HCA is within the 100-year floodplain.*

#### *Water Filtration, Infiltration, and Natural Purification*

*The vegetated shoreline below the Riverside Path provides some opportunity for water filtration, infiltration, and natural purification for overland runoff from uphill portions of the park, which currently consist primarily of lawn and pedestrian paths. A stormwater treatment basin collects and treats runoff from the adjacent vehicle parking lot in the southern portion of the project area, discharging flows to the Willamette River within the vegetated corridor.*

#### *Large Wood Recruitment and Retention and Natural Channel Dynamics*

*The larger trees along the shoreline in the project area are a potential large wood source, and the project reach of shoreline has moderate potential for large wood recruitment from upstream sources. The shoreline along the park has received bank stabilization treatments during previous phases of park development that have included boulders, log crib walls, and plantings intended to discourage bank erosion, channel migration, and impacts to park development.*

#### *Organic Material Sources*

*The trees, shrubs, and herbaceous vegetation in the narrow riparian band along the river and creek below the Riverside Path provide a source of organic material to those streams.*

### (ii) Inventory of vegetation

*The applicant's submittal materials include a technical report prepared by ESA, 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, as well as an inventory of existing vegetation. The natural resource documentation concludes that there are two main vegetation community types at the site that can generally be described as: (1) a riparian plant community that extends from the water up the bank to the existing Riverside Path and the Klein Point Overlook path, and (2) maintained park lawn on the uphill side of the paths.*

*The riparian plan community is described as being Class B – Marginal. Species composition and tree canopy coverage varies by location through the riparian zone, but the overall WQR condition in the riparian zone below the existing park riverside paths is most appropriately classified as Class B (Marginal), based on the combination of trees, shrubs, and groundcover having at least 80% coverage throughout the zone, with 25-50% canopy coverage. While high canopy (large tree) coverage is less than 25% on parts of the shoreline, particularly in the southern portion where recent park development and shoreline bank stabilization/planting work has occurred, small (low canopy) native trees are present and will grow over time.*

*The park lawn area is described as being Class C – Poor. The dominant plant community within the portion of the WQR on the uphill side of the riverside paths is maintained lawn with no trees or shrubs. The groundcover plant species in this community are dominated by lawn grass (*Poa sp.*), with species including narrow-leaf plantain (*Plantago lanceolata*), common daisy (*Bellis perennis*), common dandelion (*Tanacetum vulgare*), clover (*Trifolium repens*), and Hairy cat's ear (*Hypochaeris radicata*) also present.*

(iii) Assessment of water quality impacts

*The proposed project is unlikely to cause the addition of any parameters to DEQ's 303(d) list for the Willamette River or Johnson Creek.*

*The project's potential for water quality impacts includes the short-term increased potential for erosion and sediment transport during construction as a result of ground disturbance. Erosion and sediment control measures will be implemented during construction to manage those concerns, as required by City regulations and the NPDES Construction Stormwater Permit from DEQ that will be obtained for disturbance in excess of 1 acre. The proposed site revegetation plans will stabilize the site after construction, and long-term issues with erosion and sediment are not expected after construction with the proposed stormwater management.*

*Stormwater runoff from approximately 0.66 of new impervious surfaces introduced by the project will be managed and treated for water quality through a combination of a new vegetated swale, use of an existing on-site stormwater basin (for the parking lot and SW portion of the proposed work area), and use of pervious pavement for the Trolley Trail to infiltrate runoff on-site. The new impervious surfaces are predominantly non-pollution generating impervious surface (e.g., pedestrian paths and non-vehicular park features), and the project does not introduce operational changes that would substantially increase the risk of pollutant discharges to the river or creek (i.e., the site remains a park with no introduction of hazardous material storage or point source discharges). The stormwater management is being*

*designed to meet requirements of the City and the City of Portland's Stormwater Management Manual.*

(iv) Alternatives analysis

*The application states that there are no practicable alternatives to the requested development that will entirely avoid impacts to the WQR or HCA. The proposed park improvements meet a need and City planning direction specific to Milwaukie Bay Park; other sites without WQR or HCA are not an option. Mapped HCA extends well into the site's interior, and impacts could not be avoided even if all project elements were moved even farther away from the river than proposed. WQR boundaries are closer to the river but still extend far enough into the site that the WQR encompasses previously permitted and constructed park elements (paths) that the proposed project elements need to connect and integrate with.*

(i) The development in the WQR and HCA has been limited to the area necessary to allow for the proposed use.

*The proposed project revisits and advances park improvements envisioned in the 2010 Milwaukie Riverfront Park Master Plan and Program (e.g., amphitheater, play area, restroom, water feature) and incorporates comments received on desired park elements through an extensive community engagement process completed in 2018-2019. The proposed design limits WQR/HCA impacts to the extent practicable while still meeting the key community objectives for the park.*

*The available space in the park is constrained by the Willamette River to the west and McLoughlin Blvd. to the east. The proposed design reflects an effort to move as much of the heavily programmed areas (playground, water feature, plaza, and restroom) away from the river and to the highest portion of the site practicable, to limit both WQR/HCA impacts and floodplain impacts. Public comments received during the outreach process also expressed a strong preference to keep elements such as the water feature and playground away from SE McLoughlin Blvd along the site's eastern perimeter as much as possible.*

*The proposed design balances site constraints and public concerns, while retaining the key park elements envisioned in the 2010 master plan and program. Further limiting impacts to WQR and HCA would likely mean eliminating programmed elements from the park.*

(ii) If disturbed, the WQR can be restored to an equal or better condition in accordance with Table 19.402.11.C; and the HCA

can be restored consistent with the mitigation requirements of Subsection 19.402.11.D.2.

*As demonstrated in these Findings, the WQR and HCA disturbances will be mitigated based on the WQR requirements in Table 19.402.11.C and HCA standards in 19.402.11.D.2.*

- (v) 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

*As identified above, the Planning Commission 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.*

- (vi) Mitigation plan

*The applicant's submittal materials include a mitigation plan for permanent and temporary impacts to the WQR and HCA.*

*The project will involve temporary construction activity and permanent project elements within WQR areas and HCA. Approximately 25,136 square feet (0.58 acre) of WQR and 34,492 square feet (0.79 acre) of HCA will be temporarily disturbed and revegetated as part of the construction. Approximately 6,808 square feet of WQR (0.16 acre) and 9,671 square feet (0.22 acre) of HCA will be permanently disturbed by park structures or pavements, for a total combined WQR/HCA impact of about 16,479 square feet (0.38 acre).*

- (i) An explanation of measures that will be taken to avoid, minimize, and/or mitigate adverse impacts to the designated natural resource; in accordance with, but not limited to, Table 19.402.11.C for WQRs and Subsection 19.402.11.D.2 for HCAs.

*As described in the natural resources report, the functional vegetated riparian corridor in Milwaukie Bay Park is located below the existing riverside paths, with areas above the paths consisting of maintained park landscaping (primarily open lawn), with sidewalk and parking lot in the WQR in the southern portion of the project area. The project design avoids and minimizes impacts to ecological functions by not introducing new development to the functional vegetated corridor below the existing paths. All project elements will be at or above the level of the existing paths along the river and to the Klein Point Overlook.*

*The project as designed requires no in-water work or removal of trees or shrubs in the functional riparian corridor below the existing paths. Tree protection measures will be installed prior to ground disturbing activities to ensure trees are not inadvertently impacted. Erosion and sediment control measures will be implemented to minimize temporary impacts to the Willamette River and Johnson Creek during construction.*

*Temporary WQR/HCA disturbance areas will be restored to conditions better than the existing condition, and mitigation plantings are proposed in designated areas to compensate for permanent impacts within WQR area and HCA, as shown on the submitted plans.*

*The plant schedules included in the plan set identify mitigation trees and shrubs needed to meet the HCA mitigation standards of 19.402.11.D.2 (Mitigation Option 2), which requires planting native trees and shrubs at a rate of 5 trees and 25 shrubs per 500 sq. ft. of HCA disturbance area, which for this project requires 97 trees and 484 shrubs for the 9,671 sq. ft. of permanent HCA impact. The proposed HCA mitigation plantings will cover an area of approximately 14,500 sq. ft., or approximately 1.5 times the HCA permanent impact area and will meet HCA mitigation planting standards for size, spacing, and diversity as outlined in 19.402.11.B.*

*A separate WQR mitigation area is shown on Sheet L6.00B to address the permanent impacts to 6,808 sq. ft. of WQR impact. WQR mitigation is intended to address the requirements of Table 19.402.11.C, which for Class C (Poor) condition WQR requires mitigation to:*

- Restore and mitigate disturbed areas with native species from the Milwaukie Native Plant List, using a City-approved plan developed to represent the vegetative composition that would naturally occur on the site.*
- Plant and/or seed all bare areas to provide 100% surface coverage.*
- Inventory and remove debris and noxious materials.*

*The proposed WQR mitigation plantings include a mix of native and ornamental trees and shrubs, with total proposed WQR tree numbers meeting the 5 trees/500 sq. ft. of disturbance area threshold for HCAs. At approximately 10,200 square feet, the proposed WQR mitigation zone is approximately 1.5 times the permanent WQR impact area. All bare areas within the mitigation zone will be planted or seeded to*

*provide 100% surface coverage, and debris and noxious materials will be inventoried and removed prior to planting.*

*The proposed HCA and WQR mitigation will occur on-site and in areas within or contiguous with existing HCA and WQR areas.*

*Overall, the proposed project will remove no riparian trees and shrubs and will plant at least 165 trees of predominantly native species and at least 511 native shrubs, providing an ecological lift to the site in terms of vegetation diversity, habitat structure, and water quality functions.*

*Revegetation of disturbed areas will be done as early as practicable in the construction schedule to stabilize soils and initiate plant establishment. Construction is estimated to occur from approximately March 2023 to February 2024, which would allow woody vegetation to be installed towards the end of the construction period, with no delay needed to avoid installation during dry summer conditions.*

*The areas of natural trees, shrubs, and groundcover within WQR and HCA on the site are located on the downhill side of the existing riverside paths. That existing functional vegetated corridor will be maintained by this project, as the proposed improvements are located along and above the existing riverside paths and will not involve removal of the existing natural riparian vegetation.*

*Construction of the project is planned for approximately March 2023 to February 2024. Removal of any existing artificial debris, noxious materials, and invasive species will occur in the planting areas prior to planting. Mitigation plantings will be installed during the construction period, likely during the latter part of the schedule and within the MMC-recommended planting windows of December 1 to April 15 for bare root trees and October 15 to April 30 for potted plants. Monitoring and maintenance of the mitigation plantings will be performed for a minimum of two years to ensure a minimum 80% survival rate. An annual report on the survival rate of the mitigation plantings will be prepared and submitted to the City for two years after plant installation.*

*The Planning Commission finds that the applicant's mitigation plan is sufficient for purposes of reviewing the proposed activity against the approval criteria provided in MMC 19.402.12. As conditioned, this standard is met.*

(b) 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.*

- (i) 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.

*As described in these Findings and in the natural resources report, the project avoids development into the WQR and HCA to the extent practicable and avoids new development within the functional vegetated corridor entirely (i.e., that area of trees, shrubs, and herbaceous species along the river below the existing riverside paths).*

*An alternatives analysis was performed during the planning and preliminary design phases of this project, with three alternatives shared with the public during 2018-2019 outreach efforts. The alternatives analysis explored different layouts and amenity highlights while all attempting to capture the common key programmed elements for the park. The alternative selected to advance into final design (Alternative 1 – “Flow”) had equal or lesser WQR/HCA impacts than the other two alternatives (Alternative 2- “Fluvial” and Alternative 3 – “Vista”). Additionally, WQR/HCA impacts were further avoided as the Alternative 1 design was advanced from the preliminary stage to the design proposed in the land use application, by shifting the playground location farther away from the river and removing from the design a river overlook that would have extended into the vegetated corridor on the west side of the existing Riverside Path.*

- (ii) 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.

*The proposed park improvements are consistent with the “Parks and open space” uses permitted outright in the Open Space zone under MMC 19.304.2. The proposed project minimizes habitat loss and detrimental impacts to ecological functions and habitat loss by siting all new development outside of the functional vegetated corridor on the river and creek banks below the existing riverside paths, and mitigating for impacts to WQR/HCA areas consisting mostly of park landscaping (lawn) through planting of trees, shrubs, and groundcover within and adjacent to existing WQR/HCA.*

*The project will incorporate the impact minimization measures of MMC 19.402.11.A for work in WQR areas and HCA as follows:*

- *Work areas will be marked to reduce potential damage to the WQR and/or HCA.*



- *Trees in WQRs or HCAs will not be used as anchors for stabilizing construction equipment.*
- *Native soils disturbed during development shall be conserved on the property.*
- *An erosion and sediment control plan will be prepared in compliance with requirements set forth in the City's Public Works Standards.*
- *Site preparation and construction practices will be followed that prevent drainage of hazardous materials or erosion, pollution, or sedimentation to any WQR adjacent to the project area.*
- *Stormwater from new impervious surfaces associated with the project will be managed to meet City stormwater management requirements, including treatment of the pollution reduction design storm. The site is adjacent and discharges to the Willamette River, which is exempt from flows control requirements.*
- *Prior to construction, the WQR and/or HCA that is to remain undeveloped will be flagged, fenced, or otherwise marked and will remain undisturbed. Such markings will be maintained until construction is complete.*
- *The construction phase of the development will be done in such a manner as to safeguard the resource portions of the site that have not been approved for development.*
- *As described in the response to 19.402.12.A.6.c.2, the proposed lighting plan has been developed to minimize impact to habitat functions, using existing bollard lighting for the Riverside Pathway and existing/relocated/new lights for the Trolley Trail to meet safety requirements, while leaving internal pathways unlit to avoid redundant lighting and unnecessary lighting impacts to WQR/HCA.*
- *All work on the property will conform to a construction management plan prepared according to Subsection 19.402.9. A construction management plan will be submitted to the city.*

*The project site discharges directly to the Willamette River, and the proposed site improvements will not substantially change river hydrology. The project minimizes impacts from new impervious surface by incorporating permeable pavement into the Trolley Trail improvements to infiltrate stormwater in place where infiltration rates are suitable, and will ensure proposed new and existing stormwater treatment systems are adequately sized for treatment and conveyance in accordance with City and Portland Stormwater*

*Management Manual requirements. Flows control requirements do not apply to sites that discharge directly to the Willamette River.*

*The project involves no elements below the OHW level of the Willamette River and will not affect fish passage. The project minimizes impacts on wildlife corridors along the river by keeping the proposed project elements above and outside of the existing vegetation (trees, shrubs, and groundcover) along the river below the existing Riverside Pathway.*

*The project includes plantings of native species within and outside of resources areas to increase overall tree canopy coverage at the site. An existing large coastal redwood on the site will be preserved, as will the street trees along McLoughlin Blvd.*

- (iii) 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 these Findings, the applicant's submittal includes a mitigation plan for the WQR and HCA disturbance that will accompany the proposed development. The project would permanently impact a total combined HCA/WQR area of approximately 0.38 acres consisting mostly of lawn. To compensate for permanent impacts to ecological functions (and the potential for future ecological functions by replacing lawn with pavement/structures), the project includes approximately 0.57 acre of designated mitigation area that would be planted with native trees, shrubs, and groundcover, increasing the vegetation diversity, habitat structure, and tree canopy coverage for the site. Impacts on water quality and hydrologic functions from new impervious surfaces would be mitigated through the proposed stormwater management approach, which will infiltrate where feasible, treat the water quality design storm, and include adequately sized conveyance to direct discharges to the Willamette River in accordance with City stormwater management requirements.*

*The planting plan includes native tree, shrub, and groundcover species as shown on the submitted plans. Native trees proposed for mitigating HCA impacts per the 5 trees/500 sq. ft. disturbance area criterion include cascara buckthorn (*Rhamnus purshiana*), red alder (*Alnus rubra*), and Pacific dogwood (*Cornus nuttallii*). Native shrubs proposed for HCA mitigation for meeting the 25 shrubs/500 sq. ft. disturbance area criterion include Oregon grape (*Mahonia aquifolium*), kinnikinnick (*Arctostaphylos uva-ursi*), and*

*snowberry (Symphocarpos albus). Additional native plant species, along with some ornamental trees and grasses suitable for the park setting, are also included in the planting plan.*

*Monitoring and maintenance of the mitigation plantings will be performed for a minimum of two years to ensure a minimum 80% survival rate. An annual report on the survival rate of the mitigation plantings will be prepared and submitted to the City for two years after plant installation.*

*The Planning Commission finds that, as conditioned, the proposed development meets the approval criteria for discretionary review as established in MMC 19.402.12.B.*

*As conditioned, the Planning Commission finds that the proposed development meets the applicable discretionary review standards of MMC 19.402.12.*

9. MMC 19.500 Supplementary Development Regulations

a. MMC 19.504 Site Design Standards

(1) MMC 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.

*All walkways proposed with this project will be constructed using a hard surface material and will range from 6 to 10 feet in width. Walkways along the southern portion of the project site, adjacent to the parking areas and internal driveways, will be separated from the parking and driving areas using both 6-inch raised and flush curbs. Permeable pavement is proposed for the Trolley Trail improvements proposed with this project. Permeable pavement is not proposed for other walkways and a variance has been requested from this standard as discussed in Finding 14.*

*Walkways that comprise the Riverside Pathway (along the western boundary of the project site) will be lit to calculated average of 0.5 footcandles with a maximum of 5.2 footcandles immediately surrounding the light sources. Lighting along the Riverside Pathway will be provided by existing bollard lights.*

*Walkways along the Trolley Trail (near the eastern boundary of the project site) will be lit to a calculated average of 1.0 footcandles with a maximum of 5.3 footcandles immediately surrounding the light sources. Lighting along the Trolley Trail will be provided by existing light posts, two relocated light posts, and two new light posts. The relocated and new light posts were included in project designs to better distribute lighting along the trail.*

*Internal pathways between the Riverside Pathway and the Trolley Trail will not be illuminated. The internal pathways have been designed to provide access from the Riverside Pathway, Trolley Trail, and public sidewalks adjacent to Milwaukie Bay Park*

*to the various improvements and amenities proposed in the project design. These internal pathways are intended to complement design elements and are not intended to serve as the primary pedestrian thoroughfares through the park. The internal pathways serve as redundant access routes that ultimately provide access to the same locations as the illuminated walkways on the Riverside Pathway and Trolley Trail.*

*As discussed in Finding 14, the Planning Commission finds that the requested variance from the requirement for permeable on-site walkways is approved; however, the multi-use pathway must be constructed with pervious pavement.*

*As conditioned, the Planning Commission finds this standard has been met.*

b. MMC Section 19.508 Downtown Site and Building Design Standards

MMC 19.508 establishes design standards for downtown development, to encourage building design and construction with durable, high-quality materials. The design standards are applicable to all new development. MMC Subsection 19.508.4 establishes standards for seven different elements of design.

*The proposed development includes a new two-stall restroom that would be 275 sq ft in area and 11 ft tall. Based on this, the only applicable standards for the restroom are addressed below.*

(1) 19.508.4.C Weather Protection

Weather Protection Required

(a) All buildings shall provide weather protection for pedestrians as follows:

(i) Minimum Weather Protection Coverage

(i) All ground-floor building entries shall be protected from the weather by canopies or recessed behind the front building façade at least 3 ft.

(ii) Permanent awnings, canopies, recesses, or similar weather protection shall be provided along at least 50% of the ground-floor elevation(s) of a building where the building abuts a sidewalk, civic space, or pedestrian accessway. Weather protection used to meet the above standard shall extend at least 4 ft, and no more than 6 ft, over the pedestrian area, and a maximum of 4 ft into the public right-of-way. Balconies meeting these dimensional requirements can be counted toward this requirement.

*The restroom structure roof will include a canopy that extends 4 feet out from the building over the restroom entry. The roof canopy will cover 100% of the ground-floor elevation areas that abut the pedestrian accessway adjacent to the restroom structure. The roof canopy used to provide weather protection will extend 4 feet*

*over the pedestrian area at the front of the building. The building and canopy do not extend into the public right-of-way.*

*This standard is met.*

(2) 19.508.4.D Exterior Building Materials

Exterior Wall Standards

- (a) The following standards are applicable to the street-facing façades of all new buildings. For the purposes of this standard, street-facing façades are those abutting streets, courtyards, and/or public squares in all of the downtown. Table 19.508.4.D specifies the primary, secondary, and prohibited material types referenced in this standard.

- (i) Buildings shall utilize primary materials for at least 65% of each applicable building façade.

*The restroom structure exterior walls are proposed to be built of cast-in-place board-formed concrete and cedar slats. Finished metal panels will be located along the roofline of the entire building perimeter to accommodate ventilation. According to Table 19.508.4.D, all proposed materials are approved for building façades. Finished wood (cedar slats) is approved as a primary material and concrete and finished metal are secondary materials. The finished wood cedar slats will comprise 65% of the street facing façade. This standard is met.*

- (ii) Secondary materials are permitted on no greater than 35% of each applicable building façade.

*Cast-in-place board-formed concrete and finished metal (secondary materials) will comprise 35% of the street facing façade. This standard is met.*

- (iii) Accent materials are permitted on no greater than 10% of each applicable building façade as trims or accents (e.g. flashing, projecting features, ornamentation, etc.).

*No accent materials are proposed as part of the building facade. This standard is met.*

- (iv) Buildings shall not use prohibited materials on any exterior wall, whether or not it is a street-facing façade.

*No prohibited materials will be used on any exterior wall of the restroom building. This standard is met.*

(3) 19.508.4.E Windows and Doors

(a) Main Street

For block faces along Main St, 50% of the ground-floor street wall area must consist of openings; i.e., windows or glazed doors. The ground-floor street wall area is defined as the area up to the finished ceiling height of the space fronting the street or 15 ft above finished grade, whichever is less.

*The restroom building is not situated along Main Street. This standard does not apply.*

(b) Other Streets

For all other block faces, the exterior wall(s) of the building facing the street/sidewalk must meet the following standards:

(i) 40% of the ground-floor street wall area must consist of openings; i.e., windows or glazed doors.

(ii) Along McLoughlin Blvd the required coverage is 30%.

*The restroom structure faces McLoughlin Blvd, and as such, this standard would require 30% of the building facing the street to be windows. However, as the proposed structure is a restroom – and not a building such as a retail space where a visual connection between exterior and interior spaces is desired - no ground floor windows are proposed. Further, the building is set back from McLoughlin Blvd approximately 50 ft.*

*To address the purpose of the window standard as it would apply to a restroom in a park, which is to allow for daylighting of interior space, two skylights are included in the design to provide natural light while maintaining privacy for users of the restroom building. Downtown Design Guidelines regarding windows are related specifically to retail business and residences and do not apply to the proposed restroom building.*

(4) 19.508.4.F Roofs and Rooftop Equipment

Purposed: To create a visually interesting condition at the top of the building that enhances the quality and character of the building.

*The proposed roof form of the restroom building is a shed roof. There are no existing buildings in the immediate vicinity of the proposed restroom. The proposed restroom building will have no equipment or other structures on the roof. This standard is met.*

*The Planning Commission finds this standard has been met.*

## 10. 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.

### a. MMC Section 19.602 Applicability

MMC 19.602 establishes the applicability of the provisions of MMC 19.600, and MMC Subsection 19.602.3 establishes thresholds for full compliance with the standards of MMC 19.600. Development of a vacant site is required to provide off-street parking and loading areas that conform fully to the requirements of MMC 19.600.

*Parks are subject to the off-street parking requirements of MMC 19.600. However, off-street vehicle parking for Milwaukie Bay Park, which is located on the southern portion of the park, was developed as part of an earlier phase of park improvements. No additional vehicle parking is required or proposed as part of the Phase 3 park improvements.*

*Bicycle parking requirements are listed in MMC 19.609 and addressed below. The Planning Commission finds that the provisions of MMC 19.600 related to bicycle parking are applicable to the proposed development.*

### b. MMC Section 19.609 Bicycle Parking

#### (1) MMC Subsection 19.609.2 establishes required quantity of bicycle parking.

- (a) The quantity of required bicycle parking spaces shall be as described in this subsection. In no case shall less than 2 spaces be provided.
  - (i) Unless otherwise specified, the number of bicycle parking spaces shall be at least 10% of the minimum required vehicle parking for the use.
  - (ii) The number of bicycle parking spaces at transit centers shall be provided at the ratio of at least 1 space per 100 daily boardings.
  - (iii) Multifamily residential development with 4 or more units shall provide 1 space per unit.

*Milwaukie Bay Park contains 38 total off-street vehicle parking spaces in two lots constructed during an earlier phase of work at the park. The north lot includes 17 spaces. The south lot, which is shared with Water Environmental Services (WES), who operates the adjacent Kellogg Water Resource Recovery Facility, includes 21 spaces. With 38 total vehicle parking spaces, the minimum number of required bicycle parking spaces for the park is four.*

*During the April 28, 2022, pre-application meeting and in the Pre-Application Summary Report (Appendix A), the City encouraged the NCPRD team to provide ample bike parking in the park as part of this project, to help accommodate large events at the park and in recognition of*

*the City's efforts to promote alternative modes of transportation throughout the City. The proposed design includes 18 bike parking spaces with 6 spaces located on the south side of the amphitheater and 12 spaces located in the plaza near Monroe Street.*

*This standard is met.*

- (b) Covered or enclosed bicycle parking. A minimum of 50% of the bicycle spaces shall be covered and/or enclosed (in lockers or a secure room) in any of the following situations
  - (i) When 10% or more of vehicle parking is covered.
  - (ii) If more than 10 bicycle parking spaces are required.
  - (iii) Multifamily residential development with 4 or more units.

*None of the vehicle parking spaces are covered, and the site does not contain any multifamily residential developments. Although the project proposes more than 10 bicycle parking spaces, the code only requires four spaces for the site. Therefore, this standard does not apply.*

(2) 19.609.3 Space Standards and Racks

- (a) The dimension of each bicycle parking space shall be a minimum of 2 x 6 ft. A 5-ft-wide access aisle must be provided. If spaces are covered, 7 ft of overhead clearance must be provided. Bicycle racks must be securely anchored and designed to allow the frame and 1 wheel to be locked to a rack using a high security, U-shaped, shackle lock.

*The proposed bicycle parking will be designed to meet the dimensions of this standard. Covered spaces are not proposed. As conditioned, this standard is met.*

- (b) Lighting shall conform to the standards of Subsection 19.606.3.F, which state: Lighting is required for parking areas with more than 10 spaces. The Planning Director may require lighting for parking areas of less than 10 spaces if the parking area would not be safe due to the lack of lighting. Lighting shall be designed to enhance safe access for vehicles and pedestrians on the site, and shall meet the following standards:
  - (i) Lighting luminaires shall have a cutoff angle of 90 degrees or greater to ensure that lighting is directed toward the parking surface.
  - (ii) Parking area lighting shall not cause a light trespass of more than 0.5 footcandles measured vertically at the boundaries of the site.
  - (iii) Pedestrian walkways and bicycle parking areas in off-street parking areas shall have a minimum illumination level of 0.5 footcandles, measured horizontally at the ground level.



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

*This standard applies to bicycle parking in off-street vehicle parking areas. The proposed project does not add bicycle parking to vehicle parking areas. Six bicycle parking spaces are proposed on the south side of the amphitheater, and 12 bicycle parking spaces are proposed in the plaza near Monroe Street. The 12 spaces in the Monroe Plaza will have lighting that will meet the 0.5 footcandle standard for pedestrian walkways and bicycle parking areas, as shown on the electrical/lighting plans included in the application. The lighting for that area will not shine directly into WQR or HCA. The relevant parts of this standard will be met.*

(3) 19.609.4 Location

- (a) Bicycle parking facilities shall meet the following requirements:
  - (i) Located within 50 ft of the main building entrance.
  - (ii) Closer to the entrance than the nearest non-ADA designated vehicle parking space.
  - (iii) Designed to provide direct access to a public right-of-way.
  - (iv) Dispersed for multiple entrances.
  - (v) In a location that is visible to building occupants or from the main parking lot.
  - (vi) Designed not to impede pedestrians along sidewalks or public rights-of-way.
  - (vii) Separated from vehicle parking areas by curbing or other similar physical barriers.

*The bicycle parking spaces proposed near the amphitheater and the plaza near Monroe St are intended to accommodate users of the overall park and not provide parking specific to any building; therefore, the standards related to building entrances do not apply. The proposed bicycle parking is situated so that it will not impede pedestrians along sidewalks or in public right-of-way. This standard is met.*

11. MMC Chapter 19.700 Public Facility Improvements

MMC 19.700 is intended to ensure that development, including redevelopment, 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 partitions, subdivisions, new construction, and modification or expansion of an existing structure or a change or intensification in use that result in any projected increase in vehicle trips or any increase in gross floor area on the site.

*The applicant proposes to construct new park improvements which will intensify the current use and have a projected increase in vehicle trips.*

*MMC 19.700 applies.*

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 on April 28<sup>th</sup>, 2022, prior to application submittal. The proposed development does not require a Transportation Facilities Review application.*

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 City Engineer determined that a transportation impact study was not required as the existence of impacts on the transportation system was evident.*

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.

*Transportation impacts of the proposed development are to be mitigated through the required multi-use path on the property.*

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 City shall provide notice to the following agencies:*

- *Oregon Department of Transportation (ODOT)*
- *Metro*
- *Clackamas County*

- *TriMet*

*This standard is met.*

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.

(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.

*Per the City Engineer, no street transportation facilities are required. This standard is met.*

(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).

*Per the City Engineer, no street transportation facilities are required. This standard is met.*

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

MMC 19.708.5 provides standards for pedestrian and bicycle paths and requires such connection be built in addition to public streets in residential districts every 300ft when a street connection is not feasible, in residential districts where a path would reduce walking distance by at least 400 ft to a transit stop, school, shopping center, or park, or where a path would provide a midblock connection between blocks that exceed 800 ft or would link the end of a turnaround with a nearby street or activity center.

*The proposed development will construct a public multi-use path. Paths shall be located to provide a reasonably direct connection between likely pedestrian and bicyclist destinations. A path shall have a minimum improved surface width of 10 feet.*

*A condition has been established to require the multi-use path to be constructed using pervious material.*

*As conditioned, this standard is met.*

(4) MMC Subsection 19.708.6 Transit Requirements and Standards

MMC 19.708.6 provides standards for transit facilities.

*Transit facility improvements are not required for the proposed development.*

*As conditioned, the Planning Commission finds that the proposed development will meet the applicable public facility improvement standards of MMC 19.700.*

12. MMC Section 19.905 Conditional Uses

MMC 19.905 establishes regulations for conditional uses, including standards for establishing uses identified as conditional uses in any overlay zones. As noted in Finding 8-a and as provided in MMC Subsection 19.401.5.A, activities within the Willamette Greenway zone that trigger Willamette Greenway review are subject to the provisions of Section 19.905 as conditional uses.

a. MMC Subsection 19.905.3 Review Process

MMC 19.905.3 establishes the process by which a new conditional use must be reviewed.

As noted in Finding 8-a, the proposed activity is development as defined for the Willamette Greenway zone and so requires review as a conditional use.

*MMC 19.905.3.A requires that establishment of a new conditional use be evaluated through the Type III review process per MMC Section 19.1006.*

b. MMC Subsection 19.905.4 Approval Criteria

MMC 19.905.4.A establishes the approval criteria for a new conditional use or a major modification to an existing conditional use.

- (1) The characteristics of the lot are suitable for the proposed use considering size, shape, location, topography, existing improvements, and natural features.

*The existing property is the location of Milwaukie Bay Park and its size and shape are suitable to accommodate the additional features proposed through this work. The location of the park is central to Downtown Milwaukie, accessible throughout the region, and serves as a convenient location for community gatherings. The topography of the site contains grades that are accessible for individuals and the proposed project work, but which will be improved greatly in the proposed design for more extensive ADA-compliant access. Work was recently completed on the southern portion of the site to add a boat launch and parking area; the improvements proposed through this work were designed to seamlessly integrate into existing improvements at the site. The site is situated along the Willamette River and between Johnson Creek to the north and Kellogg Creek to the south. Improvements proposed through this work have been designed to accentuate the natural features of the site and make them more accessible to the community.*

*The Planning Commission finds that this standard is met.*

- (2) The operating and physical characteristics of the proposed use will be reasonably compatible with, and have minimal impact on, nearby uses.

*The proposed improvements are designed to be compatible with existing features and uses of the site, expanding upon improvements completed at Milwaukie Bay Park during*

*earlier phases of work. The site will continue to operate as a park for recreational uses, and the proposed improvements will enhance and intensify some uses with the addition of an event area with stage, nature play area, interactive water feature, and picnic area. Park uses with the proposed improvements in place are expected to have minimal impact on nearby uses. The proposed improvements incorporate design elements intended to minimize impacts on the more sensitive nearby residential uses to the north and river recreational/natural uses to the west, by orientating the event area stage away from those areas and towards McLoughlin Blvd. to the east, to minimize the potential for noise impacts.*

*The Planning Commission finds that this standard is met.*

- (3) All identified impacts will be mitigated to the extent practicable.

*Beyond the design considerations built into the proposal to avoid impacts to nearby uses, City Temporary Event and/or NCPRD Special Use Permits will be required for activities beyond everyday uses in the park (e.g., concerts with amplified sound, large gatherings), requiring City and NCPRD review and approval. Such permits will include conditions with considerations for mitigating potential impacts on nearby uses from noise, traffic, parking, etc.*

*The Planning Commission finds that this standard is met.*

- (4) The proposed use will not have unmitigated nuisance impacts, such as from noise, odor, and/or vibrations, greater than usually generated by uses allowed outright at the proposed location.

*The potential for nuisance impacts from the proposed use will be in line with those expected from parks uses permitted in the Open Space zone. The project maintains the existing uses of the site as a park for recreational purposes and introduces new features to facilitate additional activities, including a stage for music, movies, and plays. Trash receptacles will be provided, and the park will continue to be managed and maintained to avoid nuisance impacts from litter. No impacts from odors are expected, and any amplified sound (and related vibration) from special events such as concerts will be subject to permit approval (with decibel level and time restrictions) through an application process in which the City and NCPRD provide review and input.*

*The Planning Commission finds that this standard is met.*

- (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.

*The subject property is in the Downtown Open Space zone, Willamette Greenway zone, 100-yr floodplain, and contains mapped WQR and HCA. The proposed project will comply with all applicable requirements of the base zone and any overlay zones on the proposed project site, as documented throughout these Findings.*

*The Planning Commission finds that this standard is met.*

- (6) The proposed use is consistent with applicable Comprehensive Plan policies related to the proposed use.

*The proposed project and continued uses of Milwaukie Bay Park are consistent with Milwaukie’s Downtown and Riverfront Land Use Framework Plan (last updated 2015), which is an ancillary document to the Comprehensive Plan (updated 2020). As stated in the Comprehensive Plan (page 76), “A fundamental concept of the Framework Plan is creating stronger connections between downtown Milwaukie to the riverfront and enhancements to Milwaukie Bay Park.”*

*The proposed project is consistent with goals and policies of the of the Comprehensive Plan, including the overarching goal of the Parks and Recreation (Chapter 9) section, which is to*

*“Enhance natural areas and provide for the recreational needs of present and future city residents of all ages and abilities with an emphasis on underserved communities.”*

*The proposed project also specifically helps implement goals and policies of the Willamette Greenway chapter of the Plan (Chapter 4), including the following:*

#### GOAL 4.2 - GREENWAY DESIGN PLAN

*Allow preparation of a Greenway Design Plan within the Willamette Greenway Boundary.*

*POLICY 4.2.1 Utilize the adopted park master plans for Kronberg Park and Spring Park, the downtown design review approval for Milwaukie Bay Park, and the management plan for Peter Kerr Park at Elk Rock Island as the Greenway Design Plan for each of the parks. Adopt future park master plans or amendments to plans through the community service use process.*

#### GOAL 4.4 - NATURAL RESOURCE PROTECTION

*Protect and conserve the natural resources within the Willamette River Greenway while recognizing recreation needs.*

*POLICY 4.4.1 Protect and conserve natural resources in the Willamette Greenway through the City’s two Natural Resource overlay zones: WQR - Water Quality Resource and HCA – Habitat Conservation Area.*

*POLICY 4.4.2 Promote an increase in tree canopy within the Willamette Greenway through tree planting programs and by mitigating for any lost tree canopy that occurs through development, while recognizing the importance of retaining certain public views of the river.*

#### GOAL 4.5 - RECREATION

*Enhance the recreational use of lands within the Willamette Greenway boundaries while protecting and conserving natural resources.*

*POLICY 4.5.2 Define the primary intent and purpose of each park within the Willamette River Greenway in the Parks and Recreation Chapter of the Comprehensive Plan. The parks within the Willamette River Greenway will serve a variety of needs for the City including:*

- *Access to the Willamette River for water sports - boating, fishing, swimming, kayaking etc.,*
- *Recreational trails along the river,*
- *River and natural area viewing,*
- *Picnicking, and*
- *Community events*

#### **GOAL 4.6 - PUBLIC ACCESS AND VIEW PROTECTION**

*Provide, improve, and maintain public access and visual access to the lands and water that make up the Willamette River Greenway.*

*POLICY 4.6.1 Inventory existing and encourage new public access and views within the greenway and to the Willamette River, through dedications, easements, acquisitions or other means.*

*POLICY 4.6.2 Undertake efforts to make existing points of public access more accessible and usable through maintenance and signing.*

#### **GOAL 4.7 - DOWNTOWN**

*Maintain Milwaukie Bay Park, Dogwood Park, and Kronberg Park as the key public amenities in the downtown that attract people to the area to enjoy the open space, public trails, riverfront access, and riverfront-related development, consistent with the Downtown and Riverfront Land Use Framework Plan and park master plans.*

*POLICY 4.7.1 Provide safe pedestrian connections between downtown Milwaukie and the Willamette River consistent with the Downtown and Riverfront Land Use Framework Plan.*

*The Planning Commission finds that this standard is met.*

- (7) Adequate public transportation facilities and public utilities will be available to serve the proposed use prior to occupancy pursuant to Chapter 19.700.

*The project site is presently served by public transportation, specifically two TriMet bus stops (#8223 and #8225) located within two blocks of the proposed project location. These stops are served by TriMet routes 29, 32, 33, 34, 70, 75, 99, and 152. The proposed project site has access to public utilities necessary for the proposed project amenities including water, sewer, and electricity.*

*The Planning Commission finds that this standard is met.*

*The Planning Commission finds that the proposed development meets the approval criteria outlined in MMC 19.905.4.A for establishing a conditional use.*

c. MMC Subsection 19.905.5 Conditions of Approval

MMC 19.905.5 establishes the types of conditions that may be imposed on a conditional use to ensure compatibility with nearby uses. Conditions may be related to a number of issues, including access, landscaping, lighting, and preservation of existing trees.

*The Planning Commission finds that with conditions, the proposed development adequately mitigates impacts to floodplain and natural resource areas.*

d. MMC Subsection 19.905.6 Conditional Use Permit

MMC 19.905.6 establishes standards for issuance of a conditional use permit, including upon approval of a major modification of an existing conditional use. The provisions include a requirement to record the conditional use permit with the Clackamas County Recorder's Office and provide a copy to the City prior to commencing operations allowed by the conditional use permit.

*As conditioned, the Planning Commission finds that the proposed development is consistent with the relevant standards established in MMC 19.905 for conditional uses.*

13. MMC Section 19.907 Downtown Design Review

MMC 19.907 establishes the applicability, procedure, and approval criteria for design review of development downtown.

a. MMC Subsection 19.907.2 Applicability

For new development that is an increase in floor area for a nonresidential use of less than 10% and up to a maximum of 2,000 sq ft, Type I review is required.

*The proposed development includes a 275-sq ft restroom building. The proposed development is subject to Type I review.*

b. MMC Subsection 19.907.5 Approval Criteria

MMC 19.907.5 establishes the approval criteria for Type I, II, and III downtown design review. For Type I review, projects must meet the following criteria:

- (1) Compliance with MMC Title 19.
- (2) Compliance with applicable design standards in MMC 19.508.

*For the proposed development, compliance with the applicable standards of MMC Title 19 is discussed throughout these findings. Finding 9 discusses the project's compliance with the applicable design standards of MMC 19.508.*

*As discussed throughout these findings, and particularly in Finding 9, and as conditioned where necessary, the proposed development satisfies the approval criteria for downtown design review.*



*As addressed throughout these findings (particularly in Finding 9, and as conditioned where necessary, the Planning Commission finds that the proposed development meets the approval criteria for Type I downtown design review.*

14. 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. Ineligible variances include requests that result in any of the following: change of a review type, change or omission of a procedural step, change to a definition, increase in density, allowance of a building code violation, allowance of a use that is not allowed in the base zone, or the elimination of restrictions on uses or development that contain the word “prohibited.”

*The applicant has requested a variance to allow for pathways constructed with impervious materials.*

*The requested variances meet the eligibility requirements established in MMC 19.911.2.*

b. MMC Subsection 19.911.3 Review Process

MMC 19.911.3 establishes review processes for different types of variances. Subsection 3-B establishes the Type II review process for limited variations to certain numerical standards. Subsection 3-C establishes the Type III review process for larger or more complex variations to standards that require additional discretion and warrant a public hearing.

*The requested variance is not identified in MMC 19.911.3.B as being eligible for Type II review. Therefore, the requested variance is subject to the Type III review process and the approval criteria established in MMC Subsection 19.911.4.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 the following 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.

*The stormwater management approach and the pervious pavement variance proposed with the application are based on an analysis of existing site conditions and a*

*comparison of infiltration vs. filtration treatment approaches. Details on the basis for the proposed stormwater management approach are provided in the Preliminary Stormwater Management Report prepared in support of this application by Zucker Engineering and Design, dated June 2022.*

*A soils evaluation and infiltration testing documented by Hart Crowser in 2018 and 2022 revealed the site to be blanketed with 1 to 3 feet of fill, with variable but generally low infiltration rates. Four of five shallow infiltration tests (depths of 2 to 3 feet) performed across the site in 2022 indicated infiltration rates of less than 1 inch per hour. A fifth test performed on the upper part of the site near McLoughlin Blvd. showed much higher rates of 13 inches per hour.*

*Pervious asphalt is proposed for the Trolley Trail portion of the project, since it is located in an area where infiltration rates were found to be high and suitable for pervious pavement. Impervious pavement draining to a vegetated surface facility (grassy swale) for filtration is proposed for the other walkways on the site.*

*Pervious pavement was considered for the other walkways on the site, weighing the impacts and benefits of attempting to rely on pervious pavement versus allowing water to shed from the impervious paths to a vegetated swale designed to accommodate it. Both approaches could meet City stormwater management requirements. The proposed approach to use impervious concrete for the majority of the site walkways and provide surface treatment facilities is preferred for several reasons, including the following:*

- *The site has generally poor infiltration rates that are not conducive to infiltration-type stormwater facilities. If adequate infiltration is not achieved and infiltration facilities do not function as designed, there is a potential for untreated runoff to enter the Willamette River. Incorporation of vegetated treatment facilities that rely on filtration rather than infiltration should provide more reliable and consistent stormwater treatment.*
- *Vegetated facilities provide treatment performance similar to permeable pavement in suitable conditions, but vegetated facilities provide additional benefits that permeable pavement does not provide, including:*
  - *Vegetated facilities provide an additional 'green' aesthetic.*
  - *At the Milwaukie Bay Park site, the proposed grassy swale will provide additional function as a barrier to geese.*
  - *The prevailing understanding is that vegetated stormwater facilities improve or maintain infiltration capacity over time because of root growth.*
  - *Microbial communities associated with root systems provide soil microbe diversity and help fix atmospheric carbon and nitrogen, and are known to break down pollutants including hydrocarbons.*

- *Typical concrete is more durable than permeable concrete, particularly as it relates to shear strength. The geotechnical investigation completed for this project suggests a modest settlement potential. Pavement that has cracked, settled, or otherwise degraded can present safety concerns for pedestrians, particularly those with mobility challenges. Under conditions with moderate settlement potential, typical concrete would likely outperform permeable concrete, and settled concrete joints and panels on typical concrete would be easier to repair via grinding.*
- *Permeable concrete requires effective maintenance over time to perform as expected. Permeable concrete at this site would be maintained; however, when particulate matter accumulates in voids over time from natural causes despite ongoing maintenance, there is a greater chance of decreasing performance. At many sites, this is not a concern that exceeds benefits, but at this site where there is low infiltration and sensitive water resources, it is important to have systems that will ensure that clogging and decreased performance over time will be less likely.*

*The Planning Commission finds that the applicant's submittal provides an adequate analysis of the impacts and benefits of the requested variances compared to the baseline requirements. 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.

*The proposed variance avoids impacts to surrounding properties. Stormwater runoff from the proposed impervious concrete walkways would be captured and treated on-site through surface vegetated filtration facilities. The proposed grassy swale is designed to meet stormwater management requirements adopted by the City of Milwaukie in the form of the City of Portland's Stormwater Management Manual, and it is sized with adequate capacity to meet freeboard requirements during the peak 25-year flow event. The proposed use of impervious pavement and vegetated surface filtration facilities would not adversely impact surrounding properties through water quality or water quantity concerns. The project site's location adjacent to the Willamette River exempts it from on-site flow control requirements.*

(b) The proposed variance has desirable public benefits.

*Typical impervious concrete is a durable, stable, all-weather material that provides a safe pedestrian travel surface over the long-term. It is generally less prone to weather-related damage and/or other degradation than pervious pavement, especially at sites where low infiltration rates are a concern. The proposed variance*

*would benefit the public users of the park walkways by providing a more durable walking surface than permeable pavement.*

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

*The proposed use of typical impervious concrete for most site walkways rather than permeable pavement is a direct response to existing soil conditions at the site, which have generally poor infiltration capacity as determined through infiltration testing. The proposed stormwater management approach incorporates a surface vegetated treatment facility that is sensitive to environmental conditions at the site (i.e., a non-structural approach to treatment) and provides creative secondary functions in the form of a vegetated barrier between lawn and path that is intended to deter geese, increase plantings, and increase the aesthetic quality of the site.*

*The Planning Commission finds that the requested variance is reasonable and appropriate and that each meets 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.

*The potential for adverse impacts from not infiltrating stormwater within the walkway footprints will be avoided and fully mitigated by capturing walkway runoff and treating it on-site in compliance with the City's stormwater standards, using a vegetated facility that is sized and designed in accordance with City of Portland Stormwater Management Manual requirements.*

*As proposed, the Planning Commission finds that the requested variance meets the approval criteria established in MMC 19.911.4.B.1 for Type III variances seeking discretionary relief.*

*The Planning Commission finds that the requested variance is allowable as per the applicable standards of MMC 19.911.*

15. The application was referred to the following departments and agencies on July 11, 2022:

- Milwaukie Building Division
- Milwaukie Engineering Department
- Milwaukie Public Works Department
- Clackamas County Fire District #1
- Historic Milwaukie and Island Station Neighborhood District Association  
Chairperson and Land Use Committee
- Oregon Marine Board
- Oregon Department of Fish and Wildlife
- Division of State Lands – Wetlands and Waterways
- Oregon Parks and Recreation Department
- North Clackamas Parks and Recreation District
- Milwaukie Parks and Recreation Board

- ODOT Region 1
- TriMet
- Clackamas County Engineering Review

Notice of the public hearing was mailed to owners and residents of properties within 300 ft of the subject property on August 2, 2022.