

19.402 WATER QUALITY RESOURCE REGULATIONS

19.402.1 Purpose, General Policies, and Declarations

- A. Many of the City's original wetland and riparian resources have been adversely affected by historical development. These regulations seek to minimize additional adverse impacts and restore and improve resources where possible while balancing property rights and development needs of the City.
- B. It is the intent of this section to ensure protection of the functions and values of Water Quality Resource Areas at the time of development.
- C. It is not the intent of this section to:
 - 1. Impose any obligation on property owners for the restoration of existing developed sites to predevelopment or natural condition;
 - 2. Impose any hardship or limitation against the continued maintenance of existing legal site conditions;
 - 3. Restrict activities that do not constitute development or to apply to activities that do not affect the Water Quality Resource Areas. Normal lawn and yard planting and maintenance does not include planting of invasive nonnative or noxious vegetation;
 - 4. Prohibit normal lawn and yard landscape planting and maintenance.

This section is to be interpreted consistently with this intent.

- D. Relief from the strict application of this section is afforded through Subsections 19.402.11, variance provisions, and 19.402.12, modification of the Water Quality Resource Area boundaries.
- E. This section provides protection for natural resources that have been identified for the purposes of implementing Statewide Planning Goal 5 and Metro Urban Growth Management Functional Plan Title 3.
- F. This section establishes the Water Quality Resource Area regulations. The Milwaukie Water Quality Resource Area Map is incorporated by reference as part of this section.
- G. The Water Quality Resource Area regulations allow development in situations where adverse impacts from the development can be avoided or mitigated and where the strict application of these rules would deny reasonable economic use of property.
- H. Implementation of this section is in addition to and shall be coordinated with Milwaukie Municipal Code Title 19 Zoning Ordinance, Title 18 Flood Hazard Regulations, and Chapter 16.28 Erosion Control.
- I. Conditions legally existing as of December 17, 2002, that are inconsistent with this section are declared legal nonconforming situations.
- J. Evidence of physical conditions for sites existing at the time this section was adopted shall consist of City, County, and Metro records, aerial photography, and other information that may be available.
- K. The Planning Director shall produce and maintain the Milwaukie Native Plant List.

19.402.2 Coordination with the Willamette Greenway Overlay

- A. For properties along the Willamette River, nothing in this section shall prohibit the maintenance of view windows authorized under the Milwaukie Zoning Ordinance Section 19.401 Willamette Greenway Zone.
- B. Except as provided for in Subsection 19.402.2.A, provisions of this section shall apply where they are more restrictive than Section 19.401 Willamette Greenway Zone.

19.402.3 Applicability

Water Quality Resource Area regulations apply to all properties containing protected water features as shown on the adopted Water Quality Resource and Flood Hazard Maps. Application for development activity shall be made in accordance with Title 19, this section, and Subsections 19.402.9 Application Requirements and 19.402.10 Development Standards.

19.402.4 Activities Permitted Outright

The following activities are permitted outright in the Water Quality Resource Area and therefore do not require approval under the provisions of this section, except if they result in direct stormwater discharges to the Water Quality Resource Area:

- A. Stream, wetland, riparian, and upland enhancement or restoration projects and development in compliance with a natural resource management plan or mitigation plan approved by the Planning Commission.
- B. Farming practices or farm uses, excluding buildings and structures, except if such activities or uses increase direct discharges to water resources.
- C. Change of use where there are no exterior alterations to buildings or structures, or increases in floor area, impervious surfaces, or storage areas.
- D. The normal maintenance and repair of existing structures, utilities, access, streets, driveways, and parking improvements, including asphalt overlays.
- E. Temporary emergency procedures necessary for the safety or protection of property.
- F. Landscape planting and maintenance that does not involve invasive nonnative or noxious vegetation.
- G. Maintenance of public and private storm drainage facilities in accordance with a management plan approved by the Planning Commission.
- H. Other activities similar to the above that are determined by the Planning Director to be consistent with the purpose and policies of this section and which have also been found to have no appreciable impact to the Water Quality Resource Area.
- I. Removal of invasive or nonnative plant species.

19.402.5 Activities Permitted Under Type I Application Review

The following activities are allowed within the Water Quality Resource Area under Section 19.1004 Type I Review, subject to the conditions specified below, except if it increases direct stormwater discharges to the Water Quality Resource Area:

- A. Measures to remove or abate nuisances or any other violation of State statute, administrative agency rule, or City or County ordinance, subject to a mitigation plan to be approved by the Planning Director prior to the abatement activity.
- B. Tree removal as necessary to eliminate an imminent hazard to person or property when sufficient evidence of the hazard is provided to the satisfaction of the Planning Director.

- C. Improvements and modifications to legal structures that do not increase the building footprint or size and location of the existing area of disturbance within the Water Quality Resource Area. New decks, patios, building extensions, or other development that extend into the Water Quality Resource Area are subject to Subsection 19.402.7.
- D. Other activities similar to the above that are determined by the Planning Director to be consistent with the purpose and policies of this section and which have also been found to have no appreciable impact to the Water Quality Resource Area.

19.402.6 Activities Permitted Under Type II Review

The following activities are allowed in the Water Quality Resource Areas subject to approval by the Planning Director under Section 19.1005 Type II Review and compliance with Subsection 19.402.10 Development Standards.

- A. Improvement of existing public utility facilities where:
 - 1. The disturbed portion of the Water Quality Resource Area is restored; and
 - 2. Nonnative vegetation within the disturbed area is removed from the Water Quality Resource Area and replaced with vegetation from the Milwaukie Native Plant List.
- B. Any activity allowed under Subsections 19.402.4.A and B that increases direct stormwater discharges to the Water Quality Resource Area.
- C. Modification to any nonconforming situation subject to Type II review under Chapter 19.800 Nonconforming Uses and Development.
- D. Other activities similar to the above that are determined by the Planning Director to be consistent with the purpose and policies of this section and which have also been found to have no appreciable impact to the Water Quality Resource Area.

19.402.7 Activities Permitted Under Type III Review

The following activities are allowed within the Water Quality Resource Areas subject to approval by the Planning Commission under Section 19.1006 Type III Review and compliance with Subsection 19.402.10 Development Standards:

- A. Any activity allowed in the base zone, other than those listed in Subsections 19.402.4.A through C.
- B. Roads to provide access to protected water features or necessary ingress and egress across Water Quality Resource Areas.
- C. New public or private utility facility construction.
- D. Walkways and bike paths.
- E. New stormwater detention, retention, or pretreatment facilities.
- F. Widening an existing road adjacent to, or running parallel to, a Water Quality Resource Area.
- G. Additions, alterations, rehabilitation, or replacement of existing structures, roadways, accessory uses, and development that increase the structural footprint or disturbed area within the Water Quality Resource Area.
- H. Natural resource management plans and stormwater management plans.
- I. Partitions and subdivisions that contain protected water features or Water Quality Resource Areas.

19.402.8 Prohibited Uses

A. Following adoption of this section, new structures, development, or activity other than those allowed in Subsections 19.402.4-7 are prohibited in the Water Quality Resource Area.

B. Uncontained Areas of Hazardous Materials

This prohibition shall not be effective until the Planning Director has adopted administrative measures for its implementation, which shall be no later than June 1, 2003.

19.402.9 Application Requirements

Applications for Type II and III review shall provide the following information in addition to the information required for the base zone:

A. A topographic map of the site at contour intervals of 5 ft or less showing a delineation of the Water Quality Resource Area, which includes areas shown on the Water Quality and Flood Management Area maps, and that meets the definition of Water Quality Resource Area in Table 19.402.9.A.

| Table 19.402.9.A Vegetated Corridor Measurement by Protected Water Feature Type | | | |
|--|--|---|---|
| Protected Water Feature Type (see definitions) | Slope Adjacent to Protected Water Feature | Starting Point for Measurements from Water Feature | Width of Vegetated Corridor⁶ |
| Primary Protected Water Features ¹ | < 25% | <ul style="list-style-type: none"> Edge of bank full flow or 2-year storm level; Delineated edge of Title 3 wetland | 50' |
| Primary Protected Water Features ¹ | > 25% for 150' or more ⁵ | <ul style="list-style-type: none"> Edge of bankful flow or 2-year storm level; Delineated edge of Title 3 wetland | 200' |
| Primary Protected Water Features ¹ | > 25% for less than 150' ⁵ | <ul style="list-style-type: none"> Edge of bankful flow or 2-year storm level; Delineated edge of Title 3 wetland | Distance from starting point of measurement to top of ravine (break in > 25% slope) ³ , plus 50'. ⁴ |
| Secondary Protected Water Features ² | < 25% | <ul style="list-style-type: none"> Edge of bankful flow or 2-year storm level; Delineated edge of Title 3 wetland | 15' |
| Secondary Protected Water Features ² | > 25% ⁵ | <ul style="list-style-type: none"> Edge of bankful flow or 2-year storm level; Delineated edge of Title 3 wetland | 50' |

¹ Primary Protected Water Features include: all perennial streams and streams draining greater than 100 acres, Title 3 wetlands, and natural lakes and springs.

² Secondary Protected Water Features include intermittent streams draining 50—100 acres.

³ Where the Protected Water Feature is confined by a ravine or gully, the top of ravine is the break in the > 25% slope (see slope measurement in Appendix).

⁴ A maximum reduction of 25 ft may be permitted in the width of the vegetated corridor beyond the slope break if a geotechnical report demonstrates that slope is stable. To establish the width of the vegetated corridor, slope should be measured in 25-ft increments away from the water feature until slope is less than 25% (top of ravine).

- ⁵ Vegetated corridors in excess of 50 ft for primary protected features, or in excess of 15 ft for secondary protected features, apply on steep slopes only in the uphill direction from the protected water feature.
- ⁶ Vegetated corridor width shall be applied to the outer boundaries of water features, such as the edge of a wetland and both banks of a watercourse.

B. The location of all existing natural features including, but not limited to, all trees of a caliper greater than 6 in. diameter at breast height (DBH), natural drainages on the site, springs, seeps, and outcroppings of rocks or boulders within the Water Quality Resource Area.

C. Location of Wetlands

Where wetlands are identified, the applicant shall follow the Division of State Lands wetlands delineation process. The delineation shall be prepared by a professional wetlands specialist and will be accepted only after approval by the Oregon Division of State Lands.

D. An inventory and location of existing debris and noxious materials.

E. An assessment of the existing condition of the Water Quality Resource Area in accordance with Table 19.402.9.E.

| Table 19.402.9.E Water Quality Resource Area Requirements | |
|--|--|
| Existing Condition of Water Quality Resource Area | Requirements Applicable to Portions of the Water Quality Resource Area Disturbed During Development or Land Disturbance |
| <p>Good Existing Corridor:</p> <p>Combination of trees, shrubs, and groundcover are 80% present, and there is more than 50% tree canopy coverage in the vegetated corridor.</p> | <p>Submit an inventory of vegetation in areas proposed to be disturbed and a plan for mitigating water quality impacts related to the development, including: sediments, temperature and nutrients, sediment control, temperature control</p> <p>Or addressing any other condition that may have caused the Protected Water Feature to be listed on DEQ’s 303 (d) list.</p> <p>Inventory and remove debris and noxious materials.</p> |
| <p>Marginal Existing Vegetated Corridor:</p> <p>Combination of trees, shrubs, and groundcover are 80% present, and 25—50% canopy coverage in the vegetated corridor.</p> | <p>Vegetated disturbed and bare areas with nonnuisance plantings from the Milwaukie Native Plant List.</p> <p>Inventory and remove debris and noxious materials.</p> <p>Revegetate with native species using a City-approved plan developed to represent the vegetative composition that would naturally occur on the site.</p> <p>Revegetation must occur during the next planting season following site disturbance. Annual replacement of plants that do not survive is required until vegetation representative of natural conditions is established on the site.</p> <p>Restore and mitigate according to approved plan using nonnuisance plantings from the Milwaukie Native Plant List.</p> <p>Inventory and remove debris and noxious materials.</p> |

| Table 19.402.9.E CONTINUED | |
|--|---|
| Water Quality Resource Area Requirements | |
| Existing Condition of Water Quality Resource Area | Requirements Applicable to Portions of the Water Quality Resource Area Disturbed During Development or Land Disturbance |
| <p>Degraded Existing Vegetated Corridor:</p> <p>Less vegetation and canopy coverage than Marginal Vegetated Corridors, and/or greater than 10% surface coverage of any nonnative species.</p> | <p>Vegetate disturbed and bare areas with appropriate plants from the Milwaukie Native Plant List.</p> <p>Remove nonnative species and revegetate with nonnuisance plantings from the Milwaukie Native Plant List.</p> <p>Plant and seed to provide 100% surface coverage.</p> <p>Restore and mitigate according to approved plan using nonnuisance plantings from the Milwaukie Native Plant List.</p> <p>Inventory and remove debris and noxious materials.</p> |

- F. An inventory of vegetation, including percentage ground and canopy coverage.
- G. Alternatives analysis demonstrating that:
 - 1. No practicable alternatives to the requested development exist that will not disturb the Water Quality Resource Area; and
 - 2. Development in the Water Quality Resource Area has been limited to the area necessary to allow for the proposed use; and
 - 3. The Water Quality Resource Area can be restored to an equal or better condition in accordance with Table 19.402.9.E; and
 - 4. An explanation of the rationale behind choosing the alternative selected, including how adverse impacts to resource areas will be avoided and/or minimized.
- H. For applications seeking an alteration, addition, rehabilitation, or replacement of existing structures located within the Water Quality Resource Area:
 - 1. Demonstrate that no reasonably practicable alternative design or method of development exists that would have a lesser impact on the Water Quality Resource Area than the one proposed; and
 - 2. If no such reasonably practicable alternative design or method of development exists, the project should be conditioned to limit its disturbance and impact on the Water Quality Resource Area to the minimum extent necessary to achieve the proposed addition, alteration, restoration, replacement, or rehabilitation; and
 - 3. Provide mitigation to ensure that impacts to the functions and values of the Water Quality Resource Area will be mitigated or restored to the extent practicable.
- I. A Water Quality Resource Area mitigation plan that contains the following information:
 - 1. A description of adverse impacts that will be caused as a result of development;
 - 2. An explanation of how adverse impacts to resource areas will be avoided, minimized, and/or mitigated in accordance with, but not limited to, Table 19.402.9.E;

3. A list of all responsible parties including, but not limited to, the owner, applicant, contractor, or other persons responsible for work on the development site;
 4. A map showing where the specific mitigation activities will occur;
 5. An implementation schedule, including timeline for construction, mitigation, mitigation maintenance, monitoring, reporting, and a contingency plan. All in-stream work in fish-bearing streams shall be done in accordance with the Oregon Department of Fish and Wildlife in-stream timing schedule.
- J. All information contained in the application submittal requirements and site plan requirements forms prescribed by the Planning Director.
- K. The application fee as adopted by the City Council.

19.402.10 Development Standards

Applications for development or land disturbance on properties that contain Water Quality Resource Areas shall demonstrate compliance with the following standards:

- A. The Water Quality Resource Area shall be restored and maintained in accordance with the mitigation plan and the specifications in Table 19.402.9.E.
- B. To the extent practicable, existing vegetation shall be protected and left in place. Work areas shall be carefully located and marked to reduce potential damage to the Water Quality Resource Area.
- C. Where existing vegetation has been removed, the site shall be revegetated as soon as practicable.
- D. Prior to construction, the Water Quality Resource Area shall be flagged, fenced or otherwise marked and shall remain undisturbed except as may be allowed by this section. Such markings shall be maintained until construction is complete.
- E. Stormwater Pretreatment Facilities
 1. The stormwater pretreatment facility may encroach a maximum of 25 ft into the outside boundary of the Water Quality Resource Area of a primary water feature; and
 2. The area of encroachment must be replaced by adding an equal area to the Water Quality Resource Area on the property.
- F. Additions, Alterations, Rehabilitation, and Replacement of Lawful Structures
 1. For existing structures, roadways, driveways, accessory uses, and development which are nonconforming, this section shall apply in addition to the nonconforming use regulations of the City.
 2. Additions, alterations, rehabilitation, or replacement of existing structures, roadways, driveways, accessory uses, and development shall not encroach closer to the protected water feature than the existing structures, roadways, driveways, accessory uses, and development.
- G. Off-site Mitigation

Off-site mitigation shall not be used to meet mitigation requirements of this section.
- H. Site preparation and construction practices shall be followed that prevent drainage of hazardous materials or erosion, pollution, or sedimentation to the adjacent Water Quality Resource Area.

- I. Where practicable, the types, sizes and intensities of lights must be placed so that they do not shine directly into the natural resource locations.
- J. Where proposed, development of trails, rest points, viewpoints, and other facilities for the enjoyment of the resource must be done in such a manner so as to reduce impacts on the natural resource while allowing for the enjoyment of the resource.
- K. Areas of standing trees, shrubs, and natural vegetation will remain connected or contiguous, particularly along natural drainage courses, except where mitigation is approved, so as to provide a transition between the proposed development and the natural resource, provide opportunity for food, water, and cover for animals located within the water quality resource.
- L. Stormwater flows as a result of proposed development within and to natural drainage courses shall not exceed predevelopment flows.
- M. Road crossings of major natural drainage courses will be minimized as much as possible.
- N. The construction phase of the development must be done in such a manner to safeguard the resource portions of the site that have not been approved for development.

19.402.11 Variances

- A. The purpose of this subsection is to ensure that compliance with this section does not cause unreasonable hardship. To avoid such instances, the requirements of this section may be varied. Variances are also allowed when strict application of this section would unreasonably deprive an owner of economically viable use of land.
- B. This subsection applies in addition to the standards governing proposals to vary the requirements of the base zone.
- C. A variance to avoid the unreasonable loss of economically viable use of a lot that contains protected water features is permitted. Applicants must demonstrate that without the proposed variance, the reasonable economic use of the property would be denied. The applicant must show that no other development proposal could result in permission for an economically viable use of the property.

D. Variance Conditions

The Planning Commission may impose such conditions as are deemed necessary to minimize adverse impacts that may result from granting relief from provisions of this section. If a variance is granted, it shall be subject to the following conditions:

- 1. The minimum width of the vegetated corridor shall be 25 ft on each side of a primary protected water feature.
- 2. No more than 25% of the length of the Water Quality Resource Area for a primary protected water feature within a development site can be less than 25 ft in width on each side of the water feature.

19.402.12 Map Administration

- A. The purpose of this subsection is to provide a process for amending the Water Quality Resource Area Map to add water resources and correct the location of protected water features and the Water Quality Resource Areas.

B. Map Corrections, Deletions

1. Improperly mapped water features shown on the Milwaukie Water Quality Resource Area Maps may be deleted by Type II review in accordance with Section 19.1005 subject to the following criteria:
 - a. In the case of wetlands, submittal of a wetland delineation prepared by a professional wetland scientist in accordance with the 1996 Oregon Freshwater Wetland Assessment Methodology demonstrating that the site does not contain wetlands.
 - b. In the case of drainages, submittal of a hydrology report prepared by a professional engineer demonstrating that the drainage does not meet the definition of a protected resource.
2. The Planning Director shall confer with the Division of State Lands and Metro to confirm delineation and hydrology reports as may be needed prior to issuing a notice of decision on a requested map deletion.
3. The City shall amend the Water Quality Resource Area Map if the wetland or hydrology report demonstrates:
 - a. That a primary protected water feature no longer exists because the area has been legally filled, culverted, or developed prior to the adoption of this section; or
 - b. The boundaries of the Water Quality Resource Area have changed since adoption of the Water Quality and Flood Management Areas Map; or
 - c. An error in the original mapping has been demonstrated.

C. Map Correction, Additions, and Modifications

Map corrections that require the addition of a protected water feature to the Water Quality Resource Area Map shall be made in accordance with Section 19.902 Amendments to Maps and Ordinances.

D. Modification of the Water Quality Resource Area

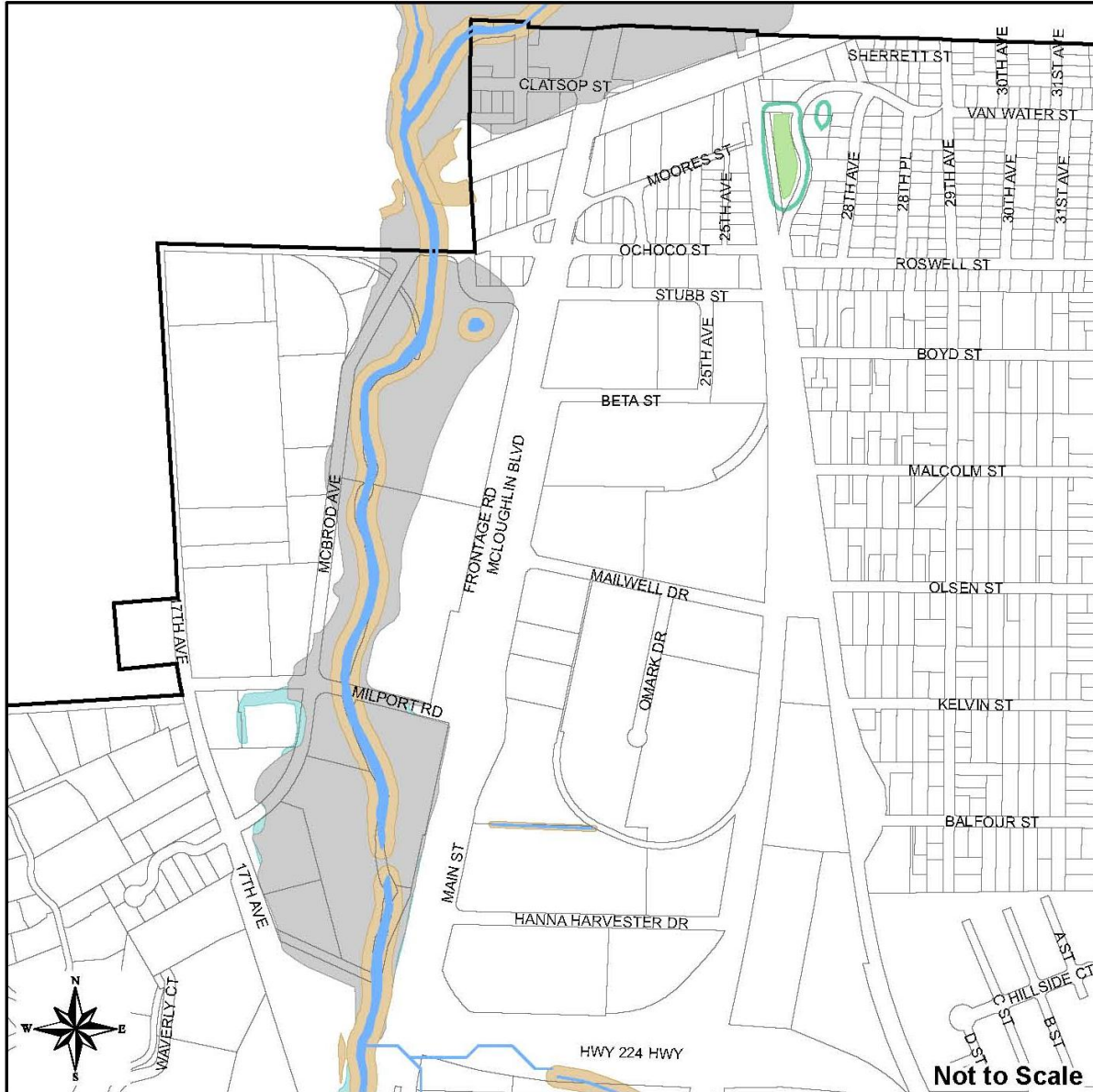
To modify the Water Quality Resource Area, the applicant shall demonstrate that the modification will offer the same or better protection of the protected water feature, Water Quality Resource Area, and flood management area by:

1. Preserving a vegetated corridor that will separate the protected water feature from proposed development; and
2. Preserving existing vegetated cover or enhancing the Water Quality Resource Area sufficient to assist in maintaining or reducing water temperatures in the adjacent protected water feature; and
3. Enhancing the Water Quality Resource Area sufficient to minimize erosion, nutrient and pollutant loading into the adjacent protected water feature; and
4. Protecting the vegetated corridor sufficient to provide filtration, infiltration, and natural water purification for the adjacent protected water feature; and
5. Stabilizing slopes adjacent to the protected water feature.

Water Quality Resources

Lower Johnson Creek

Map 1 of 6



- Milwaukie Tax Lots
- Drainage Course
- Wetland Buffer
- Vegetated Corridor
- Wetlands
- FEMA 100-Year Flood
- February 1996 Flood

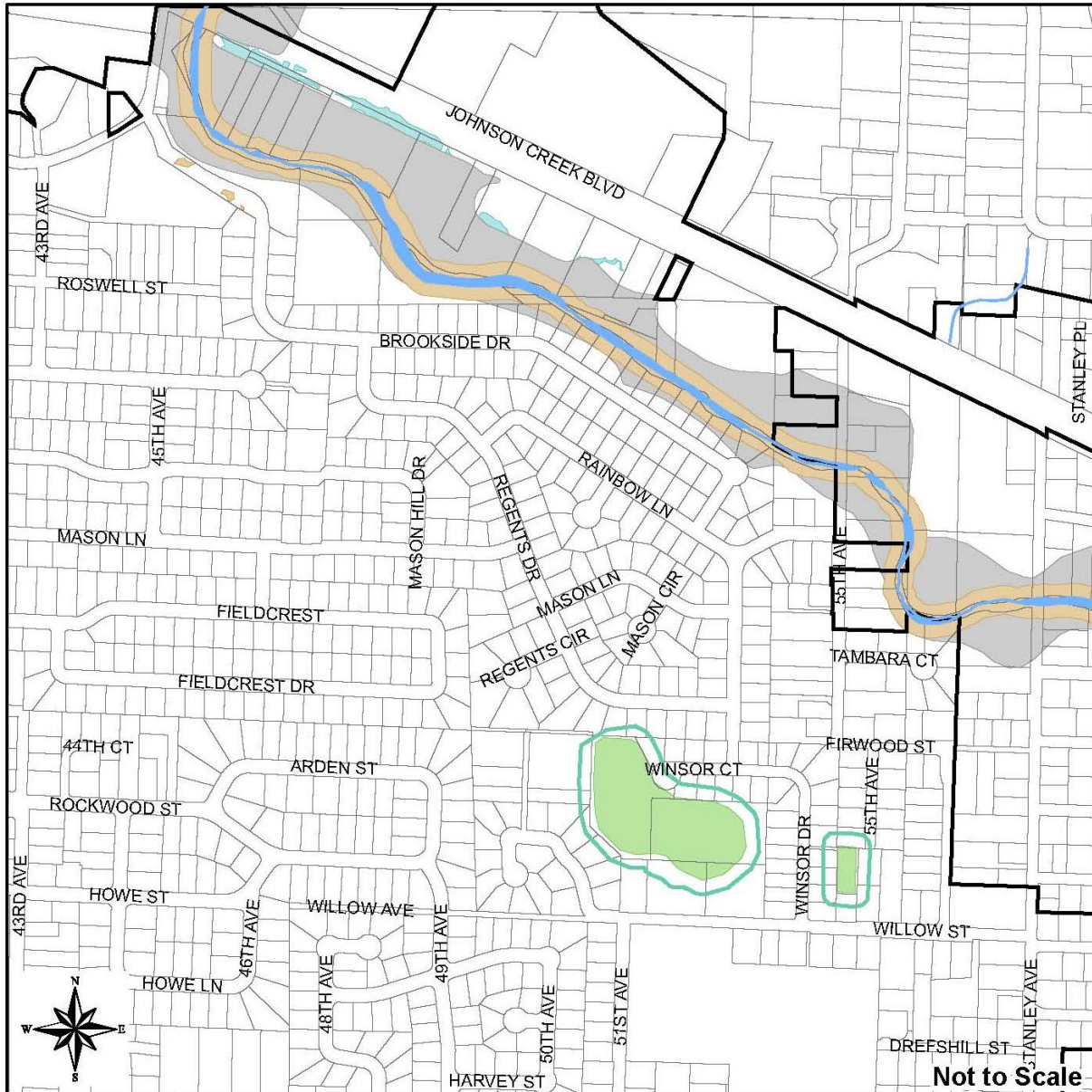
Features shown on this map are based on the August 1998 Metro Water Quality and Flood Management Area Map. The purpose of this map is to identify areas subject to Milwaukie Municipal Code 19.402- Water Quality Resource Regulations and Title 18 Flood Hazard Regulations.

Adopted Ord. #1912 December 17, 2002

Water Quality Resources

Upper Johnson Creek

Map 2 of 6



- Tax Lots
- Drainage Course
- Wetland Buffer
- Vegetated Corridor
- Wetlands
- FEMA 100-Year Flood
- February 1996 Flood

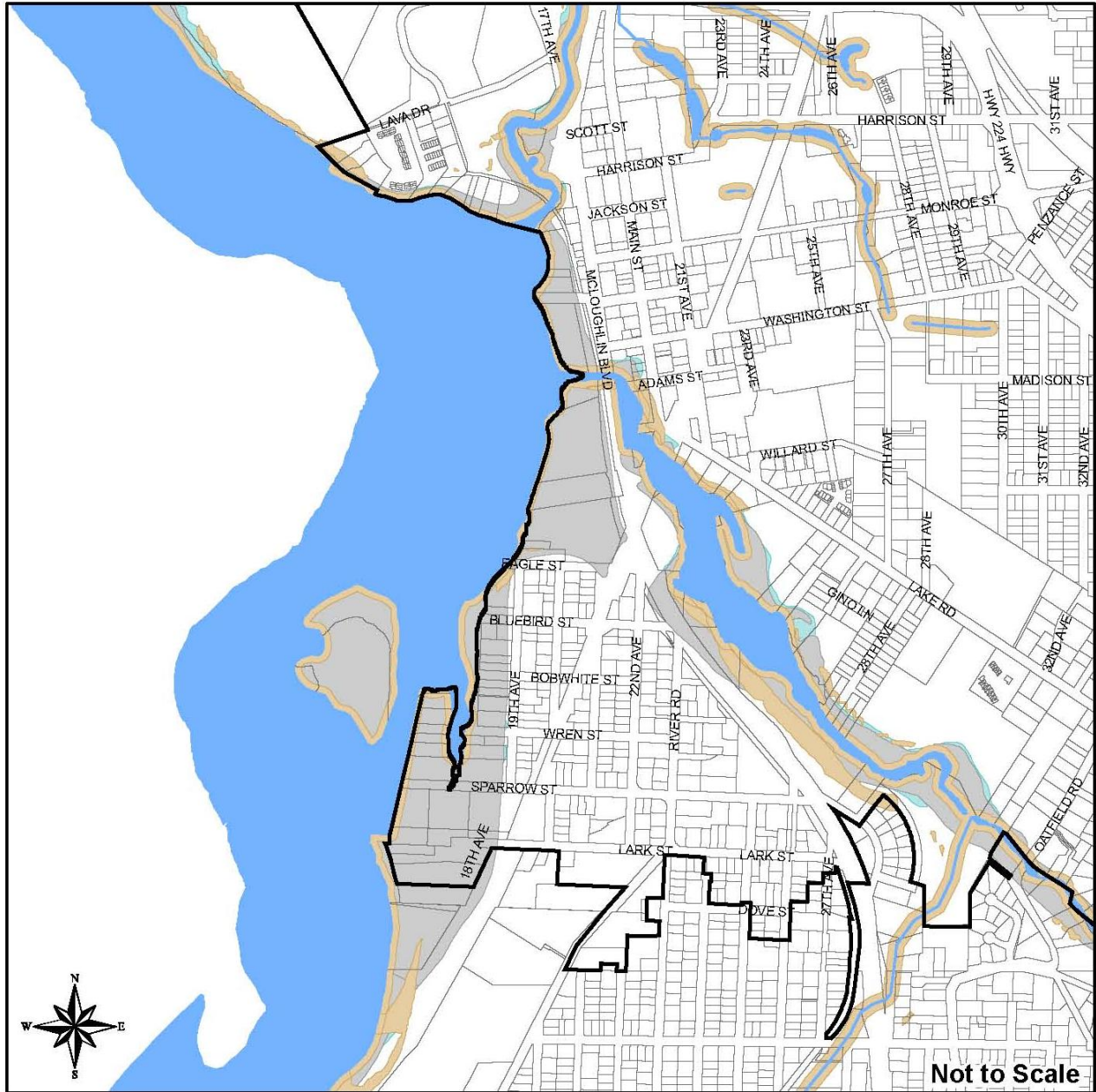
Features shown on this map are based on the August 1998 Metro Water Quality and Flood Management Area Map. The purpose of this map is to identify areas subject to Milwaukie Municipal Code 19.402- Water Quality Resource Regulations and Title 18 Flood Hazard Regulations.

Adopted Ord. #1912 December 17, 2002

Water Quality Resources

Willamette River and Kellogg Lake

Map 3 of 6



- Tax Lots
- Drainage Course
- Vegetated Corridor
- FEMA 100-Year Flood
- February 1996 Flood

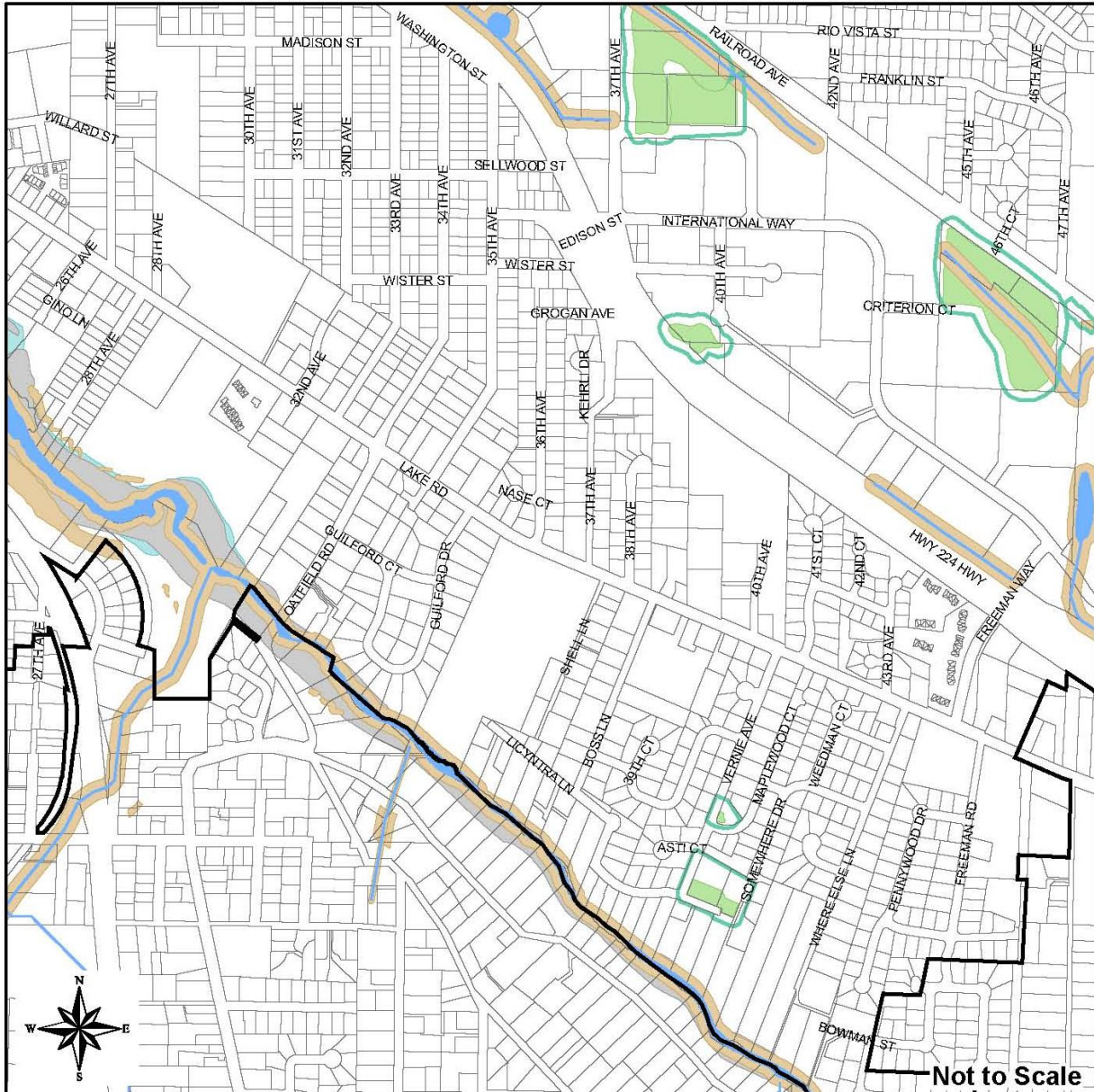
Features shown on this map are based on the August 1998 Metro Water Quality and Flood Management Area Map. The purpose of this map is to identify areas subject to Milwaukie Municipal Code 19.402-Water Quality Resource Regulations and Title 18 Flood Hazard Regulations.

Adopted Ord. #1912 December 17, 2002

Water Quality Resources

Lower Kellogg Creek

Map 4 of 6



- Tax Lots
- Drainage Course
- Wetland Buffer
- Vegetated Corridor
- Wetlands
- FEMA 100-Year Flood
- February 1996 Flood

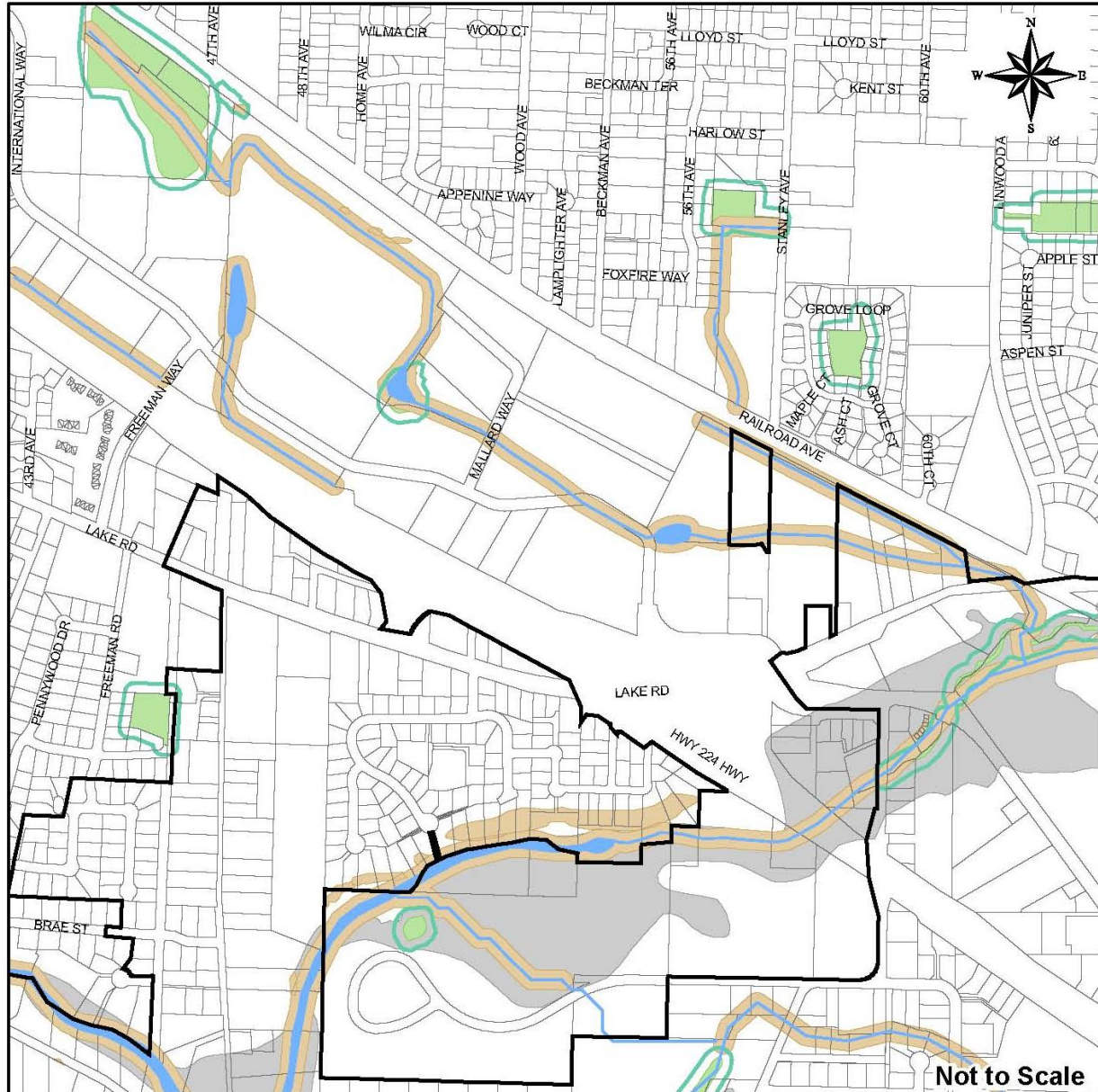
Features shown on this map are based on the August 1998 Metro Water Quality and Flood Management Area Map. The purpose of this map is to identify areas subject to Milwaukie Municipal Code 19.402- Water Quality Resource Regulations and Title 18 Flood Hazard Regulations.

Adopted Ord. #1912 December 17, 2002

Water Quality Resources

Upper Kellogg Creek and Mt. Scott Creek

Map 5 of 6



- Tax Lots
- Drainage Course
- Wetland Buffer
- Vegetated Corridor
- Wetlands
- FEMA 100-Year Flood
- February 1996 Flood

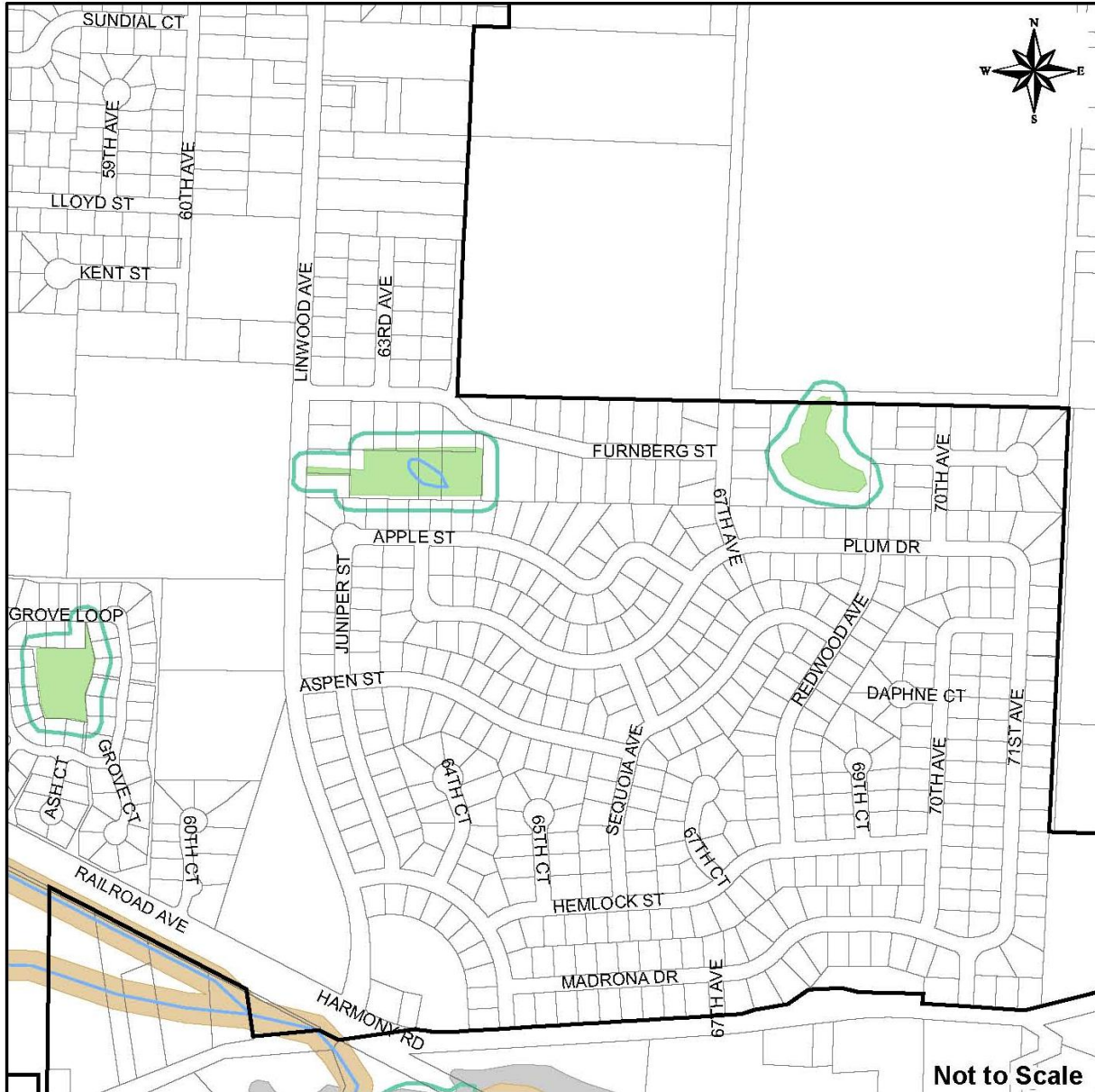
Features shown on this map are based on the August 1998 Metro Water Quality and Flood Management Area Map. The purpose of this map is to identify areas subject to Milwaukie Municipal Code 19.402- Water Quality Resource Regulations and Title 18 Flood Hazard Regulations.

Adopted Ord. #1912 December 17, 2002

Water Quality Resources

Linwood Neighborhood

Map 6 of 6



Not to Scale

- Tax Lots
- Drainage Course
- Wetland Buffer
- Vegetated Corridor
- Wetlands
- FEMA 100-Year Flood
- February 1996 Flood

Features shown on this map are based on the August 1998 Metro Water Quality and Flood Management Area Map. The purpose of this map is to identify areas subject to Milwaukie Municipal Code 19.402- Water Quality Resource Regulations and Title 18 Flood Hazard Regulations.

Adopted Ord. #1912 December 17, 2002