



# CITY OF MILWAUKIE

February 12, 2019

Land Use File(s): NR-2019-001

## NOTICE OF DECISION

This is official notice of action taken by the Milwaukie Planning Director on February 12, 2019.

<b>Applicant(s):</b>	Jennifer Garbely, Assistant City Engineer
<b>Location(s):</b>	11910 SE McLoughlin Blvd – Kronberg Park
<b>Tax Lot(s):</b>	11E36CB03000, 3100, 3300, 4500
<b>Application Type(s):</b>	Natural Resource Review
<b>Decision:</b>	Approved with Conditions
<b>Review Criteria:</b>	Milwaukie Zoning Ordinance: <ul style="list-style-type: none"><li>• MMC 16.28 Erosion Control</li><li>• MMC 16.32 Tree Cutting</li><li>• MMC 18.04 Flood Hazard Areas</li><li>• MMC 19.304 Downtown Zones</li><li>• MMC 19.401 Willamette Greenway</li><li>• MMC 19.402 Natural Resources</li><li>• MMC 19.1006 Type II Review</li></ul>
<b>Neighborhood(s):</b>	Island Station; Historic Milwaukie

**Appeal period closes: 5:00 p.m., February 27, 2019**

This notice is issued in accordance with Milwaukie Municipal Code (MMC) Section 19.1005 Type II Review. The complete case file for this application is available for review 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 Koliass, Associate Planner, at 503-786-7653 or [koliassv@milwaukieoregon.gov](mailto:koliassv@milwaukieoregon.gov), if you wish to view this case file or visit the project webpage at [www.milwaukieoregon.gov/planning/nr-2019-001](http://www.milwaukieoregon.gov/planning/nr-2019-001).

**This decision may be appealed by 5:00 p.m. on February 27, 2019, which is 15 days from the date of this decision.**<sup>1</sup> Any person who is adversely affected or aggrieved by this decision may appeal the decision by filing a written appeal. An appeal of this decision would be heard by the

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

Milwaukie Planning Commission following the procedures of MMC Section 19.1010 Appeals. This decision will become final on the date above if no appeal is filed during the appeal period. Milwaukie Planning staff can provide information regarding forms, fees, and the appeal process at 503-786-7630 or [planning@milwaukieoregon.gov](mailto:planning@milwaukieoregon.gov).

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

### **Findings in Support of Approval**

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, Jennifer Garbely, Assistant City Engineer, has applied for approval to construct a multi-use path in Kronberg Park. This site is in the Downtown Open Space Zone (OS). The applicant is the property owner and has the authority to initiate the application per MMC 19.1001.6.A. The application was initially submitted on January 8, 2019 and was deemed complete on January 22, 2019. The land use application file number is NR-2019-001.
2. The applicant is proposing to construct a 10-12 ft wide, 1,040-lf multi-use path in Kronberg Park which will parallel McLoughlin Blvd, per the 2015 Kronberg Park Master Plan. The path will connect the south end of Kellogg Creek pedestrian bridge with the crosswalk at McLoughlin Blvd and River Rd. The project includes mitigation plantings within mapped natural resource areas.
3. The proposal is subject to the following provisions of the Milwaukie Municipal Code (MMC):
  - MMC 16.28 Erosion Control
  - MMC 16.32 Tree Cutting
  - MMC 18.04 Flood Hazard Areas
  - MMC 19.304 Downtown Zones
  - MMC 19.401 Willamette Greenway
  - MMC 19.402 Natural Resources
  - MMC 19.1005 Type II Review

The application has been processed and public notice provided in accordance with MMC Section 19.1005 Type II Review with a decision by the Planning Director.

4. MMC 16.28 Erosion Control

- a. MMC 16.28.020 establishes the applicability of erosion control permits, and identifies the types of projects that require an erosion control permit, and when an erosion control permit is required prior to commencement of work. For any lot that includes natural resources regulated by Milwaukie Zoning Ordinance Section 19.402 Natural Resources, an erosion control permit shall be required prior to placement of fill, site clearing, or land disturbances, including but not limited to grubbing, clearing or removal of ground vegetation, grading, excavation, or other activities, any of which has the potential for, or results in visible and measurable erosion, regardless of the area of disturbance.

The proposed project is on property that contains mapped natural resources regulated by MMC 19.402. An erosion control plan was included in the application materials.

As conditioned, requiring an erosion control permit prior to any land disturbance activities, this criterion is met.

5. MMC 16.32 Tree Cutting

- a. MMC 16.32.026 establishes the applicability and requirements for permits for major pruning or removal of street trees or trees in the public right-of-way and other public land.

The proposed project identifies trees to be removed. MMC 16.32.026 applies to the project. A permit for tree removal has been approved by the City (601-19-000031-ROW). Tree cutting permits for trees in the public right-of-way will be obtained as applicable.

As conditioned, to obtain the applicable tree cutting permits in the public right-of-way, this criterion is met.

6. MMC 18.04 Flood Hazard Areas

- a. MMC 18.04.150 establishes the standards and requirements for construction in a flood hazard area.

The project site lies partially within the FEMA 100-year floodplain and the Metro 1996 flood zone. The proposal does not involve the construction of habitable buildings, installation of water or sanitary sewer, or for a subdivision. Only Subsections 18.04.150.A - Anchoring, B – Construction Materials and Methods, and F – Balanced Cut and Fill apply to the project.

(1) Anchoring

- (a) All new construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure.

*The elevated structures have been designed per the “AASHTO Load and Resistance Factor Design Bridge Design Specifications” and the “LRFD Guide Specifications for the Design of Pedestrian Bridges” to resist flotation, collapse, and lateral movement. The structural plan sheets, stamped by a registered Structural Engineer, were submitted as part of the Construction Plan set in the application materials.*

(2) Construction Materials and Methods

- (a) All new construction and substantial improvements shall be constructed with materials and utilize equipment resistant to flood damage.
- (b) All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.
- (c) Electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities shall be designed and/or otherwise elevated or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

*The illumination plan sheets, stamped by a registered Engineer, include requirements that electrical equipment conform to the relevant industry standards to ensure protection of the equipment. These plans are a part of the Construction Plan set in the application materials.*

(3) Balanced Cut and Fill

The displacement of flood storage area by the placement of fill or structures (including building foundations) shall conform to the following standards for balanced cut and fill:

- (a) The placement of fill or structures that displaces ten (10) cubic yards or less of flood storage area is exempt from the requirements below.
- (b) The placement of fill or structures that displaces more than ten (10) cubic yards of flood storage area shall comply with the following standards:
  - (i) No net fill in any floodplain is allowed.
  - (ii) All fill placed in a floodplain shall be balanced with at least an equal amount of soil material removal.
  - (iii) Any excavation below bankful stage shall not count toward compensating for fill.
  - (iv) Excavation to balance a fill shall be located on the same parcel as the fill unless it is not reasonable or practicable to do so. In such cases, the excavation may be located in the same drainage basin and as close as possible to the fill site subject to the following:

- (1) The proposed excavation and fill will not increase flood impacts for surrounding properties as determined through hydrologic and hydraulic analysis;
  - (2) The proposed excavation is authorized under applicable municipal code provisions including Section 19.402 Natural Resources; and
  - (3) Measures to ensure the continued protection and preservation of the excavated area for providing balanced cut and fill shall be approved by the City.
- (v) Temporary fills permitted during construction shall be removed at the end of construction.
- (vi) New culverts, stream crossings, and transportation projects shall be designed as balanced cut and fill projects or designed not to significantly raise the design flood elevation. Such projects shall be designed to minimize the area of fill in flood management areas and to minimize erosive velocities. Stream crossings shall be as close to perpendicular to the stream as practicable. Bridges shall be used instead of culverts wherever practicable.
- (vii) Excavation and fill required for the construction of detention facilities or structures, and other facilities, shall be designed to reduce or mitigate flood impacts and improve water quality. Levees shall not be used to create vacant buildable lands.

*Construction of the project necessitates minor areas of fill within the floodplain. Grading will be accomplished to create an equivalent amount of cutting to mitigate for total volume of storage lost due to the fill. As proposed, 2 cuts of 20 cu yds each are balanced with 40 cu yds of fill. All balancing of cut and fill will be located on the subject parcel. The cut and fill areas are depicted on the diagram in Appendix D of the application materials.*

This criterion is met.

7. MMC 19.304 Downtown Zones

- a. MMC 19.304.2 identifies the permitted uses in the downtown zones.

*The proposed path is a planned feature in Kronberg Park. Parks and open space are identified as permitted uses in the Downtown Open Space Zone.*

*This criterion is met.*

8. MMC 19.401 Willamette Greenway Review

- a. MMC 19.401.5.D establishes the requirements for a greenway conditional use. A greenway conditional use is required for all intensification or change of use as defined in this section.

*The proposal is for a public walkway located a minimum of 150 feet from the top of Willamette riverbank, with at-grade portions constructed of permeable material, and width not exceeding 12 feet. In MMC 19.401.4 the definition of change of use specifically excludes the construction of new low impact pathways, which are further defined as public recreational trails or public walkways located a minimum of 150 ft from the top of Willamette riverbank and constructed of permeable material if at-grade, up to 12 ft in width.*

*MMC 19.401 does not apply to the proposal.*

9. MMC 19.402 Natural Resources Review

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 bounded on the east and north sides by Kellogg Lake which is a protected water feature. 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 nearly the entire site except for a portion of the meadow at the north end of the site.*

*As presented in the applicant's submittal materials, construction of the path will result in a permanent disturbance of 3,702 sq ft of WQR and 1,862 sq ft of HCA. Permanent disturbance is a linear area of the path alignment. The disturbance of HCA is 2.7% of the total amount of HCA on the project site.*

	<b>WQR</b>	<b>HCA</b>
<b>Total Existing Area</b>	142,491 sq ft	140,921 sq ft
<b>Proposed disturbance (permanent)</b>	3,702 sq ft	1,862 sq ft
<b>Proposed disturbance (temporary)</b>	2,624 sq ft	1,302 sq ft

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

b. MMC Subsection 19.402.7 Activities Requiring Type II Review

MMC 19.402.7 establishes that certain activities within a designated WQR and/or HCA are subject to Type II review in accordance with MMC 19.1005. As per MMC 19.402.7.A.3, this includes Special Uses, including walkways and bikepaths.

*The proposed activity is the construction of a new multi-use path approximately 1,036 ft in length. An at-grade hard-surface path will be constructed in the northern grass covered portion of the site, connecting to the existing Kellogg Creek pedestrian bridge. This segment will be 10 feet in width, constructed of permeable materials. The southern portion will be elevated, taking users through the tree canopy and providing views of Kellogg Lake and the natural vegetation below. The elevated path will connect to the existing sidewalk at the River Road/McLoughlin Boulevard intersection. This segment will be 12 feet in width, consisting of steel bridges with at-grade sections where transitions are necessary.*

*The Planning Director finds that the proposed activity shall be processed with Type II 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 an erosion control 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. The submitted planting plan includes tree protection measures.*

*This standard is met.*

d. MMC Subsection 19.402.11 Development Standards

(1) Protection of Natural Resources During Site Development

MMC 19.402.11.A provides standards for development of any site containing a designated natural resource:

- Work areas shall be marked to reduce potential damage to the WQR and/or HCA.
- Trees in WQRs or HCAs shall not be used as anchors for stabilizing construction equipment.
- Native soils disturbed during development shall be conserved on the property.
- An erosion and sediment control plan is required and shall be prepared in compliance with requirements set forth in the City's Public Works Standards.
- Site preparation and construction practices shall be followed that prevent drainage of hazardous materials or erosion, pollution, or sedimentation to any WQR adjacent to the project area.
- Stormwater flows that result from proposed development within and to natural drainage courses shall not exceed predevelopment flows.
- Prior to construction, the WQR and/or HCA that is to remain undeveloped shall be flagged, fenced, or otherwise marked and shall remain undisturbed. Such markings shall be maintained until construction is complete.
- The construction phase of the development shall be done in such a manner as to safeguard the resource portions of the site that have not been approved for development.
- Where practicable, lights shall be placed so that they do not shine directly into any WQR and/or HCA location. The type, size, and intensity of lighting shall be selected so that impacts to habitat functions are minimized.
- All work on the property shall conform to a construction management plan prepared according to Subsection 19.402.9.

*The applicant's submittal materials include documentation showing compliance with each of these standards. The project has been designed to be constructed with protection of natural resources in mind. A stormwater report with calculations demonstrating minimal impact of stormwater runoff is found in Appendix E. The lighting plan, included in the Construction Plan set, and the accompanying Lighting Analysis addresses the lighting standard. Protection of sensitive areas is further addressed on the Erosion Control sheets within the Construction Plan set, and in the construction specifications.*

*As conditioned, to obtain and erosion control permit and to submit a construction management plan, the Planning Director finds that the project has been designed in*



*accordance with the required development standards provided in MMC 19.402.11.A.*

*This standard is met.*

(2) General Standards for Required Mitigation

MMC 19.402.11.B provides the standards for required mitigation for disturbance to WQRs and/or HCAs:

- Disturbance
  - Designated natural resources that are affected by temporary disturbances shall be restored, and those affected by permanent disturbances shall be mitigated, in accordance with the standards provided in Subsection 19.402.11.C for WQRs and Subsection 19.402.11.D.2 for HCAs, as applicable.
  - Landscape plantings are not considered to be disturbances, except for those plantings that are part of a non-exempt stormwater facility; e.g., raingarden or bioswale.
- Required Plants
  - Unless specified elsewhere in Section 19.402, all trees, shrubs, and ground cover planted as mitigation shall be native plants, as identified on the Milwaukie Native Plant List. Applicants are encouraged to choose particular native species that are appropriately suited for the specific conditions of the planting site; e.g., shade, soil type, moisture, topography, etc.
- Plant Size
  - Required mitigation trees shall average at least a ½-in caliper—measured at 6 in above the ground level for field-grown trees or above the soil line for container-grown trees—unless they are oak or madrone, which may be 1-gallon size. Required mitigation shrubs shall be at least 1-gallon size and 12 in high.
- Plant Spacing
  - Trees shall be planted between 8 and 12 ft on center. Shrubs shall be planted between 4 and 5 ft on center or clustered in single-species groups of no more than 4 plants, with each cluster planted between 8 and 10 ft on center. When planting near existing trees, the dripline of the existing tree shall be the starting point for plant spacing measurements.
- Plant Diversity
  - Shrubs shall consist of at least 2 different species. If 10 trees or more are planted, then no more than 50% of the trees shall be of the same genus.

- Location of Mitigation Area
  - On-Site Mitigation
    - All mitigation vegetation shall be planted on the applicant's site within the designated natural resource that is disturbed, or in an area contiguous to the resource area; however, if the vegetation is planted outside of the resource area, the applicant shall preserve the contiguous planting area by executing a deed restriction such as a restrictive covenant.
  - Off-Site Mitigation
    - For disturbances allowed within WQRs, off-site mitigation shall not be used to meet the mitigation requirements of Section 19.402.
    - For disturbances allowed within HCAs, off-site mitigation vegetation may be planted within an area contiguous to the subject-property HCA, provided there is documentation that the applicant possesses legal authority to conduct and maintain the mitigation, such as having a sufficient ownership interest in the mitigation site. If the off-site mitigation is not within an HCA, the applicant shall document that the mitigation site will be protected after the monitoring period expires, such as through the use of a restrictive covenant.
- Invasive Vegetation
  - Invasive nonnative or noxious vegetation shall be removed within the mitigation area prior to planting, including, but not limited to, species identified as nuisance plants on the Milwaukie Native Plant List.
- Ground Cover
  - Bare or open soil areas remaining after the required tree and shrub plantings shall be planted or seeded to 100% surface coverage with grasses or other ground cover species identified as native on the Milwaukie Native Plant List. Revegetation shall occur during the next planting season following the site disturbance.
- Tree and Shrub Survival
  - A minimum of 80% of the trees and shrubs planted shall remain alive on the second anniversary of the date that the mitigation planting is completed.
  - Required Practices

- To enhance survival of the mitigation plantings, the following practices are required:
- Mulch new plantings to a minimum of 3-in depth and 18-in diameter to retain moisture and discourage weed growth.
- Remove or control nonnative or noxious vegetation throughout the maintenance period.
- Recommended Practices
  - To enhance survival of tree replacement and vegetation plantings, the following practices are recommended:
  - Plant bare root trees between December 1 and April 15; plant potted plants between October 15 and April 30.
  - Use plant sleeves or fencing to protect trees and shrubs against wildlife browsing and the resulting damage to plants.
  - Water new plantings at a rate of 1 in per week between June 15 and October 15 for the first 2 years following planting.
- Monitoring and Reporting
  - Monitoring of the mitigation site is the ongoing responsibility of the property owner. Plants that die shall be replaced in kind as needed to ensure the minimum 80% survival rate. The Planning Director may require a maintenance bond to cover the continued health and survival of all plantings. A maintenance bond shall not be required for land use applications related to owner-occupied single-family residential projects. An annual report on the survival rate of all plantings shall be submitted for 2 years.
- Light Impacts
  - Where practicable, lights shall be placed so that they do not shine directly into any WQR and/or HCA location. The type, size, and intensity of lighting shall be selected so that impacts to habitat functions are minimized.

*The applicant's materials include a mitigation plan identifying the mitigation area and proposed planting list. The proposed planting list includes big-leaf maple, douglas fir, western red cedar, scouler willow, redosier dogwood, salmonberry, sitka willow, and sword fern. Also included is a native seed mix for groundcover areas.*

	<b>WQR</b>	<b>HCA</b>
<b>Proposed disturbance (permanent)</b>	3,702 sq ft	1,862 sq ft
<b>Proposed disturbance (temporary)</b>	2,624 sq ft	1,302 sq ft
<b>Proposed mitigation for permanent disturbance</b>	Approx. 31,400 sq ft 95 trees; 474 shrubs	

*Environmental Science Associates, the City’s on-call natural resource review consultant, provided a review of the proposed mitigation area and planting list and concluded that both the location of the proposed mitigation as well as the list of plant species are suitable and appropriate. The proposed mitigation area was identified by the North Clackamas Parks and Recreation District (NCPRD) and is consistent with the Kronberg Park Master Plan. All areas of temporary disturbance will be restored to their original condition. The submitted lighting plan demonstrates compliance with this standard. As conditioned, the plantings will be monitored and maintained in accordance with the criteria. Invasive species and debris will be removed; any soil disturbance resulting from debris removal will be restored to its original condition or better. NCPRD has expressed interest in implementing the mitigation plan using their volunteer program. They regularly schedule invasive plant removal volunteer events, which will be appropriate for Kronberg Park. The City will partner with NCPRD to ensure compliance with all aspects of the code requirements.*

*This standard is met.*

(3) Mitigation Requirements for Disturbance within WQRs

MMC 19.402.11.C provides the standards assessing the condition of the WQR and the associated mitigation requirements.

*To determine the Class of the WQR, measurements were made using the Measurement tool in the City’s mapping system, with WQR aerial (tree canopy) layers active as well as field surveys. In addition to the large open field area, the South Forest area has a mostly open understory, with enhancement plantings installed by NCPRD as part of their ongoing planting program. Several large older trees are located along the McLoughlin roadfill, with most of the trees on the terrace below being comparatively young. The few evergreens include a large redwood and a few smaller Douglas firs along the road bank. Several large black cottonwoods are near the north end of proposed path. The primarily deciduous overstory is otherwise comprised of bigleaf maple, black locust, and red oak, with red alder and Oregon ash also noted along the shoreline of Kellogg Creek. Understory plants include ornamental and native species, especially to the south.*

*Laurel, camellia, and English ivy are present, along with snowberry and tall Oregon grape. Numerous native shrubs or saplings have been planted within the understory, including seedling alder, cedar, Douglas fir, grand fir, bigleaf maple, Indian plum, and snowberry. Groundcover includes Himalayan blackberry, mint, nipplewort, dock, geranium, and wood avens. Yellow flag is also apparent in places along the flooded edge of Kellogg Creek.*

*Existing tree, shrub, and ground coverage exceeds 80%, and existing tree canopy is between 25% and 50%. Therefore, the WQR on the subject site is classified as B “Marginal.” Mitigation in the WQR is guided only by the general requirements in Table 19.402.11.C. Therefore, mitigation within the WQR is proposed using the HCA mitigation standards. The proposed mitigation is an area exceeding 31,000 sq ft and comprising of various native seed mixes for ground cover, 95 trees, and 474 shrubs.*

*This standard is met.*

(4) Nondiscretionary Standards for HCAs

MMC 19.402.11.D.2 provides the mitigation requirements for disturbance in HCAs. An applicant shall meet the requirement of Mitigation Option 1 or 2, whichever results in more tree plantings.

Mitigation Option 1

This mitigation requirement is calculated based on the number and size of trees that are removed from the site. Trees that are removed from the site shall be replaced as shown in Table 19.402.11.D.2.a. Conifers shall be replaced with conifers. Bare ground shall be planted or seeded with native grasses or herbs. Nonnative sterile wheat grass may also be planted or seeded, in equal or lesser proportion to the native grasses or herbs.

Mitigation Option 2

This mitigation requirement is calculated based on the size of the disturbance area within an HCA. Native trees and shrubs are required to be planted at a rate of 5 trees and 25 shrubs per 500 sq ft of disturbance area. Bare ground shall be planted or seeded with native grasses or herbs.

*As provided in the applicant’s materials, per Option 1, 5 trees from 6” to 12”, and 2 trees from 13” to 18” will be removed. One 6” tree and one 16” tree are nuisance species and mitigation is not required. This results in mitigation of 11 trees and 18 shrubs. Per Option 2, the project will result in 3,164 sf of disturbance in the HCA. This calculation requires 32 trees and 158 shrubs to be planted. Option 2 yields a higher mitigation rate; therefore, per 19.402.11.D.2, mitigation shall include planting of at least 32 trees and 158 shrubs for the disturbance in the HCA. When added to the mitigation for disturbance in the WQR, the total mitigation, in addition to native seed*

*mixes for groundcover, is 95 trees and 474 shrubs.*

*This standard is met.*

(5) Standards for Special Uses

MMC 19.402.11.E establishes the standards for Special Uses.

(a) General Standards for Special Uses

General standards include a requirement for a mitigation plan in compliance with 19.402.11 as applicable, and that WQRs and HCAs are restored and maintained according to the mitigation plan. The standards also include a requirement for protection of existing vegetation outside of approved work areas and that the site is revegetated as soon as practicable.

*A mitigation plan, including tree protection measures, and a planting plan and schedule were submitted as part of the application materials.*

*This standard is met.*

(b) Walkways and bikepaths

Walkways and bikepaths are to comply with the following standards:

- Walkways and bike paths within WQRs or HCAs shall not exceed a 12-ft width.
- If the proposed walkway or bike path will be located within a WQR and will be paved, then, for the purposes of evaluating the proposed project, the vegetated corridor shall be widened by the width of the walkway or bike path.
- The walkway or bike path shall be designed to avoid WQRs and HCAs, to the greatest extent practicable, and shall be constructed so as to minimize disturbance to existing vegetation and slope stability.
- The walkway or bike path shall be a minimum of 10 ft from the boundary of the protected water feature.
- Where practicable, any lights associated with the walkway or bike path shall be placed so that they do not shine directly into any WQR and/or HCA location. The type, size, and intensity of lighting shall be selected so that impacts to habitat functions are minimized.

*The proposed multi-use path will be limited to 12 ft in width, and the at-grade portions will be constructed of permeable materials. The alignment was selected from several alternatives to provide the best user experience with the least disturbance to sensitive areas. The lighting plan, included in the Construction Plan was designed to minimize impact to habitat functions.*

*This standard is met.*

*As conditioned, the Planning Director finds that the proposed activity meets the approval criteria for Type II review of a Special Use.*

10. As per MMC 19.1001.7.E, this variance request shall expire and become void unless the proposed development completes the following steps:

Obtain and pay for all necessary development permits and start development of the site within 2 years of land use approval (by February 27, 2021).

Pass final inspection and/or obtain a certificate of occupancy within 4 years of land use approval (by February 27, 2023).

11. The application was referred to the following departments and agencies on January 24, 2019: Milwaukie Building Division; Milwaukie Engineering Department; Clackamas Fire District #1; Environmental Science Associates (the City's on-call environmental reviewer); the Historic Milwaukie and Island Station Neighborhood District Associations; Metro; Oregon Department of Transportation; Parks and Recreation Board; and the North Clackamas Parks and Recreation District. Notice of the application was also sent to surrounding property owners within 300 ft of the site on January 24, 2019, and a sign was posted on the property on January 24, 2019. Comments received are as follows:

- **NCPRD:** The agency provided recommended mitigation area and plant lists, which have been incorporated into revised application materials.
  - **Staff response:** *The revised mitigation area and planting lists were reviewed by ESA and were deemed appropriate and suitable relative to the code requirements and subject property.*
- **ODOT:** An ODOT Miscellaneous Permit must be obtained for all work in the highway right of way.
  - **Staff response:** *The applicant is fully engaged with ODOT, and has submitted all required permit applications, with 100% drawings nearly complete.*

### **Conditions of Approval**

1. An ODOT Miscellaneous Permit must be obtained for all work in the highway right-of-way.
2. Tree cutting permits for trees in the public right-of-way will be obtained as applicable.
3. Prior to any land disturbance activities, the following shall be resolved:
  - Applicant will obtain an erosion control permit.
  - The applicant shall submit a Construction Management Plan (CMP) that satisfies the requirements of MMC 19.402.9 and shows the following:
    - The CMP must establish root protection zones (RPZs) around trees in WQR/HCA adjacent to any approved work area. Per 19.402.9, the RPZ shall extend from the trunk to the outer edge of the tree's canopy, or as close to the outer edge of the canopy as is practicable for the approved project.

- Clarify the location of all staging and access areas, and ensure that all temporary disturbance areas have been identified and accounted for the mitigation plan.
4. Prior to final inspection of any building permit, the following shall be resolved:
- Submit a letter from the project landscape designer and/or NCPRD attesting that all required site plantings have been completed in conformance with the approved site plans and with City standards, including all mitigation plantings. This includes removal of all invasive or nuisance species vegetation (as identified on the Milwaukie Native Plant List) as well as debris and rubble per the application narrative and mitigation plan.

**Director's Declaration of Impartiality**

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

**Decision**

- Approved
- Approved with Conditions
- Denied



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Dennis Egner, FAICP  
Planning Director

cc: Kelly Brooks, Assistant City Manager and Acting City Engineer  
Jennifer Garbely, Assistant City Engineer  
Wendy Marshall, Civil Engineer  
Planning Commission (via email)  
Alma Flores, Community Development Director (via email)  
Alex Roller, Engineering Technician II (via email)  
Samantha Vandagriff, Building Official (via email)  
Stephanie Marcinkiewicz, Inspector/Plans Examiner (via email)  
Harmony Drake, Permit Technician (via email)  
Mike Boumann and Izak Hamilton, CFD#1 (via email)  
ODOT Region 1 (via email)  
Tonia Williamson, NCPRD (via email)  
PARB (via email)  
NDA(s): Island Station ; Historic Milwaukie (via email)

Land Use File(s): NR-2019-001