



CITY OF MILWAUKIE

December 12, 2022

Land Use File(s): NR-2022-002

NOTICE OF DECISION

This is official notice of action taken by the Milwaukie Planning Manager on December 12, 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.

Applicant(s): Brian Haveman (Tor LLC)
Location(s): 11909 SE Stanley Ave
Tax Lot(s): 1S2E31DA, lots 5400 and 5500
Application Type(s): Natural Resource Review—Boundary Verification
Decision: Approved
Review Criteria: Milwaukie Zoning Ordinance:

- Milwaukie Municipal Code (MMC) Subsection 19.402.15 Boundary Verification and Map Administration (Natural Resources)
- MMC Section 19.1005 Type II Review

Neighborhood(s): Linwood

Appeal period closes: 5:00 p.m., December 27, 2022

Conditions of Approval

None

Other requirements

None

Case File

This notice is issued in accordance with Milwaukie Municipal Code (MMC) Section 19.1005 Type II Review. The complete case file for this application is available for review from the Planning Department, Johnson Creek Facility, 6101 SE Johnson Creek Blvd. Please contact

Brett Kelter, Senior Planner, at 503-786-7657 or kelterb@milwaukieoregon.gov, if you wish to view this case file or visit the project webpage at www.milwaukieoregon.gov/planning/nr-2022-002.

Appeal

This decision may be appealed by 5:00 p.m. on December 27, 2022, which is 15 days from the date of this decision.¹ Any person who is adversely affected or aggrieved by this decision may appeal the decision by filing a written appeal. An appeal of this decision would be heard by the Milwaukie Planning Commission following the procedures of MMC Section 19.1010 Appeals. This decision will become final on the date above if no appeal is filed during the appeal period. Milwaukie Planning staff can provide information regarding forms, fees, and the appeal process at 503-786-7630 or planning@milwaukieoregon.gov.

Expiration

As per MMC Subsection 19.1001.7.E.3, decisions on boundary verifications of designated natural resources are exempt from expiration. As per MMC Subsection 19.402.15.B.1, approved updates to the City's Natural Resources Administrative Map will be made as soon as practicable.

Findings in Support of Approval

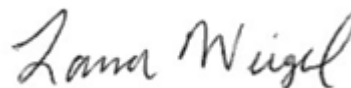
The Findings for this application are included as Exhibit 1.

Manager's Declaration of Impartiality

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

Decision

- ☒ Approved
☐ Approved with Conditions
☐ Denied



Laura Weigel, AICP
Planning Manager

Exhibits

1. Findings in Support of Approval
2. Map showing revised WQR boundary

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

cc: Brian Haveman, Tor LLC, applicant (via email)
Mike Stouder, 5 Parkside Design, Inc., applicant's representative (via email)
Planning Commission (via email)
Joseph Briglio, Community Development Director (via email)
Steve Adams, City Engineer (via email)
Engineering Development Review (via email)
Stephanie Marcinkiewicz, Inspector/Plans Examiner (via email)
Harmony Drake, Permit Technician (via email)
Shawn Olson, Fire Marshal, CFD#1 (via email)
NDA(s): Linwood (via email)
Interested Persons
Land Use File(s): NR-2022-002

EXHIBIT 1
Findings in Support of Approval
File #NR-2022-002
Detailed Boundary Verification of Natural Resources Administrative Map
11909 SE Stanley Ave

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

1. The applicant, Brian Haveman (Tor LLC), has applied to adjust the Water Quality Resource (WQR) and Habitat Conservation Area (HCA) boundaries shown for the subject property on the City's Natural Resource Administrative map (NR map). The subject property is 11909 SE Stanley Ave and is zoned Moderate Density Residential (R-MD). The land use application file number is NR-2022-002.
2. The subject property is comprised of two tax lots on Assessor Map 1S2E31DA. Tax lot 5400 is a standard interior lot with a single detached dwelling; tax lot 5500 is an undeveloped flag lot with its "pole" accessway extending west from Stanley Avenue along the southern boundary of 5400 and its "flag" portion behind (west of) 5400. On the current NR map, much of the subject property is designated as WQR and HCA, stemming largely from a wetland designation that covers the entirety of tax lot 5500 as well as the buffer for a stream channel on the adjacent property that runs along the southern boundary of 5500.

Given the lack of wetland features on the site and the fact that the primary source of water in the stream appears to be two outfalls of the City's piped stormwater system, the applicant has proposed a detailed verification of the WQR and HCA boundaries, subject to the Type II process established in MMC Subsection 19.402.15.A.2.b.

3. The proposal is subject to the following provisions of the Milwaukie Municipal Code (MMC):
 - MMC Subsection 19.402.15 Boundary Verification and Map Administration (Natural Resources)
 - MMC Section 19.1005 Type II Review

The application has been processed and public notice provided in accordance with MMC Section 19.1005 Type II Review, with a decision by the Planning Manager. The application was submitted on October 18, 2022. The application was deemed complete on November 16, 2022; public notice was sent to properties within 300 ft of the subject property on November 17, 2022, as required.

4. MMC Subsection 19.402.15 Boundary Verification and Map Administration

Within MMC Section 19.402, which establishes the City's regulation of natural resources, MMC 19.402.15 provides standards for verifying the boundaries of WQRs and HCAs and for administering the NR map. For WQRs, the NR map is a general indicator of the location of protected water features and their associated vegetated corridors; the specific location must be determined in the field in accordance with MMC Table 19.402.15. For

HCA, the City's NR map is assumed to be accurate with respect to location unless challenged by the applicant.

MMC Subsection 19.402.15.A.1 provides a mechanism for making minor corrections to resolve simple incongruities or acknowledge existing legal development. MMC Subsection 19.402.15.A.2 outlines the process for a more detailed verification. For drainage WQRs (including rivers, streams, springs, and natural lakes), a report from a qualified scientist must demonstrate whether or not the drainage meets the definition of a protected water feature. For wetland WQRs, a wetland delineation report must be provided, with review and approval by the Oregon Department of State Lands (DSL).

For verifying HCA boundaries, the applicant must conduct a comprehensive and site-specific re-evaluation of the factors that were initially considered in designating HCAs across the city. As outlined in MMC Subsection 19.402.15.A.2.b(2), detailed HCA boundary verifications involve a three-step process: (1) verifying the boundaries of inventoried riparian habitat and determining its classification, (2) determining the property's urban development value, and (3) cross-referencing the habitat class with urban development value using MMC Table 19.402.15.A.2.b.(2).(c).

The applicant has proposed a detailed verification of the mapped WQR and HCA on the subject property and has submitted all relevant information required by MMC 19.402.15.A.2, including a technical report prepared by a professional wetland scientist and natural resources specialist through Environmental Technology Consultants. The technical report includes the wetland delineation report submitted to DSL; assessment of existing conditions, with aerial and site photos; and relevant Metro maps showing riparian habitat, wetlands and streams, and vegetative cover.

The technical report confirms that the wetland delineation report has been prepared in accordance with accepted methodology and concludes that no wetlands exist on the site. A letter from DSL confirming that conclusion was received on November 28, 2022 (DSL file WD #2022-0475).

The technical report references an earlier boundary verification conducted for a nearby site approximately 400 ft farther south on the same drainage (primary file #S-2018-001, at Railroad Avenue and 56th Avenue). The 2018 verification concluded that the stream channel drains an area of approximately 64 acres and so constitutes a secondary protected water feature at that location. Although the applicant's report notes that the stream channel is fed by two City stormwater outfalls on the west edge of Stanley Avenue at the subject property location, the report does not assert that the drainage area is less than 50 acres at that point and concurs that the stream channel is a secondary protected water feature.

Finally, the technical report walks through the three steps outlined for detailed HCA verifications. The site does not appear on Metro's Vegetative Cover Map as having a classifiable vegetation type and does not qualify as a riparian area for purposes of using MMC Table 19.402.15.A.2.b.(2).(a).(iv)—it is more accurately classified as an upland area. Metro's Habitat Urban Development Value map shows the entire area as having a "Low" value. Using MMC Table 19.402.15.A.2.b.(2).(c) to cross-reference the two classifications, the result is that, as an upland area, the subject property does not include a designated HCA.

The Planning Manager finds that the applicant's request to adjust the NR map is approvable as proposed: (1) there is no delineated wetland WQR feature on the site; (2) the stream channel adjacent to the subject property is a secondary protected water feature, with a 15-ft vegetated corridor on either side; and (3) there is no HCA resource on the subject property. As per MMC Subsection 19.402.15.B.1, the NR map will be adjusted accordingly.

5. The application was referred on November 17, 2022, to the following departments and agencies:

- Milwaukie Community Development Department
- Milwaukie Building Department
- Milwaukie Engineering Department
- Milwaukie Public Works Department
- City Attorney
- Linwood Neighborhood District Association (NDA), Chairperson and Land Use Committee (LUC)¹
- Clackamas Fire District #1 (CFD#1)
- Metro
- Oregon Department of State Lands (DSL)
- North Clackamas Watersheds Council
- NW Natural

In addition, public notice of the proposal was mailed to properties within 300 ft of the site on November 17, 2022. The following is a summary of the comments received:

- **Jacob and Sandra Reams, owners/residents at 5634 SE Harlow St:** Believe the NR map is not in error, because the stream has flows year-round and is not simply a stormwater swale. The creek provides habitat for wildlife and should remain protected.
- **Dwight Dillon, owner/resident at 11815 SE Stanley Ave:** Believes the natural areas on the site should be protected, with a 20-ft buffer on either side of the creek. The NR map is not in error, at least with respect to the creek.
- **Raina Hassan, owner/resident at 11908 SE 56th Ave:** Reported that the Linwood NDA had not received notice of the proposal and asked that the comment period be extended to allow time for the application to be discussed at the regular Linwood NDA meeting on December 8. Provided a subsequent comment requesting that the City make sidewalk improvements on the west side of Stanley Avenue, install school-zone signage, and provide a marked crosswalk at the shared driveway of Linwood

¹ The referral sent on November 17 was inadvertently sent to the Lewelling NDA instead of Linwood NDA. Staff was made aware of this error on November 29 and forwarded the referral to the Linwood NDA that same day. The comment period was extended to at least December 8 to allow the NDA to discuss the application at their regular meeting.

Elementary School and the Ukrainian Bible Church (11900 SE Stanley Ave) in conjunction with the development proposed on the site.

- **Michael and Linda Palmer, owners/residents at 5620 SE Harlow St:** Expressed concern about safety on Stanley Avenue near the driveway serving Linwood Elementary School, as well as concerns about impacts from future development on the subject property.
- **Elizabeth Start, Chair of Linwood NDA, and Jason Start, Chair of Linwood NDA LUC:** Reported on the NDA's discussion of the project at its December 8 meeting. No issues with the proposed changes to the NR map. Concerns focused on potential impacts from new development on the subject property, including on-street parking on Stanley Avenue, pedestrian safety (e.g., desire for sidewalks and safe crossings), and preservation of tree canopy and mature trees.

With respect to assertions that the current version of the NR map is in fact correct in its depiction of designated natural resources on the subject property, commenters are directed to Finding 4 for the explanation of map-verification methodology and the conclusions of the resulting analysis. Other comments related to the possible redevelopment of the subject property are not relevant to the proposal to verify the accuracy of the NR map, but they have been shared with other City departments for reference as appropriate.

Exhibit 2

