



March 25, 2015

Land Use File(s): DR-2015-001, WG-2015-001

NOTICE OF DECISION

This is official notice of action taken by the Milwaukie Planning Commission on March 24, 2015.

Applicant(s):	Stacy Bluhm, City of Milwaukie
Appellant (if applicable)	
Location(s):	Northern and southern banks of Kellogg Lake
Tax Lot(s):	TriMet right-of-way on Tax Maps 1S1E36BC and 36BC between Lake Rd and McLoughlin Blvd
Application Type(s):	Downtown Design Review, Willamette Greenway Review
Decision:	Approved, with Conditions
Review Criteria:	<u>Milwaukie Zoning Ordinance:</u> <ul style="list-style-type: none">• Section 19.1006 Type III Review• Section 19.907 Downtown Design Review• Section 19.1011 Design Review Meetings• MMC Section 19.401 Willamette Greenway Zone• MMC Section 19.905 Conditional Uses
Neighborhood(s):	Historic Milwaukie, Island Station

Appeal period closes: 5:00 p.m., April 9, 2015

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 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 Li Alligood, Senior Planner, at 503-786-7627 or alligoodl@milwaukieoregon.gov, if you wish to view this case file.

This decision may be appealed by 5:00 p.m. on April 9, 2015, which is 15 days from the date of this notice of decision. 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.

COMMUNITY DEVELOPMENT
BUILDING • ECONOMIC DEVELOPMENT • ENGINEERING • PLANNING
6101 SE Johnson Creek Blvd., Milwaukie, Oregon 97206
P) 503-786-7600 / F) 503-774-8236
www.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

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, Stacy Bluhm for the City of Milwaukie, has applied for approval to construct connections and landings between the Kellogg Lake Bicycle/Pedestrian Bridge and Lake Rd to the north and Kronberg Park to the south in the TriMet right-of-way on Tax Maps 1S1E36BC and 36BC between Lake Rd and McLoughlin Blvd. This site is in the Downtown Open Space Zone. The land use application file numbers are DR-2015-001 and WG-2015-001.
2. The applicant is seeking land use approvals for construction of connections between the Kellogg Lake bicycle/pedestrian bridge structure and Lake Rd to the north and Kronberg Park to the south. The proposal includes the following elements as traveling from north to south:
 - At the north landing, a concrete sidewalk is supported by a modular block retaining wall. The retaining wall ranges in height from flush at the north end to approximately 15 ft tall at the south end.
 - Between the north landing and the bicycle/pedestrian bridge structure, a concrete deck is supported by a concrete slab and cross beam, mounted on a single concrete column.
 - At the south landing, a concrete deck connects directly to the bank.
3. The proposal is subject to the following provisions of the Milwaukie Municipal Code (MMC):
 - MMC Section 19.1006 Type III Review
 - MMC Section 19.907 Downtown Design Review
 - MMC Section 19.1011 Design Review Meetings
 - MMC Section 19.401 Willamette Greenway Zone
 - MMC Section 19.905 Conditional Uses
4. The application has been processed and public notice provided in accordance with MMC Section 19.1006 Type III Review and MMC Section 19.1011 Design Review Meetings. A public design review meeting was held on March 10, 2015, and a public hearing was held on March 24, 2015, as required by law.
5. MMC Section 19.907 Downtown Design Review
 - a. MMC Subsection 19.907.2 Applicability

MMC 19.907.2 establishes that all new construction and changes to buildings and/or properties in the downtown zones is subject to design review.

The proposed development involves construction of a structural connection between the existing bicycle and pedestrian bridge and the banks of Kellogg Lake to the north and south.

The Planning Commission finds that the proposed development is subject to design review in accordance with the procedures provided in MMC Subsection 19.907.5.

b. MMC Subsection 19.907.5 Application Procedure

MMC 19.907.5 establishes the procedures by which applications for design review shall be processed. As per MMC 19.907.5.C, major exterior alterations are subject to Type III review.

The Planning Commission finds that, as new construction, the proposed development is subject to Type III downtown design review.

c. MMC Subsection 19.907.6 Application

MMC 19.907.6 establishes the requirements for downtown design review applications, including a completed design review checklist, written statement describing how the proposal meets applicable design guidelines, and site plan showing the proposed development.

The applicant's submittal includes a completed design review checklist, narrative describing the proposed development and addressing applicable criteria, and site plans showing the proposed improvements.

The Planning Commission finds that this standard is met.

d. MMC 19.907.7 establishes the approval criteria for design review applications. The approval authority may approve, approve with conditions, or deny a design review application based on the following criteria:

(1) Compliance with Title 19 Zoning Ordinance

The applicable standards pertain to wall design and minimum landscaping requirements.

(a) Subsection 19.301.6.2 contains the design standards for walls. The applicant is not proposing any wall-mounted mechanical equipment or any prohibited wall materials.

(b) Subsection 19.304.4 contains the minimum landscaping requirements for the Downtown Open Space Zone. At least 20% of the site must be landscaped. Per WG-11-01, approximately 70% of the site is landscaped and exceeds the minimum.

The Planning Commission finds that this approval criterion has been met.

(2) Substantial consistency with the Downtown Design Guidelines

Refer to Table 1 below for detailed findings.

The Planning Commission finds that the proposal, as conditioned, is substantially consistent with the Downtown Design Guidelines and that this approval criterion has been met.

(3) Submittal of a complete application and applicable fee as adopted by the City Council

The Community Development Department of the City of Milwaukie is the applicant of record for this request. Staff has completed the appropriate forms; there is no fee for an application generated by a General Fund department. This approval criterion has been met.

The Planning Commission finds that the approval criteria for downtown design review are met.

6. MMC Subsection 19.401 Willamette Greenway Zone

a. MMC Subsection 19.401.5 Procedures

MMC 19.401 establishes standards for the Willamette Greenway overlay designation. The subject property is within the Willamette Greenway zone as shown on the City's zoning map.

The project involves the substantial alteration of natural site characteristics and constitutes "development" as defined in MMC Subsection 19.401.4. The proposed development is subject to conditional use review standards of MMC 19.905 and the approval criteria of MMC 19.401.6.

b. MMC Subsection 19.401.6 Criteria

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

(1) *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" 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. Economic, developmental and locational factors include such matters as ports, industrial, commercial, residential or recreational uses of property; the effect these existing uses have on properties in their vicinity, previous public decisions regarding the land in question, as contained in ordinances and such plans as the Lower Willamette River Management Plan, the city or county comprehensive plans, and similar public actions."

The subject property is zoned for Downtown Open Space use and is already developed with a light rail bridge and a bicycle and pedestrian bridge. The land is committed to an urban use.

The Planning Commission finds that this criterion is met.

(2) *Compatibility with the scenic, natural, historic, economic, and recreational character of the river*

The presence of a light rail and pedestrian bridge at this location was approved by WG-11-01 and associated approvals. That action included a requirement that an Ashlar stone appearance be used on the retaining walls, structural walls and other surfaces supporting the bridge, consistent with the visual character of the Portland-Milwaukie Light Rail Alignment project. Surface treatment with a similar Ashlar stone appearance on the retaining walls necessary to form the abutments for the pedestrian bridge link extensions will ensure that the proposed structures are compatible with the approved design vocabulary and the environmental appearance created by the bridge's construction at this location along Kellogg Creek.

The Design and Landmarks Committee has determined that a galvanized steel finish is most appropriate for the proposed railings, in order to complement the design vocabulary of the light rail bridge. A condition has been established to

ensure the use of an Ashlar stone appearance on the retaining walls and galvanized steel on the proposed railings. The proposed development presents no significant impacts to the character of the river and is compatible.

The Planning Commission finds that, as conditioned, this criterion is met.

(3) *Protection of views both toward and away from the river*

Much of the bridge will not be viewable from the Willamette River, nor will it obscure views toward the river, due to the presence of the existing freight rail trestle. Because the pedestrian bridge itself is lower than the trestle, there is no significant view opportunity to the west. On the other hand, the proposed project will create new eastward viewing opportunities from a vantage point above Kellogg Lake, just east of the railroad trestle, that have never been accessible to the public before. This will be a significant contribution to visual access to the Kellogg Lake scenic corridor, consistent with this approval criterion.

The Planning Commission finds that this criterion is met.

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

The bicycle and pedestrian bridge connections will create view opportunities looking eastward, upstream along the Kellogg Lake corridor. The proposed linking structures will provide bicycle and pedestrian access to the bridge, and across Kellogg Creek, where users can frequently and safely enjoy these scenic amenities. The use of Ashlar stone visual treatment of exposed surfaces will ensure that a coherent, high-quality visual character is maintained along the banks of Kellogg Lake.

The Planning Commission finds that this criterion is met.

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

In addition to making bicycle and pedestrian connections to multimodal facilities on both ends of the bridge, the proposed connections will also make connections to planned future trails within or along the Kellogg Lake corridor itself.

The Planning Commission finds that this criterion is met.

(6) *Emphasis on water-oriented and recreational uses*

Kellogg Lake is not an opportune location for navigation between it and the Willamette River because the lake is dammed at its mouth. The bicycle and pedestrian bridge connections will provide residents and visitors new views of Kellogg Lake and the Willamette River as well as access to new recreational opportunities.

The Planning Commission finds that this criterion is met.

(7) *Maintain or increase views between the Willamette River and downtown*

The bicycle and pedestrian bridge connections will provide users with unique views of downtown Milwaukie, including Dogwood Park, Kronberg Park, Kellogg Lake, and the Willamette River to the west that are currently not available by any other means. The bridge will not block views between the Willamette River and downtown Milwaukie.

The Planning Commission finds that this criterion is met.

(8) *Protection of the natural environment according to regulations in Section 19.402*

WG-11-01 included mitigation for an additional 375 sq ft of permanent disturbance within the mapped habitat conservation area (HCA) to accommodate future construction of the bicycle and pedestrian bridge connections and landings. The proposed disturbance area within the HCA is 142 sq ft.

The Planning Commission finds that this criterion is met.

(9) *Advice and recommendations of the Design and Landmark Committee, as appropriate*

The Design and Landmarks Committee (DLC) has reviewed the proposal and recommends approval of the project as conditioned.

The Planning Commission finds that this criterion is met.

(10) *Conformance to applicable Comprehensive Plan policies*

The applicable Comprehensive Plan policies are those of Chapter 3: Environmental and Natural Resources and Chapter 4: Land Use.

Chapter 3: Environmental and Natural Resources

(a) Natural Hazards Element

(i) *Objective #1 – Floodplain*

Like the pedestrian bridge itself, the proposed pedestrian ramp linkages are elevated above the 100-year flood elevation, and will be supported by structures designed to withstand flood events without compromising flows. The proposed design is therefore consistent with these policies.

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

(i) *Objective #1 – Open Space*

The proposed project will link the Kellogg Lake bicycle/pedestrian bridge with bicycle and pedestrian facilities on both sides of Kellogg Lake, and will create eastward viewing opportunities from a vantage point above Kellogg Lake that has never been accessible to the public before. These will be significant contributions to passive recreational opportunities the City intends to foster within the Kellogg Lake/Kellogg Creek corridor over time. The proposed project therefore furthers this Policy.

(ii) *Objective #3 – Scenic Areas*

Currently, views into the Kellogg Lake corridor from Dogwood Park are obstructed by the existing railroad trestle located immediately west of the Kellogg Bridge. The proposed project will create new eastward viewing opportunities from a vantage point above Kellogg Lake, just east of the railroad trestle, that has not been accessible to the public for decades. This will be a significant contribution to visual access to the Kellogg Lake scenic corridor. The proposed project therefore furthers this Policy.

Chapter 4: Land Use

(a) Economic Base and Industrial/Commercial Land Use Element

(i) *Objective #6 – Commercial Land Use*

Convenient and safe pedestrian access is an important element for achieving successful economic development in a mixed-use district. The proposed project will provide the necessary pedestrian connectivity for a safe and efficient pedestrian linkage between the Downtown area/Lake Road Station and neighborhoods to the south of Kellogg Lake.

(ii) *Objective #2 – Town Center*

The proposed project represents the final land use approval necessary to follow through on the City's work with TriMet to design and construct the Kellogg Bicycle/Pedestrian Bridge in conjunction with the Portland-Milwaukie Light Rail Project. This approval will permit the design and construction of the bicycle and pedestrian landing linkages necessary to functionally connect the Kellogg Lake bicycle/pedestrian bridge, which has now been constructed, to bicycle and pedestrian facilities on both banks of the Kellogg Lake corridor.

(b) Recreational Needs Element

(i) *Objective #7 – Riverfront Recreation*

The proposed project will link the Kellogg Lake bicycle/pedestrian bridge with bicycle and pedestrian facilities on both sides of Kellogg Lake, and will create eastward viewing opportunities from a vantage point above Kellogg Lake that has never been accessible to the public before. These will be significant contributions to recreational opportunities the City intends to foster within the Kellogg Lake/Kellogg Creek corridor over time.

(c) Willamette Greenway Element

(i) *Objective #7 – Central Riverfront*

The proposed project is subject to Willamette Greenway Review because it is located within the designated Willamette Greenway Zone. That review process furthers implementation of this Objective and its applicable Policies. In addition to creating safe and efficient bicycle and pedestrian linkage between the Downtown/Lake Road Station and neighborhoods to the south of Kellogg Lake, the project will create eastward viewing opportunities from a vantage point above Kellogg Lake that has not been accessible to the public for decades. These will all be significant contributions to public access, public recreational use, and visual access within the Kellogg Lake/Kellogg Creek corridor, as well as improving transportation capacity, specifically for pedestrian-mode travel.

Chapter 5: Transportation, Public Facilities, and Energy Conservation

(a) Transportation Element

The proposed project will provide the linkages necessary to activate the Kellogg Lake Bicycle/Pedestrian Bridge as a functioning part of the City's multi-modal transportation system. The addition of this new bicycle and pedestrian access route will contribute to livability, safety and travel choices by facilitating walking trips between the Downtown area and neighborhoods south of Kellogg Lake, on an efficient and well-lighted bicycle and pedestrian bridge adjacent to the Milwaukie/Main Street Station of the Portland-Milwaukie Light Rail Extension project. The proposal is therefore consistent with these Goals of the Transportation Element.

The City's transportation goals are implemented through the Transportation System Plan (TSP). The proposal conforms to the policies of the TSP as follows.

(i) *TSP Chapter 5: Pedestrian Element*

The proposed project is a critical element to implement Project AU in accordance with the Pedestrian Element of the Transportation System Plan.

(ii) *TSP Chapter 6: Bicycle Element*

The proposed project is a critical element to implement Project AC in accordance with the Bicycle Element of the TSP.

(b) Energy Conservation Element

(i) *Objective #2 – Transportation System*

The proposed project will provide the linkages necessary to activate the Kellogg Lake Bicycle/Pedestrian Bridge as a functioning part of the City's multi-modal transportation system. This new bicycle and pedestrian access route will facilitate walking and cycling trips between the Downtown area/Lake Road Station and neighborhoods south of Kellogg Lake, on an efficient and well-lighted pedestrian bridge. The proposal is therefore consistent with this Objective and Policy.

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

The proposed development is not inconsistent with any known plans or programs of the Department of State Lands.

(12) *A vegetation buffer plan meeting the conditions of Subsections 19.401.8.A through C*

The proposal does not revise or disturb the vegetation buffer plan approved by WG-11-01.

The Planning Commission finds that the proposed development meets all relevant approval criteria provided in MMC 19.401.6.

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

7. MMC Section 19.905 Conditional Uses

MMC 19.905 establishes regulations for conditional uses, including standards for reviewing modifications to existing conditional uses.

a. MMC Subsection 19.905.3 Review Process

MMC 19.905.3 establishes the process by which a new conditional use, or a major or minor modification of an existing conditional use, must be reviewed.

As noted in Finding 6-a, the proposed development is an activity within the Willamette Greenway zone that requires review as a conditional use. The existing use on the subject property is a bicycle and pedestrian bridge constructed as part of the Portland-Milwaukie light rail project. The proposed development, which includes structures and retaining walls to connect the bridge to grade, represents a major modification to the existing conditional use.

MMC 19.905.3.A requires that a major modification of an existing 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 general criteria for approval of 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 site is currently developed with a light rail bridge and pedestrian and bicycle bridge. The proposed connections respond to the topography of the site and connect the existing bicycle and pedestrian bridge with grade on either end.

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.*

Nearby uses include the light rail bridge, light rail station, a single-family home, and Kronberg Park. The operating characteristics of the proposed connections will be compatible with the adjacent light rail station and light rail bridge, and will have minimal impact on nearby uses.

The Planning Commission finds that this standard is met.

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

The primary impact of the proposed development will be allowing use of the bicycle and pedestrian bridge, which is currently inaccessible due to the lack of connections to grade. No impacts beyond those approved by WG-11-01 have been identified.

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 proposed development will provide bicycle and pedestrian access to the bridge and points south, but will not have impacts greater than uses allowed outright in the DOS zone, including parks and plazas.

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.*

As addressed in various other findings, the proposed development will comply with all applicable development standards, requirements of the underlying Downtown Office zone and other applicable overlay zones, and the standards of MMC 19.905.

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.*

As addressed in Finding 6-b-10, the proposed development is consistent with all relevant policies in the Comprehensive 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 Engineering Department has reviewed the proposal and confirmed that existing public transportation facilities and public utilities are adequate to serve the proposed development.

The Planning Commission finds that this standard is met.

The Planning Commission finds that the proposed development meets all of the approval criteria outlined in MMC 19.905.4.A for a major modification to an existing 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, as proposed, the new development sufficiently mitigates any potential negative impacts and that no additional conditions are necessary to ensure compatibility with nearby uses.

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.

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

8. The application was referred to the following departments and agencies on February 18, 2015:
- Milwaukie Building Division
 - Milwaukie Engineering Department

- Island Station Neighborhood District Association Chairperson and Land Use Committee
- Historic Milwaukie Neighborhood District Association Chairperson and Land Use Committee

In addition, notice of the application was provided to the Oregon Department of Transportation (ODOT), Oregon Department of Parks and Recreation, Department of State Lands, Oregon Department of Fish and Wildlife, and State Marine Board on March 17, 2015.

The comments received are summarized as follows:

- **Pam Denham, Island Station NDA Land Use Committee Co-Chair:** No concerns.

Conditions of Approval

1. At the time of submission of the associated development permit application, the following shall be resolved:
 - a. Final plans submitted for building permit review shall be in substantial conformance with plans approved by this action, which are the plans stamped received by the City on February 17, 2015, and except as otherwise modified by these conditions.
 - b. Final construction plans shall demonstrate the following:
 - (1) The elevation of the retaining walls has the appearance of Ashlar stone. The Design and Landmarks Committee (DLC) strongly prefers that the profile, size, and coursing of the pattern are similar to the existing abutment and retaining walls of the light rail station, if no additional cost is required.
 - (2) The railings are made of galvanized steel.
 - c. Provide a narrative describing all actions taken to comply with these conditions of approval.
 - d. Provide a narrative describing any changes made after the issuance of this land use decision that are not related to these conditions of approval

Other requirements

1. An application for Type I development review is required in conjunction with the submittal of the associated development permit application.
2. Limitations on Development Activity
Development activity on the site shall be limited to 7 a.m. to 10 p.m. Monday through Friday and 8 a.m. to 5 p.m. Saturday and Sunday, as per MMC Subsection 8.08.070(I).
3. Prior to final inspection for the associated development permit, the applicant shall record the conditional use permit issued by the City upon approval of the proposed development. The conditional use permit shall be recorded with the Clackamas County Recorder's Office, and a copy of the recorded permit shall be provided to the Planning Director.



Dennis Egner, AICP
Planning Director

cc: Stacy Bluhm, City of Milwaukie (*via e-mail*)
Planning Commission (*via e-mail*)
Dennis Egner, Interim Community Development Director (*via e-mail*)
Jason Rice, Engineering Director (*via e-mail*)
Brad Albert, Civil Engineer (*via e-mail*)
Chrissy Dawson, Engineering Tech II (*via e-mail*)
Samantha Vandagriff, Building Official (*via e-mail*)
Bonnie Lanz, Permit Specialist (*via e-mail*)
Mike Boumann and Matt Amos, CFD#1
NDA(s): Historic Milwaukie, Island Station (*via e-mail*)
Interested Persons
Land Use File(s): DR-2015-001, WG-2015-001