



August 23, 2017

Land Use File(s): WG-2017-003; NR-2017-002

NOTICE OF DECISION

This is official notice of action taken by the Milwaukie Planning Commission on August 22, 2017.

Applicant(s): Rick Buen
Appellant (if applicable)
Location(s): 11211 SE McLoughlin Blvd
Tax Lot(s): 11E35AD-01000
Application Type(s): Willamette Greenway Conditional Use; Natural Resources
Decision: Approved with Conditions
Review Criteria: Milwaukie Zoning Ordinance:

- MMC 19.304 Downtown Zones
- MMC 19.401 Willamette Greenway
- MMC 19.402 Natural Resources
- MMC 19.905 Conditional Uses
- MMC 19.1006 Type III Review

Neighborhood(s): Historic Milwaukie
Island Station

Appeal period closes: 5:00 p.m., September 7, 2017

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 Vera Kolas, Associate Planner, at 503-786-7653 or kolasv@milwaukieoregon.gov, if you wish to view this case file.

This decision may be appealed by 5:00 p.m. on September 7, 2017, which is 15 days from the date of this 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
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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, the City of Milwaukie Engineering Department, has applied for approval to remove the existing Kellogg Creek Bridge in Riverfront Park and replace it with a newly constructed bridge. The Kellogg Creek Bridge connects the main parking lot and boat ramp to the boat trailer parking area. The new bridge will continue to serve that function but will also incorporate a pedestrian crossing as part of the bridge. The Riverfront Park site consists of multiple tax lots, addressed as 11211 SE McLoughlin Blvd, and is zoned Downtown Open Space OS with Natural Resource and Willamette Greenway overlays. The proposed activity triggers land use review against the applicable standards of the Natural Resource and Willamette Greenway sections of the zoning code. The land use application master file number is WG-2017-003 with associated file number NR-2017-002.
2. The proposed activity involves removing a vehicular bridge; stabilizing the adjacent steep slopes; replacing the bridge; and planting native species trees, shrubs, and groundcover to restore the project area. The applicant has submitted a Willamette Greenway vegetation buffer plan to address MMC 19.401.8.
3. The proposal is subject to the following provisions of the Milwaukie Municipal Code (MMC):
 - MMC 19.304 Downtown Zones
 - MMC 19.401 Willamette Greenway
 - MMC 19.402 Natural Resources
 - MMC 19.905 Conditional Uses
 - MMC 19.1006 Type III Review

The proposed activity does not result in the expansion of any existing structures. The municipal code relies on an increase in building square footage to calculate vehicle trip generation to and from the site. The Engineering Department has determined that MMC Chapter 19.700 Public Facility Improvements does not apply to this application.

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 by the Planning Commission on August 22, 2017, as required by law.
5. MMC Section 19.401 Willamette Greenway Zone

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

 - a. 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 removal of the existing bridge and construction of a new bridge, in addition to substantial stope restoration work constitutes “development” in the context of the Willamette Greenway overlay on the site, requiring conditional use review as per MMC Section 19.401. The proposed activity is subject to the 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” 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.”

The land on which this project takes place has already been approved for park use. The land is committed to an urban use.

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

The project area is adjacent to and overlooks the confluence of Kellogg Creek with the Willamette River. The project will not create any perceptible change to the historic, economic or recreational character of the river. The scenic and natural character of both the Willamette River and Kellogg Creek will be enhanced by this project. Along with the bank stabilization and restoration activities done on the south bank of Kellogg Creek, the widening of the stream banks directly underneath the new bridge will result in lower velocities for Kellogg Creek and will make it more conducive for anadromous fish species. The south bank activities will include large woody debris (LWD) and other elements to increase fish habitat. The stabilization and restoration of the scoured and eroded portions of stream bank within the project area will enhance views from the Willamette River.

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

The project area is adjacent to the river and includes steep slopes on the site. The character and aesthetic value of the views toward and away from the river will not be substantially altered by this project. Any impact will likely be positive due to the aesthetic design elements incorporated into the bridge such as a decorative concrete rail and ornamental light stands. The existing bridge does not include any decorative elements save for the existing ornamental light fixtures. The proposed design is an improvement and will create a sense of permanence as well as serve as a gateway for people using Riverfront Park. Any disturbance of the stream banks directly associated with the bridge replacement will be returned to natural conditions.

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

The removal of the existing bridge and construction of the new bridge will result in the following: removal of the vertical concrete end-abutments from the waterway, a widening of the portion of the waterway directly beneath the new bridge, and placement of rock for bank stabilization to address scour issues directly beneath the new bridge. The streambanks directly adjacent to the new bridge will be replanted in accordance with the approved planting plan of the Riverfront Park Plan. The new bridge will incorporate aesthetic elements such as stained rock façade, decorate concrete rail and incorporation of the current bridge illumination. The stabilization and restoration of the south bank area will result in a more natural and aesthetically pleasing stream bank environment.

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

The Kellogg Creek bridge is necessary to provide public access to the boat ramp and other elements of Riverfront Park. If this project is not under taken, this access is in jeopardy. Construction schedule and planning has been structured to inhibit public access as minimally as possible. The bank stabilization and restoration activities on the south bank should have no impact on public access.

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

The project helps ensure “water-oriented and recreational uses” remain possible at this location by decreasing the chances of complete stream bank failure.

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

This project will maintain and enhance the current view between the Willamette River and downtown.

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

An application for Natural Resources review has been submitted along with the subject application. The intent of the proposed activity is to repair and restore the existing natural area on the site, a significant portion of which includes WQR and HCA natural resource designations. The proposed activity will be reviewed against the standards for natural resource protection as provided in MMC Section 19.402. The project includes mitigation for impacts to the designated natural resource areas on the subject property and will improve the overall ecological health of the natural environment. In-water work will follow Oregon Department of Fish & Wildlife guidelines and will involve isolation and fish removal if necessary. The project area will be re-planted in accordance with the approved Riverfront Park Planting Plan. All disturbed soils will be returned to original or enhanced conditions.

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

The Design and Landmarks Committee (DLC) reviewed and submitted a recommendation to the Planning Commission on August 7, 2017.

- (10) 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 activity is being reviewed through the Willamette Greenway conditional use process as provided in MMC Subsection 19.401.5. The project will not significantly or permanently impact visual corridors. The proposed activity maintains and improves public access to the river. The proposed project is also being reviewed through the general discretionary review process for natural resource areas as provided in MMC Section 19.402.

- (11) 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). This project does include removal-fill activities within the waters of the state and the appropriate permits from DSL U.S. Army Corps of Engineers will be acquired before any remove-fill activities take place within Kellogg Creek.

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

The proposed activity involves stabilization of a steep slope on the site, with accompanying plantings to repair and restore riverbank areas damaged by scour following a December 2015 high-water storm event. The applicant's materials include a mitigation plan that proposes to restore the bank where the existing access road will be removed with native grasses and plant a vegetation buffer area adjacent to the location where the slope will be stabilized. 3 trees have been tagged for removal per the approved Riverfront Park plan. They will be removed as part of this project. No additional trees will be removed from within the Willamette Greenway vegetation buffer and scenic views will not be significantly affected over the long term. The proposed activity will enhance the vegetation buffer area. In addition, while some minor removal of vegetation will occur during this project, the overall goal of the project is to restore vegetation that has been lost due to erosion, scour and past development practices. Planting throughout this area will be done in accordance with the Riverfront Park Planting Plan (See Attachment 3.h).

The Planning Commission finds that 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 the Willamette Greenway zone.

6. MMC Section 19.402 Natural Resources

MMC 19.402 establishes regulations for designated natural resource areas. The standards and requirements of MMC 19.402 are an acknowledgment that many of the riparian, wildlife, and wetland resources in the community have been adversely impacted by development over time. The regulations are intended to minimize additional negative impacts and to restore and improve natural resources where possible.

a. MMC Subsection 19.402.3 Applicability

MMC 19.402.3 establishes applicability of the Natural Resource (NR) regulations, including all properties containing Water Quality Resources (WQRs) and Habitat Conservation Areas (HCAs) as shown on the City's Natural Resource (NR) Administrative Map.

The site is adjacent to Kellogg and the Willamette River, both of which are protected water features. As per MMC Table 19.402.15, primary protected water features, along with their associated vegetated corridors, constitute a WQR on the site. The City's NR Administrative Map also shows the HCA designation over a large portion of the site between the existing house and the creek and river below.

As presented in the applicant's submittal materials, the proposed activity will disturb approximately 10,000 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, even without the needed corrections to the applicant's calculation of actual WQR and HCA disturbance area.

The Planning Commission finds that the requirements of MMC 19.402 are applicable to the proposed activity.

b. 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 proposed activity is associated with the existing open space use and is allowed outright in the underlying Downtown Open Space OS zone. The level of disturbance proposed within the 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 must be reviewed using Type III review and the discretionary process established in MMC 19.402.12.

The Planning Commission finds that the proposed activity shall be processed with Type III review.

c. 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 submittal materials include a construction management plan that shows the locations of proposed erosion control measures, access to the work area for machinery and people, and a staging area for equipment and materials. High-

visibility fencing and sediment fence will be utilized to protect nearby trees from damage.

The Planning Commission finds that the applicant's construction management plan is sufficient to satisfy the requirements of MMC 19.402.9.

d. MMC Subsection 19.402.12 General Discretionary Review

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

(1) Impact Evaluation and Analysis

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

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

The applicant's submittal materials include a technical report prepared by Reeve Sherwood Consulting, LLC, a consulting firm with staff experience and expertise in environmental studies, natural system design, and fisheries biology. The technical report includes an impact evaluation and alternatives analysis consistent with the required components listed above.

In summary, the technical report notes that the proposed construction of the Kellogg Creek Bridge Emergency Replacement Project will help correct the current scour and erosion issues that have damaged the south bank and the area around the sanitary manhole cover by doing bank stabilization and adding fish habitat structures and vegetation. Included in the project is the reconstructing the currently over-steepened south bank between the existing bridge and the existing soldier pile wall, reestablishing the bank around the sanitary sewer manhole and raising the manhole cover and providing streambank improvements.

The project will impact some of the previously planted vegetation which will be dug up if impacted and then replanted after construction is complete. Some low-quality vegetation on the south bank which is within the vegetation buffer for Kellogg Creek will be impacted as the over-steepened bank reconstructed but the area will be fully replanted as previously described. The final bank will be a well-vegetated streambank and improved habitat due to the placement of large woody debris (LWD) in three large structures at the toe of slope on the south bank.

While some minor removal of vegetation will occur during this project, the project will restore vegetation that has been lost due to erosion, scour and past development practices. The planting throughout this area will be done in accordance with the approved Riverfront Park Planting Plan.

The report presents an analysis of alternatives to the proposed activity. The streambanks downstream of the bridge were analyzed for various stabilization methods. Full rock from toe of slope to top was looked at, but this method would not allow for native vegetation to be reestablished effectively. A fully bio-engineered hillside was assessed but due to the large volume of water the concern was the high failure rate would be likely. A compromise was reached that incorporates rock and LWD at the toe of slopes followed by rock that would go partially up the hill but would be buried with soil so vegetation could be established. Biodegradable matting will be placed on top of the soil to keep the soil in place until vegetation is established.

Per the WQR and HCA Mitigation Plan, all temporary or permanent disturbances will be either restored or mitigated. The new bridge will place its end abutments outside of ordinary high water (OHW) and will remove fill from the creek banks and bed, thus allowing a more natural creek channel. The removal of the old bridge abutments will reduce the velocity of the creek by widening the channel. This action combined with the addition of fish habitat structures downstream more than mitigates for the temporary and permanent impacts to Kellogg Creek. The south bank portion of the project is itself a mitigation project to improve storm scour damage. Plantings within the project will comply with the approved Riverfront Park Planting Plan.

The technical report demonstrates that the proposed activity is the least impactful option that also restores and improves the streambank area and reduces the likelihood of further slope erosion.

The technical report includes a mitigation plan that calls for replanting disturbed areas with native species plants, with trees and shrubs planted in the ratios listed in MMC Subsection 19.402.11.D.2.b. The native species of trees, shrubs, and groundcover planted will improve the quality of vegetated cover within the WQR and HCA.

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.

(2) Approval Criteria

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

- a) *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.*
- b) *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.*
- c) *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.

The proposed activity would minimize disturbance impacts to the WQR and HCA on the site to the extent practicable while still achieving the goal of stabilizing the slope. The project would affect only those portions of the slope and nearby areas within the WQR and HCA as necessary to stabilize and improve existing conditions. As discussed, while some minor removal of vegetation will occur during this project, the project will restore vegetation that has been lost due to erosion, scour and past development practices. The planting throughout this area will be done in accordance with the approved Riverfront Park Planting Plan. Doing nothing would leave the slope vulnerable to further erosion, increasing the likelihood of additional sediment being deposited in the protected water features below.

To minimize impacts to the WQR and HCA, the applicant's construction management plan shows the erosion control methods to be employed for this project, including: perimeter controls, wattles, sediment fencing, biodegradable erosion control matting, seeding, and permanent vegetation. Protective fencing will be placed so no work occurs outside of the fencing and will also help in keeping the public from getting into the work areas.

As conditioned, the Planning Commission finds that the proposed activity meets the approval criteria for discretionary review.

e. MMC Subsection 19.402.15 Boundary Verification and Map Administration

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

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

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

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

The Planning Commission finds that the City's NR Administrative Map shall be adjusted to reflect the information provided by the applicant with respect to the location of the permanent disturbance to the HCA.

As conditioned, the Planning Commission finds that the proposed activity, including disturbance and restoration of a portion of the designated natural resource areas on the subject property, meets all applicable standards of MMC 19.402.

7. MMC Section 19.905 Conditional Uses

MMC 19.905 establishes regulations for conditional uses, including standards for reviewing modifications to existing conditional uses. As noted in Finding 6-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, 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 city park, which is an allowed use in the underlying Downtown Open Space zone OS. The proposed activity involves removing and replacing an existing bridge spanning Kellogg Creek, as well as slope stabilization and plantings, which represents a major modification to the existing 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 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 subject property is a park approximately 3.4 acres in size. The property is developed with parking areas, a restroom facility, seating and formal walking paths, a vehicular bridge spanning Kellogg Creek, and a dock. The site is adjacent to the confluence of Kellogg Creek and the Willamette River and includes WQR and HCA natural resource areas. The proposed activity is intended to provide a more efficient and aesthetically appropriate bridge crossing and repair significant slope damage due to scour and erosion.

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 subject property is an active public park that is adjacent to Kellogg Creek and the Willamette River. The project area is located at the confluence of Kellogg Creek and the Willamette River and includes replacement of the existing bridge crossing and streambank slope stabilization, repair and restoration. The bridge and the slopes in question are visible from both the river and from McLoughlin Blvd. The project is intended to improve the existing conditions both in the performance and aesthetics of the bridge, but also in the health and stability of the stream banks. The project's impacts on nearby uses will be minimal.

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 activity will be the temporary disturbance of the designated natural resource areas (WQR and HCA) on the site. The project includes planting native species of trees, shrubs, and groundcover to mitigate the disturbance.

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 activity will not result in any different use of the subject property than currently exists and will not generate any unmitigated nuisance impacts.

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 OS. The proposed project is in keeping with existing public park use as well as the approved development plans for Riverfront Park.

As addressed in these Findings, the proposed activity will comply with the relevant standards of the Natural Resource and Willamette Greenway overlay zones, respectively. As addressed elsewhere in Finding 6, the proposed activity is compliant with the other 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 5-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 negative impacts as proposed 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.

An advisory note has been included with the conditions of approval to outline the conditional use permit process.

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

8. As per MMC Subsection 19.1001.7.E.1.a, proposals requiring any kind of development permit must complete both of the following steps:

- a. Obtain and pay for all necessary development permits and start construction within two (2) years of land use approval.
- b. Pass final inspection and/or obtain a certificate of occupancy within four (4) years of land use approval.

As per MMC Subsection 19.1001.7.E.2.b, land use approvals shall expire unless both steps noted above have been completed or unless the review authority specifies a different expiration date in the land use decision to accommodate large, complex, or phased development projects.

9. The application was referred to the following departments and agencies on July 14, 2017:

- Milwaukie Building Department
- Milwaukie Engineering Department
- Milwaukie Operations Department (Environmental Services Division)
- Clackamas Fire District #1
- Historic Milwaukie and Island Stations Neighborhood District Associations (NDAs) Chairperson and Land Use Committee (LUC)
- Oregon Parks and Recreation Department
- Oregon Department of State Lands (DSL)
- Oregon Department of Fish and Wildlife
- Oregon State Marine Board
- Oregon Department of Transportation (ODOT)

The comments received are summarized as follows:

- a. **Alex Roller, Engineering Tech II, Milwaukie Engineering Department:** comments related to the requirement of a stormwater management plan which have been included in the conditions of approval.

- b. Rob Livingston, Environmental Services Coordinator, Milwaukie Public Works Department:** comments relative to the submitted erosion control plan, which have been provided to the applicant for review and response.
- c. Tom Madden, Historic Milwaukie Neighborhood Land Use Committee Chair:** The NDA has no objections to the proposed project.

Conditions of Approval

1. At the time of submittal of the associated development permit application(s), the following shall be resolved:
 - a. Final plans submitted for development permit review shall be in substantial conformance with plans approved by this action, which are the plans stamped received by the City on July 7, 2017 as revised and received on August 17, 2017, except as otherwise modified by these conditions.
 - b. Provide a narrative describing all actions taken to comply with these conditions of approval.
 - c. 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

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 and Public Works Standards that are required at various point in the development and permitting process.

1. Conditional Use Permit

As per MMC Subsection 19.905.6, the City will issue a conditional use permit upon approval of an application to allow major modification of an existing conditional use (including Willamette Greenway conditional uses). 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.
2. Development Standards

Projects affecting designated natural resources are subject to the standards provided in MMC Subsection 19.402.11.A for protection of natural resources during development. In addition, projects requiring mitigation for impacts to natural resource areas are subject to the standards provided in MMC Subsection 19.402.11.B, including survival rates, minimum plant sizes, and others.
3. Erosion Control

Submit an Erosion Control application and plan as required.
4. 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 per MMC 8.08.070(l).

5. Expiration of Approval

As per MMC 19.1001.7.E.1.a, proposals requiring any kind of development permit must complete both of the following steps:

- a. Obtain and pay for all necessary development permits and start construction within two (2) years of land use approval.
- b. Pass final inspection and/or obtain a certificate of occupancy within four (4) years of land use approval.

As per MMC 19.1001.7.E.2.b, land use approvals shall expire unless both steps noted above have been completed or unless the review authority specifies a different expiration date in the land use decision to accommodate large, complex, or phased development projects.



Dennis Egner, FAICP
Planning Director

cc: Rick Buen (City of Milwaukie, 6101 SE Johnson Creek Blvd, Milwaukie, OR 97206)
Randy Reeve (4790 NW Anthony Place, Albany, OR 97321)
Planning Commission (*via e-mail*)
Alma Flores, Community Development Director (*via e-mail*)
Chuck Eaton, Engineering Director (*via e-mail*)
Alex Roller, Engineering Technician II (*via e-mail*)
Peter Passarelli, Public Works Director (*via email*)
Samantha Vandagriff, Building Official (*via e-mail*)
Bonnie Lanz, Permit Specialist (*via e-mail*)
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Oregon Division of State Lands

Land Use File(s): WG-2017-003; NR-2017-002