



CITY OF MILWAUKIE

REVISED AGENDA

May 28, 2019

PLANNING COMMISSION

City Hall Council Chambers
10722 SS Main Street
www.milwaukieoregon.gov

- 1.0 **Call to Order - Procedural Matters** — 6:30 PM
- 2.0 **Planning Commission Minutes** — Motion Needed
- 3.0 **Information Items**
- 4.0 **Audience Participation** — This is an opportunity for the public to comment on any item not on the agenda
- 5.0 **Public Hearings** — Public hearings will follow the procedure listed on reverse
 - 5.1 Summary: Monroe Apartments Building Height Variance
Applicant: Dean Masukawa, LRS Architects
Address: Monroe Street & 37th Avenue
File: VR-2019-003
Staff: Vera Kolas, Associate Planner
 - 5.2 Summary: Elk Rock Estates **HEARING TO BE CONTINUED TO JULY 23**
Applicant/Owner: Matthew Gillis, Gillis Properties
Address: 12205/12225 SE 19th Ave
File: NR-2018-005, LC-2018-001, WG-2018-001, VR-2018-014, VR-2018-015
Staff: Vera Kolas, Associate Planner
- 6.0 **Worksession Items** — None
- 7.0 **Planning Department Other Business/Updates**
- 8.0 **Planning Commission Committee Updates and Discussion Items** — This is an opportunity for comment or discussion for items not on the agenda.
- 9.0 **Forecast for Future Meetings:**
 - June 11, 2019
 - 1. Public Hearing: A-2016-006 Clackamas Community College Annexation
 - 2. Public Hearing: WG-2019-002 Proposed Dock
 - 3. Worksession: Comprehensive Plan Housing Policies
 - June 25, 2019
 - 1. Public Hearing: NR-2018-005 Elk Rock Estates (*tentative continued*)
 - 2. Worksession: Cottage Cluster/Accessory Dwelling Unit Presentation & Discussion
 - 3. Joint Session: Design Review Code with Design and Landmarks Committee *tentative*
 - July 9, 2019
 - 1. Joint Session: Design Review Code with Design and Landmarks Committee *tentative*

Milwaukie Planning Commission Statement

The Planning Commission serves as an advisory body to, and a resource for, the City Council in land use matters. In this capacity, the mission of the Planning Commission is to articulate the Community's values and commitment to socially and environmentally responsible uses of its resources as reflected in the Comprehensive Plan

- 1. PROCEDURAL MATTERS.** If you wish to speak at this meeting, please fill out a yellow card and give to planning staff. Please turn off all personal communication devices during meeting. For background information on agenda items, call the Planning Department at 503-786-7600 or email planning@milwaukieoregon.gov. Thank you.
- 2. PLANNING COMMISSION and CITY COUNCIL MINUTES.** City Council and Planning Commission minutes can be found on the City website at www.milwaukieoregon.gov/meetings.
- 3. FORECAST FOR FUTURE MEETING.** These items are tentatively scheduled, but may be rescheduled prior to the meeting date. Please contact staff with any questions you may have.
- 4. TIME LIMIT POLICY.** The Commission intends to end each meeting by 10:00pm. The Planning Commission will pause discussion of agenda items at 9:45pm to discuss whether to continue the agenda item to a future date or finish the agenda item.

Public Hearing Procedure

Those who wish to testify should come to the front podium, state his or her name and address for the record, and remain at the podium until the Chairperson has asked if there are any questions from the Commissioners.

- 1. STAFF REPORT.** Each hearing starts with a brief review of the staff report by staff. The report lists the criteria for the land use action being considered, as well as a recommended decision with reasons for that recommendation.
- 2. CORRESPONDENCE.** Staff will report any verbal or written correspondence that has been received since the Commission was presented with its meeting packet.
- 3. APPLICANT'S PRESENTATION.**
- 4. PUBLIC TESTIMONY IN SUPPORT.** Testimony from those in favor of the application.
- 5. NEUTRAL PUBLIC TESTIMONY.** Comments or questions from interested persons who are neither in favor of nor opposed to the application.
- 6. PUBLIC TESTIMONY IN OPPOSITION.** Testimony from those in opposition to the application.
- 7. QUESTIONS FROM COMMISSIONERS.** The commission will have the opportunity to ask for clarification from staff, the applicant, or those who have already testified.
- 8. REBUTTAL TESTIMONY FROM APPLICANT.** After all public testimony, the commission will take rebuttal testimony from the applicant.
- 9. CLOSING OF PUBLIC HEARING.** The Chairperson will close the public portion of the hearing. The Commission will then enter into deliberation. From this point in the hearing the Commission will not receive any additional testimony from the audience, but may ask questions of anyone who has testified.
- 10. COMMISSION DISCUSSION AND ACTION.** It is the Commission's intention to make a decision this evening on each issue on the agenda. Planning Commission decisions may be appealed to the City Council. If you wish to appeal a decision, please contact the Planning Department for information on the procedures and fees involved.
- 11. MEETING CONTINUANCE.** Prior to the close of the first public hearing, any person may request an opportunity to present additional information at another time. If there is such a request, the Planning Commission will either continue the public hearing to a date certain, or leave the record open for at least seven days for additional written evidence, argument, or testimony. The Planning Commission may ask the applicant to consider granting an extension of the 120-day time period for making a decision if a delay in making a decision could impact the ability of the City to take final action on the application, including resolution of all local appeals.

The City of Milwaukie will make reasonable accommodation for people with disabilities. Please notify us no less than five (5) business days prior to the meeting.

Milwaukie Planning Commission:

Kim Travis, Chair
John Henry Burns, Vice Chair
Adam Argo
Joseph Edge
Greg Hemer
Lauren Loosveldt
Robert Massey

Planning Department Staff:

Denny Egner, Planning Director
David Levitan, Senior Planner
Brett Kolver, Associate Planner
Vera Koliass, Associate Planner
Mary Heberling, Assistant Planner
Alicia Martin, Administrative Specialist II



CITY OF MILWAUKIE

To: Planning Commission
Through: Dennis Egner, Planning Director
From: Vera Kalias, Associate Planner
Date: May 20, for May 28, 2019, Public Hearing
Subject: **File:** VR-2019-003
Applicant: Dean Masukawa
Owner(s): Tye Management Company
Address: 37th Ave and Monroe St
Legal Description (Map & Tax Lot): 11E36AB03003 and 11E36AA19203
NDA: Ardenwald and Hector Campbell

ACTION REQUESTED

Approve application VR-2019-003 and adopt the recommended Findings and Conditions of Approval found in Attachment 1. This action would allow for the development of a five-story building as part of the Monroe Apartments development.

BACKGROUND INFORMATION

Project Permitting Process

The proposed project is a 234-unit multifamily development on a 7.2-acre site. Multifamily development is a permitted use in the General Mixed Use (GMU) Zone. As proposed, the project is subject to the following land use review:

- MMC 19.911.7 – Building height variance in the GMU zone: Type III
- MMC 19.505.3 – Development Review for Multifamily Housing: Type I or Type II
- MMC 19.911 – Variance to fence height: Type II or Type III
- MMC 19.704 – Transportation Facilities Review: Type II

The applicant has elected to phase the permitting process to confirm approval of the proposed 5-story building prior to submitting for the subsequent land use review processes:

- Phase 1: building height variance
- Phase 2: development review, variance, transportation facilities review
 - Includes City and peer review of transportation impact study

The subject of this staff report and review by the Planning Commission is Phase 1 for the requested variance to allow a 5-story building in the proposed development. Phase 2 land use review will commence after the conclusion of this review and once the applicant submits all required application materials.

The applicant is proposing a five-story building in the GMU Zone. Per MMC 19.911.7, the building height variance is subject to Type III review and approval by the Planning Commission in accordance with Section 19.1011 – Design Review Meetings. Design review meetings are with the DLC in advance of the Planning Commission hearing. The DLC provides a recommendation to the Planning Commission related to the approval criteria for the height variance.

A. Site and Vicinity

The site is located on the vacant property at Monroe St and 37th Ave. The site is made up of two tax lots and has an area of 7.24 acres. It is bounded by Monroe St, 37th Ave, and Oak St as well as the Southern Pacific Railroad line.

The surrounding area consists of a combination of uses, including single-family neighborhoods, a multifamily development, the Milwaukie Marketplace commercial development, and the Milwaukie Police Station.



Figure 1 Subject property and surrounding area

B. Zoning Designation

General Mixed Use – GMU

C. Comprehensive Plan Designation

Town Center – TC

D. Land Use History



Figure 2 1967 aerial photo of subject property

The site has a history of industrial use and hazardous material contamination. The L.D. McFarland Company leased the site from the mid-1920s to the mid-1950s and operated a wood treatment facility using creosote to treat utility poles. Operations resulted in creosote impacts to site soils and groundwater. Two significant creosote spills are documented. An estimated 10,000-gallon spill from a railroad car reportedly occurred in 1937 and an approximately 10,000-gallon release occurred from an above ground storage tank in 1951 as a result of vandalism. DEQ has been working on the site and in concert with the current and previous landowners, as well as with the City. Long-term remedial controls to manage the site are in place.

Outside of the above-mentioned history, city records indicate no previous land use actions for this site.

E. Proposal

The applicant is seeking land use approval for a height variance to allow a five-story building as part of a multifamily development (See Figure 3). The proposal is 234-unit multifamily development, including live/work units, in five buildings.

One of the proposed buildings will be five stories using two building height bonuses to exceed the 3-story base maximum height: residential and green building. Per MMC 19.303.4.B.3, buildings that elect to use both height bonuses for a 5-story building are subject to Type III review per Subsection 19.911.7 Building Height Variance in the General Mixed Use Zone.



Figure 3. Site Plan

On May 6, the Design and Landmarks Committee reviewed the project in an open public meeting. The DLC voted to recommend approval of the variance and recommended that the Planning Commission consider the following during the review (see Attachment 3):

- That the Planning Commission discuss a potential requirement that the applicant break up the 3 large gable ends to further reduce the massing and visual impacts of those 5-story elevations on surrounding properties. For example, each large gable end could be re-designed with 2 gable ends.

KEY ISSUES

Summary

Staff has identified one issue for the Commission's deliberation. Aspects of the proposal not listed below, such as traffic impacts, are not subject to the Commission's review and will be reviewed through the Phase 2 land use review process.

Analysis

A. Does the proposal meet the approval criteria for a height variance? Each criterion is addressed below:

1. The proposed project avoids or minimizes impacts to surrounding properties. Any impacts from the proposed project will be mitigated to the extent practicable. The applicant's alternatives analysis shall provide, at a minimum, an analysis of the impacts and benefits of the variance proposal as compared to the baseline code requirements.

The site is surrounded on two of its three sides by single-family and multifamily residential homes (across Monroe Street and SE 37th). The third side contains railroad tracks and the Milwaukie Marketplace shopping center. The GMU zone allows a building permitted outright to be 4 stories and 57 ft high. The requested variance would allow Building 1 to be built at 5 stories and 69 ft. Potential impacts are visual impacts to the surrounding residential development as a result of the 5-story design.

The applicant has addressed the potential visual impacts in the following ways:

- Building 1 is sited toward the interior of the site approximately 150 ft from Monroe St where a multifamily development is currently located north of the site. To the east, 180 ft from 37th Ave, single-family homes are located. This horizontal distance makes Building 1 appear less prominent than it would if sited closer to the street. Additionally, the site slopes downward between the streets and the Building 1 location. Building 1 is sited on the lower elevation area to further reduce its visual impact to the surrounding neighborhoods (See Figures 4 and 5).

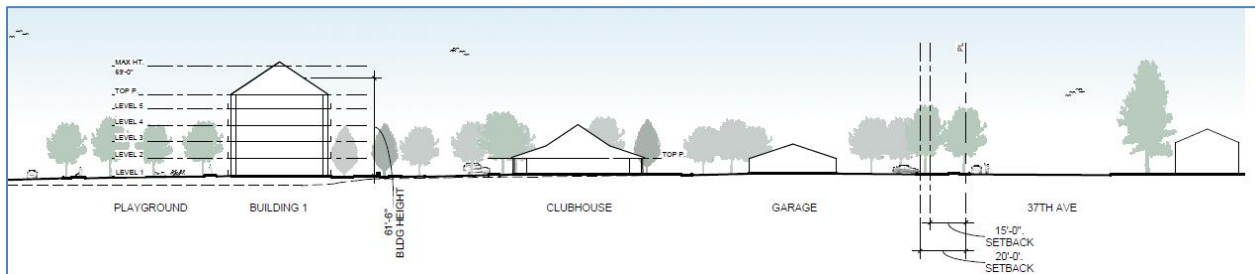


Figure 4. Cross-section at 37th Ave

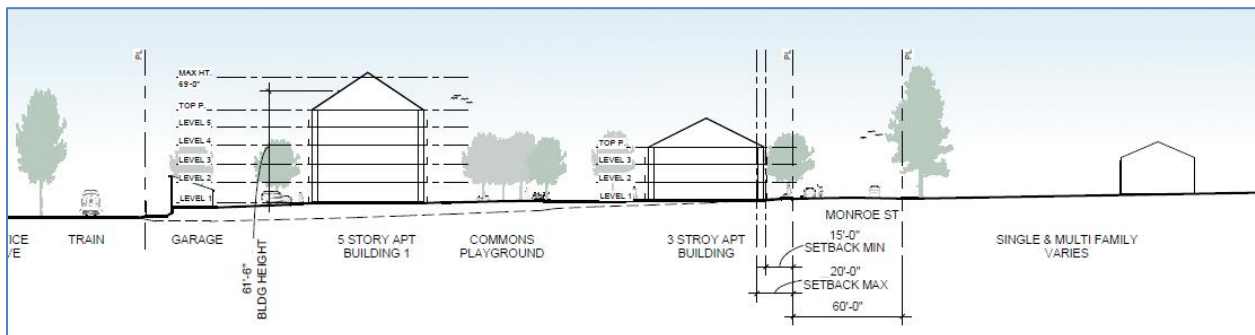


Figure 5. Cross-section at Monroe St

- Landscaping and other smaller buildings closer to the street separate the surrounding neighborhood from the 5-story building. Existing one- and two-story homes are buffered from Building 1 by a proposed row of trees. The proposal sites the proposed 3-story apartments and a row of new street trees between Building 1 and the existing neighbors.

These design elements will help to minimize the potential visual impacts of Building 1. As shown in the application materials, very little of the additional height is visible above the landscaping or 3-story buildings. These mitigation measures lessen the project's impact to the extent practicable.

As identified in the application materials, the project objective is to construct approximately 234 new housing units on the property. A reduction in housing units for the project was considered, but that option did not meet the project financial objectives or the city's objectives to provide more housing. The key benefit of the 5th story is that the project can meet objectives with a smaller footprint, allowing the additional area to be used for amenities and landscaping. The additional area for landscaping provided the design flexibility to plant more trees to address the city's goal of a 40% tree canopy coverage. Eliminating the 5th story would have resulted in relocating those housing units to other buildings and areas of the site, potentially increasing the height of buildings at the street. The only practicable option would be to relocate these units by expanding building footprints, ultimately decreasing landscaping and amenity areas on the property. By including an additional story on Building 1, there is space for a dog walk area, playground, the clubhouse and several outdoor areas.

Given the DLC's review and recommendation, staff recommends that the applicant address their concerns about the massing of the 3 large gable ends and consider design alternatives to lessen their impacts on surrounding properties.

1. The proposed project is creative and is exceptional in the quality of detailing, appearance, and materials or creates a positive unique relationship to other nearby structures, views, or open space.

The project site has been vacant for decades. The proposed development improves a vacant brownfield site that has been described as an eyesore in the neighborhood. The development provides housing density within the City and creates a walkable transition area between the existing residential and commercial uses. The development would provide sidewalks, walkways, street trees, and a public multi-use pathway along the railroad tracks.

As described by the applicant, the development implements a "modern barn" design theme with Building 1 as its focal point (See Figures 6 and 7). The massing of Building 1 is broken down into two parts connected by a lower pitch roof. These two masses are further broken down by the use of inset decks and changes in material. Warm toned fiber cement siding accentuates the recessed decks, while the base of the building maintains a lighter cement siding material. Pitched roofs maintain the residential character, and relate to the surrounding neighborhood. All of the materials will be permanent in nature (composite shingle roofing, cementitious siding, and metal railings).



Figure 6. Perspective rendering

As noted, the DLC reviewed the project and recommended that the Planning Commission discuss a potential requirement that the applicant break up the 3 large gable ends to further reduce the massing and visual impacts of those 5-story elevations on surrounding properties. For example, each large gable end could be re-designed with 2 gable ends. The applicant should address this recommendation as it directly relates to the building's relationship with surrounding properties.



Figure 7. Perspective rendering

The design of the project and Building 1 creates a positive relationship to the surrounding residential and commercial areas and the adjacent public pedestrian pathway. The

development steps down toward the existing residential development and includes landscaping and tree canopy to blend into the neighborhood. The existing public park area at the corner of 37th Ave and Monroe St is proposed to be improved, and the project includes new sidewalks and paths that provide access to that area. Finally, the development activates the commercial area along the rail corridor by installing a public path and providing connectivity to this area over what is currently a contaminated brownfield. The 5th story on Building 1 allows the development to better respond to these existing features by providing additional area for landscaping and connectivity.

2. The proposal will result in a project that provides public benefits and/or amenities beyond those required by the base zone standards and that will increase vibrancy and/or help meet sustainability goals.

The key public benefits that the project provides to the community are a public pedestrian pathway, minor repairs and improvements to the adjacent public park at 37th Ave and Monroe St, and connectivity between the existing residential neighborhood and commercial services. Currently, the site is vacant and a portion is a brownfield that separates a neighborhood from the nearby commercial uses. The project will provide a public pedestrian path along the rail corridor that further contributes to connectivity of the area.

Site amenities that are possible due to the additional height, and therefore less building footprint, include a dog walk area, playground, plaza and multiple outdoor areas associated with the clubhouse. The clubhouse will offer an exercise room, great room, lounge, and possible flex meeting rooms.

The project will also help to meet the City's sustainability goals by incorporating a green building program provided by the Energy Trust of Oregon.

3. The proposed project ensures adequate transitions to adjacent neighborhoods.

The surrounding neighborhood immediately adjacent to the site contains a mix of one- and two-story structures. Across the railroad tracks there is the Milwaukie Marketplace commercial shopping center. The site is a transition point from the commercial use to the lower-density residential neighborhood. The proposal includes mitigation measures to address impacts of additional density on the low-density neighborhood and new and improved infrastructure to connect the residential areas to the commercial amenities. Mitigation measures include: site landscaping and locating Building 1 toward the west of the site away from adjacent neighborhoods. The project will redevelop the existing brownfield into a transition site that adds needed housing to the community.



Figure 8. View looking west from the intersection of 37th Ave and Monroe St



Figure 9. View from entrance at 37th Ave

Building 1 is sited toward the interior of the site, approximately 150 ft from Monroe Street and 180 ft from SE 37th where the single-family homes are located (see Figures 8 – 10). This horizontal distance makes Building 1 appear less prominent than it would if sited adjacent to the street. Additionally, the site slopes downward between the street and the Building 1 location. Taking advantage of this natural grade change reduces the visual impact of Building 1's 5th story. Landscaping that includes existing large trees and rows of additional street trees and new 3-story apartment buildings located closer to the street also help to reduce any visual impacts from Building 1.



Figure 10. View from proposed multi-use path

CONCLUSIONS

A. Staff recommendation to the Planning Commission is as follows:

1. Approve the Variance for building height in the General Mixed Use Zone. This will result in a 5-story multifamily building as part of a larger residential development.
2. Adopt the attached Findings.

Staff notes that the Commission should review the applicant's response to the DLC recommendation about reducing the massing on the 3 large gable ends.

CODE AUTHORITY AND DECISION-MAKING PROCESS

The proposal is subject to the following provisions of the Milwaukie Municipal Code (MMC).

- MMC 19.303 Commercial Mixed-Use Zones
- MMC 19.911.7 Building Height Variance in the General Mixed Use Zone
- MMC 19.1006 Type III Review
- MMC 19.1011 Design Review Meetings

This application is subject to Type III review, which requires the Planning Commission to consider whether the applicant has demonstrated compliance with the code sections shown above. In Type III reviews, the Commission assesses the application against review criteria and development standards and evaluates testimony and evidence received at the public hearing.

The Commission has 4 decision-making options as follows:

- A. Approve the application subject to the recommended Findings.

- B. Approve the application with modified Findings and new Conditions of Approval. Such modifications need to be read into the record.
- C. Deny the application upon finding that it does not meet approval criteria.
- D. Continue the hearing.

The final decision on this application, which includes any appeals to the City Council, must be made by July 26, 2019, in accordance with the Oregon Revised Statutes and the Milwaukie Zoning Ordinance. The applicant can waive the time period in which the application must be decided.

COMMENTS

Notice of the proposed changes was given to the following agencies and persons: City of Milwaukie Building Division, Milwaukie Engineering Department, Community Development Department, Oregon Department of Transportation Region 1, Oregon Department of Environmental Quality, Milwaukie Public Works Department, Clackamas County Fire District #1, and Ardenwald and Hector Campbell Neighborhood District Association Chairperson and Land Use Committee.

The following is a summary of the comments received by the City, although only one comment pertains to the DLC's review. See Attachment 3 for further details.

- David Aschenbrenner, Chair, Hector Campbell NDA: The NDA voted at their meeting on April 8 to support the variance application. The NDA noted the need for a traffic study to assess and address the future impacts on the surrounding street system.
- Marah Danielson, ODOT Development Review Planner: The applicant shall submit a traffic impact analysis to assess the impacts of the proposed use on the State highway system. The analysis must be conducted by a Professional Engineer registered in Oregon and include four OR 224 intersections at Harrison St, Monroe St, Oak St, and 37th Ave.
Staff note: this requirement is relevant to the overall project review rather than the height variance itself and will be covered under a future land use review process.
- Madeline E. Roebke, Senior General Attorney, Union Pacific Railroad Company: Ms. Roebke identified issues and concerns related to development adjacent to an active rail line, including: noise and vibration impacts on the residents, increased pedestrian and vehicular traffic near and around the crossings, construction near the track, and trespassing on railroad property.
- Jill Bowers, 4688 SE Ada Lane: concerns about traffic related to the main entrance location across from Washington St.
- Patti Dryden, 4026 SE Washington St: many concerns related to traffic impacts of the proposed development to Washington St.
- Linda Keeling, Village Monroe resident: concerns related to impacts on wetlands and geese migration, and use of the property for dog walking.

ATTACHMENTS

Attachments are provided as indicated by the checked boxes. All material is available for viewing upon request.

	Early PC Mailing	PC Packet	Public Copies	Packet
1. Recommended Findings in Support of Approval	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
2. Applicant's Narrative and Supporting Documentation received on March 19, 2019				
a. Narrative	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
b. Site Plan	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c. Building elevations and other graphics	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
3. Comments Received	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

Key:

Early PC Mailing = paper materials provided to Planning Commission at the time of public notice 20 days prior to the hearing.

PC Packet = paper materials provided to Planning Commission 7 days prior to the hearing.

Public Copies = paper copies of the packet available for review at City facilities and at the Planning Commission meeting.

Packet = packet materials available online at <https://www.milwaukieoregon.gov/bc-pc/planning-commission-29>.

**Recommended Findings in Support of Approval
File #VR-2019-003, Monroe Apartments Height Variance**

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, Dean Masukawa, has applied for approval for a height variance at Monroe St and 37th Ave, TL 11E36AB03003 and 11E36AA19203. This site is in the General Mixed Use Zone (GMU). The land use application file number is VR-2019-003.
2. The applicant is seeking land use approval for a height variance to allow a five-story building (Building 1) as part of a 234-unit multi-family development.
3. The proposal is subject to the following provisions of the Milwaukie Municipal Code (MMC):
 - MMC 19.303 Commercial Mixed-Use Zones
 - MMC 19.911.7 Building Height Variance in the General Mixed Use Zone
 - MMC 19.1006 Type III Review
 - MMC 19.1011 Design Review Meetings

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 meeting with the Design and Landmarks Committee was held on May 6, 2019. A public hearing with the Planning Commission was held on May 28, 2019, as required by law.

4. MMC 19.300 Base Zones
 - a. MMC Chapter 19.303 Commercial Mixed Use Zones
 - (1) MMC 303.4 Detailed Development Standards

MMC 303.4.B.3 establishes the detailed development standards for building height and height bonuses.

Table 19.303.3 Commercial Mixed Use Zones Development Standards			
Standard	Required	Proposed	Comment
1. Building Height (ft)			
a. Base maximum	45	69	With the variance, the project is eligible for the height bonus.
b. Maximum with height bonus	57-69		

The proposed building will be 5 stories and 69 ft in height. The base maximum building height in the GMU zone is 45 ft. A building in the GMU Zone can utilize up to 2 of the

development incentive bonuses in Subsection 19.303.4.B.3.a. and 3.b, for a total of 2 stories or 24 ft of additional height, whichever is less. Buildings that elect to use both height bonuses for a 5-story building are subject to Type III review per Subsection 19.911.7 Building Height Variance in the General Mixed Use Zone. The proposed building will be residential and will be built using an approved green building system.

Subject to approval of the submitted height variance, the Planning Commission finds that this standard is met.

5. MMC 911 Variances

a. MMC 911.7 Building Height Variance in the General Mixed Use Zone

MMC 19.911.7.D establishes the approval criteria for a discretionary variance to maximum building heights in the General Mixed Use Zone.

- (1) The proposed project avoids or minimizes impacts to surrounding properties. Any impacts from the proposed project will be mitigated to the extent practicable. The applicant's alternatives analysis shall provide, at a minimum, an analysis of the impacts and benefits of the variance proposal as compared to the baseline code requirements.

The site is surrounded on two of its three sides by single-family and multi-family residential homes (across Monroe Street and SE 37th). The third side contains railroad tracks and the Milwaukie Marketplace shopping center. The GMU zone allows a building permitted outright to be 4 stories and 57 ft high. The requested variance would allow Building 1 to be built at 5 stories and 69 ft. Potential impacts are visual impacts to the surrounding residential development as a result of the 5-story design.

The applicant has addressed the potential visual impacts in the following ways:

- (a) *Building 1 is sited toward the interior of the site approximately 150 ft from Monroe St where a multi-family development is currently located north of the site and 180 ft from 37th Ave where the single-family homes are located east of the site. This horizontal distance makes Building 1 appear less prominent than it would if sited closer to the street. Additionally, the site slopes downward between the streets and the Building 1 location. Building 1 is sited on the lower elevation area to further reduce its visual impact to the surrounding neighborhoods.*
- (b) *Landscaping and other smaller buildings closer to the street separate the surrounding neighborhood from the 5-story building. Existing one- and two-story homes are buffered from Building 1 by a proposed row of trees. The proposal sites the proposed 3-story apartments and a row of new street trees between Building 1 and the existing neighbors.*

These design elements will help to minimize the potential visual impacts of Building 1. As shown in the application materials, very little of the additional height is visible above the landscaping or 3-story buildings. These mitigation measures lessen the project's impact to the extent practicable.

As identified in the application materials, the project objective is to construct approximately 234 new housing units on the property. A reduction in housing units for the project was considered, but that option did not meet the project financial objectives or the city's objectives to provide more housing. The key benefit of the 5th story is that the project can meet the objective with a smaller footprint, allowing the additional area to be used for amenities and landscaping. The additional area for landscaping provided the design flexibility to plant more trees to address the city's goal of a 40% tree canopy coverage. Eliminating the 5th story would have resulted in relocating those housing units to other buildings and areas of the site. The only practicable option would be to relocate these units by expanding building footprints, ultimately decreasing landscaping and amenity areas on the property. By including an additional story on Building 1, there is space for a dog walk area, playground, the clubhouse and several outdoor areas.

The Planning Commission finds that this criterion is met.

- (2) The proposed project is creative and is exceptional in the quality of detailing, appearance, and materials or creates a positive unique relationship to other nearby structures, views, or open space.

The project site has been vacant for decades. The proposed development improves a vacant brownfield site that has been described as an eyesore in the neighborhood. The development provides housing density within the City and creates a walkable transition area between the existing residential and commercial uses. The development would provide sidewalks, walkways, street trees, and a public multi-use pathway.

As described by the applicant, the development implements a "modern barn" design theme with Building 1 as its focal point. The massing of Building 1 is broken down into two parts connected by a lower pitch roof. These two masses are further broken down by the use of inset decks and changes in material. Warm toned fiber cement siding accentuates the recessed decks, while the base of the building maintains a lighter cement siding material. Pitched roofs maintain the residential character, and relate to the surrounding neighborhood. All of the materials will be permanent in nature (composite shingle roofing, cementitious siding, and metal railings).

The design of the project and Building 1 creates a positive relationship to the surrounding residential and commercial areas and the adjacent public pedestrian pathway. The development steps down toward the existing residential development and includes landscaping and tree canopy to blend into the neighborhood. The existing public park area at the corner of 37th Ave and Monroe St is proposed to be improved, and the project includes new sidewalks and paths that provide access to that area. Finally, the development activates the commercial area along the rail corridor by installing a public path and providing connectivity to this area over what is currently a contaminated brownfield. The 5th story on Building 1 allows the development to better respond to these existing features by providing additional area for landscaping and connectivity.

The DLC reviewed the project and recommended that the Planning Commission discuss a potential requirement that the applicant break up the 3 large gable ends to further reduce the massing and visual impacts of those 5-story elevations on surrounding properties. For example, each large gable end could be re-designed with 2 gable ends.

The Planning Commission finds that this criterion is met.

- (3) The proposal will result in a project that provides public benefits and/or amenities beyond those required by the base zone standards and that will increase vibrancy and/or help meet sustainability goals.

The key public benefits that the project provides to the community are a public pedestrian pathway, minor repairs and improvements to the adjacent public park, and connectivity between the existing residential neighborhood and commercial services. Currently, the site is vacant and a portion is a brownfield that separates a neighborhood from the nearby commercial uses. The project will provide a public pedestrian path along the rail corridor that further contributes to connectivity of the area.

The Planning Commission finds that this criterion is met.

- (4) The proposed project ensures adequate transitions to adjacent neighborhoods

The surrounding neighborhood immediately adjacent to the site contains a mix of one- and two-story structures. Across the railroad tracks there is the Milwaukie Marketplace commercial shopping center. The site is a transition point from the commercial use to the lower-density residential neighborhood.

Building 1 is sited toward the interior of the site, approximately 150 ft from Monroe Street and 180 ft from SE 37th where the single-family homes are located. This horizontal distance makes Building 1 appear less prominent than it would if sited adjacent to the street. Additionally, the site slopes downward between the street and the Building 1 location. Taking advantage of this natural grade change reduces the visual impact of Building 1's 5th story. Landscaping that includes existing large trees and rows of additional street trees and new 3-story apartment buildings located closer to the street also help to reduce any visual impacts from Building 1.

The Planning Commission finds that this criterion is met.

The Planning Commission finds that the criteria are met.

6. 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 May 28, 2021).

Pass final inspection and/or obtain a certificate of occupancy within 4 years of land use approval (by May 28, 2023).

7. The application was referred to the following departments and agencies on March 29, 2019:

- Milwaukie Building Division
- Milwaukie Engineering Department
- Community Development Department
- Design and Landmarks Committee
- Oregon Department of Transportation Region 1
- Oregon Department of Environmental Quality
- Milwaukie Public Works Department
- Clackamas County Fire District #1
- Ardenwald and Hector Campbell Neighborhood District Association Chairperson and Land Use Committee

The comments received are summarized as follows:

- Design and Landmarks Committee: The DLC voted to recommend approval of the variance and recommended that the Planning Commission discuss the design of the building related to the 3 large gable ends and that the applicant consider breaking up the massing of these gable ends.
- David Aschenbrenner, Chair, Hector Campbell NDA: The NDA voted at their meeting on April 8 to support the variance application. The NDA noted the need for a traffic study to assess and address the future impacts on the surrounding street system.
- Marah Danielson, ODOT Development Review Planner: The applicant shall submit a traffic impact analysis to assess the impacts of the proposed use on the State highway system. The analysis must be conducted by a Professional Engineer registered in Oregon and include four OR 224 intersections at Harrison St, Monroe St, Oak St, and 37th Ave.
- Madeline E. Roebke, Senior General Attorney, Union Pacific Railroad Company: Ms. Roebke identified issues and concerns related to development adjacent to an active rail line, including: noise and vibration impacts on the residents, increased pedestrian and vehicular traffic near and around the crossings, construction near the track, and trespassing on railroad property.
- Jill Bowers, 4688 SE Ada Lane: concerns about traffic related to the main entrance location across from Washington St.
- Patti Dryden, 4026 SE Washington St: many concerns related to traffic impacts of the proposed development to Washington St.
- Linda Keeling, Village Monroe resident: concerns related to impacts on wetlands and geese migration, and use of the property for dog walking.



PLANNING DEPARTMENT
 6101 SE Johnson Creek Blvd
 Milwaukie OR 97206
 503-786-7630
 planning@milwaukieoregon.gov

Application for Land Use Action

Master File #: VR-2019-003

Review type*: I II III IV V

CHOOSE APPLICATION TYPE(S):

Variance: Building Height

...

...

...

...

APPLICATION RECEIVED
 BY THE PLANNING DEPT:
 March 19, 2019

Use separate application forms for:

- Annexation and/or Boundary Change
- Compensation for Reduction in Property Value (Measure 37)
- Daily Display Sign
- Appeal

RESPONSIBLE PARTIES:

APPLICANT (owner or other eligible applicant—see reverse): Dean Masukawa

Mailing address: 720 NW Davis Street, Suite 300 Zip: 97209

Phone(s): 503.265.1545 Email: dmasukawa@lrsarchitects.com

APPLICANT'S REPRESENTATIVE (if different than above):

Mailing address: Zip:

Phone(s): Email:

SITE INFORMATION:

Address: Monroe St and 37th Ave, Milwaukie OR Map & Tax Lot(s): TACT 1: 11E36AB & 11E36AB03003
 TACT 2: 11E36AA & 11E36AA19203

Comprehensive Plan Designation: ... Zoning: GMU Size of property: 7.22 Acres

PROPOSAL (describe briefly):

Hieght variance for building 1. Building 1 proposes a 5 story multi family structure at a height of 61' - 6".

SIGNATURE:

ATTEST: I am the property owner or I am eligible to initiate this application per Milwaukie Municipal Code (MMC) Subsection 19.1001.6.A. If required, I have attached written authorization to submit this application. To the best of my knowledge, the information provided within this application package is complete and accurate.

Submitted by: *Dean Masukawa* Date: 3/19/19

IMPORTANT INFORMATION ON REVERSE SIDE

*For multiple applications, this is based on the highest required review type. See MMC Subsection 19.1001.6.B.1

TYEE MANAGEMENT COMPANY

5501 Pacific Highway E. Ste #2
Tacoma, WA 98424
P (253-922-4902) Fax (253-922-4916)

March 7, 2019

Vera Kolas, Associate Planner
City of Milwaukie
6101 SE Johnson Creek Blvd
Milwaukie OR 97206

Re: Representative of contract purchaser
Project Name: Monroe Apartments LRS Project Number: 217374

Tyee Management Company, LLC, land owner, authorizes Dean Masukawa with LRS Architects to be the representative of the Building 1 variance application.

Sincerely,



Dana M LaBrie
Assistant Corporate Secretary
Tyee Management Company LLC



MILWAUKIE PLANNING

6101 SE Johnson Creek Blvd

Milwaukie OR 97206

503-786-7630

planning@milwaukieoregon.gov

Submittal Requirements

**For all Land Use Applications
(except Annexations and Development Review)**

All land use applications must be accompanied by a signed copy of this form (see reverse for signature block) and the information listed below. The information submitted must be sufficiently detailed and specific to the proposal to allow for adequate review. Failure to submit this information may result in the application being deemed incomplete per the Milwaukie Municipal Code (MMC) and Oregon Revised Statutes.

Contact Milwaukie Planning staff at 503-786-7630 or planning@milwaukieoregon.gov for assistance with Milwaukie's land use application requirements.

1. **All required land use application forms and fees**, including any deposits.
Applications without the required application forms and fees will not be accepted.
- ✓2. **Proof of ownership or eligibility to initiate application** per MMC Subsection 19.1001.6.A.
Where written authorization is required, applications without written authorization will not be accepted.
- ✓3. **Detailed and comprehensive description** of all existing and proposed uses and structures, including a summary of all information contained in any site plans.
Depending upon the development being proposed, the description may need to include both a written and graphic component such as elevation drawings, 3-D models, photo simulations, etc. Where subjective aspects of the height and mass of the proposed development will be evaluated at a public hearing, temporary onsite "story pole" installations, and photographic representations thereof, may be required at the time of application submittal or prior to the public hearing.
- ✓4. **Detailed statement** that demonstrates how the proposal meets the following:
 - A. All applicable development standards (listed below):
 1. **Base zone standards** in Chapter 19.300.
 2. **Overlay zone standards** in Chapter 19.400.
 3. **Supplementary development regulations** in Chapter 19.500.
 4. **Off-street parking and loading standards and requirements** in Chapter 19.600.
 - N/A 5. ~~**Public facility standards and requirements**, including any required street improvements, in Chapter 19.700.~~
 - B. All applicable application-specific approval criteria (check with staff).
These standards can be found in the MMC, here: www.qcode.us/codes/milwaukie/
- ✓5. **Site plan(s), preliminary plat, or final plat** as appropriate.
See Site Plan, Preliminary Plat, and Final Plat Requirements for guidance.
- ✓6. **Copy of valid preapplication conference report**, when a conference was required.

APPLICATION PREPARATION REQUIREMENTS:

- Five hard copies of all application materials are required at the time of submittal. Staff will determine how many additional hard copies are required, if any, once the application has been reviewed for completeness.
- All hard copy application materials larger than 8½ x 11 in. must be folded and be able to fit into a 10- x 13-in. or 12- x 16-in. mailing envelope.
- All hard copy application materials must be collated, including large format plans or graphics.

ADDITIONAL INFORMATION:

- Neighborhood District Associations (NDAs) and their associated Land Use Committees (LUCs) are important parts of Milwaukie's land use process. The City will provide a review copy of your application to the LUC for the subject property. They may contact you or you may wish to contact them. Applicants are strongly encouraged to present their proposal to all applicable NDAs prior to the submittal of a land use application and, where presented, to submit minutes from all such meetings. NDA information: www.milwaukieoregon.gov/citymanager/what-neighborhood-district-association.
- Submittal of a full or partial electronic copy of all application materials is strongly encouraged.

As the authorized applicant I, (print name) Dean Masukawa, attest that all required application materials have been submitted in accordance with City of Milwaukie requirements. I understand that any omission of required items or lack of sufficient detail may constitute grounds for a determination that the application is incomplete per MMC Subsection 19.1003.3 and Oregon Revised Statutes 227.178. I understand that review of the application may be delayed if it is deemed incomplete.

Furthermore, I understand that, if the application triggers the City's sign-posting requirements, I will be required to post signs on the site for a specified period of time. I also understand that I will be required to provide the City with an affidavit of posting prior to issuance of any decision on this application.

Applicant Signature: 

Date: 3/18/19

Official Use Only

Date Received (date stamp below):

BUILDING HEIGHT VARIANCE - TYPE III

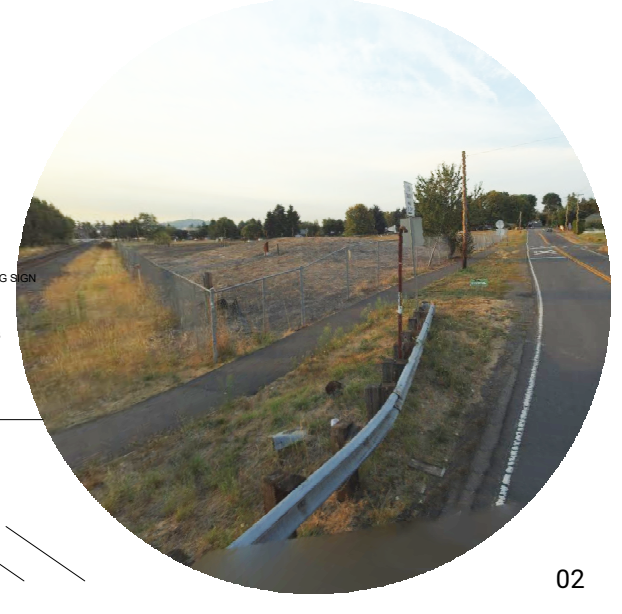
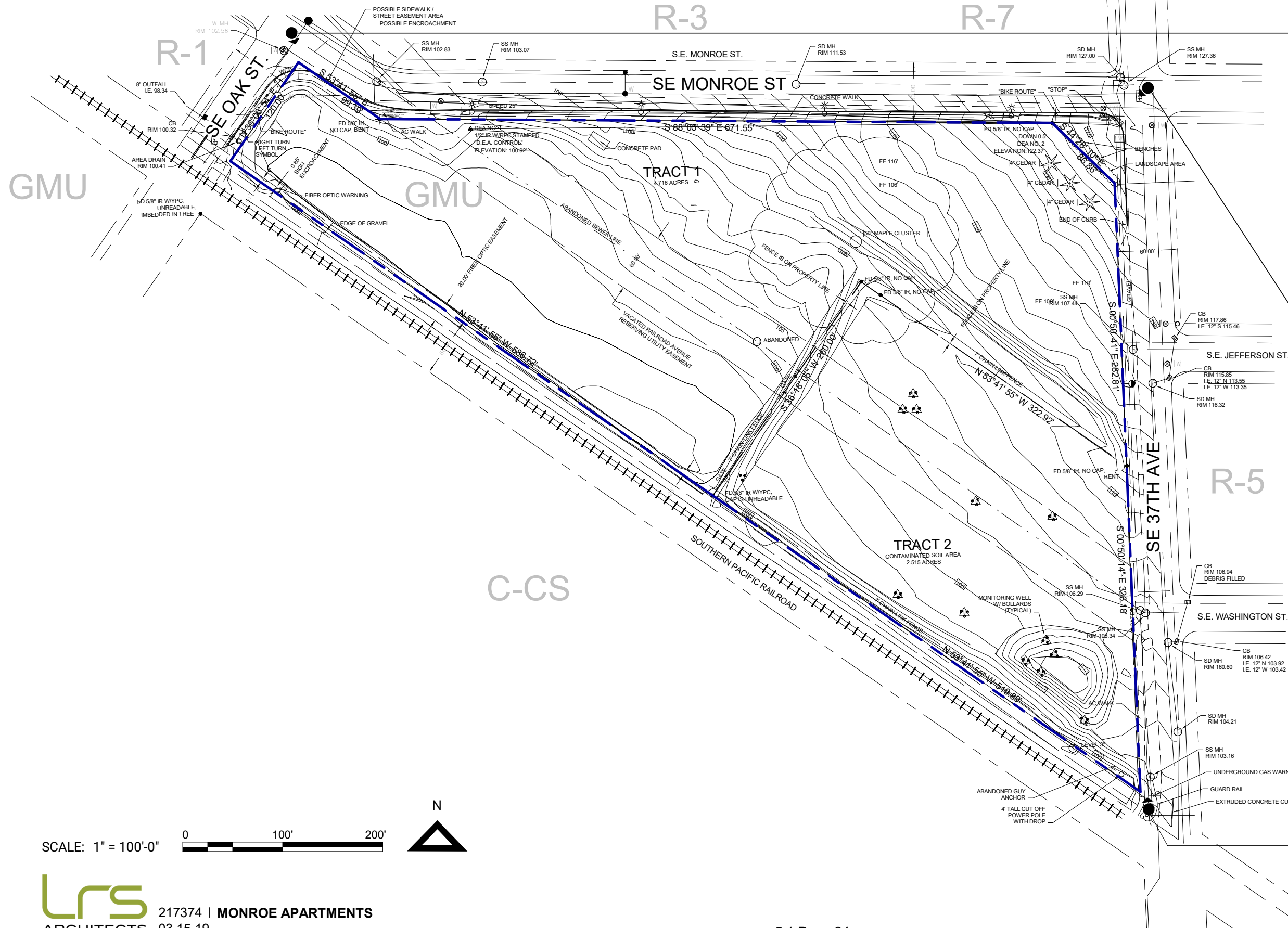
MCFARLAND SITE - MONROE APARTMENTS

FOR THE CITY OF MILWAUKIE



BUILDING HEIGHT VARIANCE - TYPE III

EXISTING CONDITIONS PLAN



BUILDING HEIGHT VARIANCE - TYPE III

INSPIRATIONAL NARRATIVE



Connecting to the Local Context:

The site has historically been a mill site. Similar to a village layout the larger apartment building is the center of the community surrounded by residential scaled buildings and a community clubhouse.

The Building Massing:

The building massing is characterized by the mill inspiration by the repetition of simple vertical geometric façade elements. The base of the building is emphasized to provide a human scale and ground the building.

Materials include:

Panel or Lap fiber cement siding, wood toned lap siding is used to enhance the building recesses and break down the massing. Shingle Composition Roofing.

BUILDING HEIGHT VARIANCE - TYPE III

SITE AERIAL



BUILDING HEIGHT VARIANCE - TYPE III

VARIANCE SUMMARY

The project requires a variance to allow for Building 1, which is proposed at 69 feet and 5 stories, to exceed the Code height limit. Under section 19.303.4.B, the site's base height is 3 stories or 45 feet. However, an additional story (12 feet) can be earned through a bonus in two ways under section 19.303.4.B.3. The project qualifies for both height bonuses, and could use either bonus to obtain a 4th story and 57 feet of height for Building 1 without a variance. By proposing to use both bonuses to build a 5-story, 69-foot building, the project triggers the variance requirement. For purposes of the analysis below, we treat the 4-story, 57-foot option that could be built by using one (but not both) height bonuses, as the baseline alternative for Building 1.

The following page is a response to the variance criteria per section 19.911.7.D Building Height Variance in the General Mixed Use Zone:

BUILDING HEIGHT VARIANCE - TYPE III

VARIANCE SUMMARY

1. The proposed project avoids or minimizes impacts to surrounding properties. Any impacts from the proposed project will be mitigated to the extent practicable. The applicant's alternatives analysis shall provide, at a minimum, an analysis of the impacts and benefits of the variance proposal as compared to the baseline code requirements.

The site is surrounded on two of its three sides by single family residential homes (across Monroe Street and SE 37th). The third side contains railroad tracks and a shopping center. Building 1 is allowed to be 4 stories and 57 feet under the Code. We are seeking this variance to allow Building 1 to be built at 5 stories and 69 feet. We designed the project to minimize impacts to residential neighbors from the additional height.

Identification of Impacts and Mitigation

We identified visual impacts to the surrounding single family homes as a potential impact of Building 1's 5-story design. This criterion requires us to mitigate these impacts to the extent "practicable." Practicable is defined by section 19.201 as "capable of being realized after considering cost, existing technology, logistics, and other relevant considerations; such as ecological functions, scenic views, natural features, existing infrastructure, and/or adjacent uses."

We took the following actions to mitigate the potential impacts of the project: First, we sited Building 1 toward the interior of the site, approximately 150 feet from Monroe Street and 180 feet from SE 37th where the single family homes are located. This horizontal distance makes Building 1 appear less prominent than it would if sited adjacent to the homes. Additionally, the site slopes downward between the homes and the Building 1 location. We located Building 1 on the lower elevation area to further reduce its visual impact to the existing homes. Second, we ensured that landscaping and other, smaller buildings closer to the homes would blunt remaining visual impacts. Existing one and two story homes are buffered from Building 1 by an existing row of trees. Our proposal places the 3 story apartments and a row of new street trees between Building 1 and the existing neighbors. All of these elements will help to obscure and minimize the height impacts of Building 1. As shown on the Site Perspectives included with this application, the design significantly mitigates the visual impact of Building 1. From many viewpoints, the additional height is not visible above the landscaping or 3-story buildings. These mitigation measures lessen the project's impact to the extent practicable. The site's size, location adjacent to the railroad, grade and layout (including the existing park) make additional mitigation measures impracticable.

In addition, by improving an existing brownfield, we are reducing the visual impact that this vacant lot has on the neighbors.

Alternatives Analysis

This project objective is to construct approximately 234 new housing units on the property. We explored a variety of alternative configurations for the units and determined that the best development scheme is the one we are proposing, with Building 1 at 5 stories. We also explored a reduction in housing units for the project. This option does not meet the project objectives, or the city's objectives to emphasize housing, and is not feasible for us to undertake. It would leave the exiting brownfield at the site, which is a significant negative impact.

The impacts of the proposed 5-story option are visual as discussed above. By siting Building 1 on the interior of the property at a grade lower than the surrounding homes, and by placing smaller structures and tree cover between the homes and Building 1, our proposal mitigates the impacts of the 5th story to the extent practicable. The benefits of the 5th story are substantial as they allow us to meet the project objectives with a smaller footprint. The additional ground space is used for amenities and landscaping. Adding the extra story to Building 1 also allows us the flexibility to get closer to the city's goal of a 40% tree canopy coverage.

We also explored a 4-story version of Building 1 that meets the project objectives to create 234 housing units. The impacts of a 4-story building are a loss of project open space and amenities. To eliminate the 5th story we would have needed to relocate units from this 5th story level to other areas of the site. The only practicable option was to relocate these units was through expanding building footprints, ultimately decreasing landscaping and amenity areas on the property. By including an additional story on Building 1, there is space for a dog walk area, playground, and many outdoor clubhouse areas. The only benefit of a 4-story option is the avoidance of already minimal visual impacts to neighbors.

2. The proposed project is creative and is exceptional in the quality of detailing, appearance, and materials or creates a positive unique relationship to other nearby structures, views, or open space.

This project improves a vacant brownfield that continues to be an eyesore, health hazard and possibly contributes to lower home values in the surrounding area. The development provides housing density within the City and creates a walkable transition area between the existing residential and commercial uses. Our development also provides sidewalks, walkways, street trees, and a public

pedestrian pathway.

Building 1's design is high-quality and creative. The development implements a "modern barn" design theme with Building 1 as its focal point. The massing of Building 1 is broken down into two parts connected by a lower pitch roof. These two masses are further broken down by the use of inset decks and changes in material. Warm toned cementitious siding accentuates the recessed decks, while the base of the building maintains a lighter cementitious material. Pitch roofs maintain the residential character, and relates to the existing building. All of the materials will be permanent in nature (composite shingle roofing, cementitious siding, and metal railings).

The design of the project and Building 1 creates a positive relationship to the existing residential and commercial areas, and the adjacent public pedestrian pathway. The development steps down toward the existing residential homes and includes landscaping and tree coverage to blend more seamlessly into the neighborhood. The existing public park will be improved, and the project includes new sidewalks and paths that provide access to the park. Finally, the development activates the commercial area along the rail corridor by installing a public path and providing connectivity to this area over what is currently a contaminated brownfield. The 5th story on Building 1 allows the development to better respond to these existing features by providing additional ground space for landscaping and infrastructure.

3. The proposal will result in a project that provides public benefits and /or amenities beyond those required by the base zone standards and that will increase vibrancy and / or help meet sustainability goals.

The key public benefits that our project provides to the community are a public pedestrian pathway, improvements to the public park and connectivity between the existing residential neighborhood and commercial amenities. Currently, the site is a brownfield that separates a neighborhood from nearby commercial uses. Our project will fill the gap with a high quality design and public infrastructure. Our project will also provide a public pedestrian path along the rail corridor that further contributes to connectivity of the area; however, this is a requirement under the City's code so not responsive to this criterion.

The project also includes amenities that go beyond the code requirements. These ground level features are made possible by adding height to Building 1 and freeing up ground space on the project site. These include a dog

walk area, playground, plaza and multiple outdoor areas associated with the clubhouse. The clubhouse will offer an exercise room, great room, lounge, and possible flex meeting rooms.

Finally, the project will also help to meet the City's sustainability goals by incorporating a green building program provided by the Energy Trust or Oregon.

4. The proposed project ensures adequate transitions to adjacent neighborhoods. (Ord. 2140 & 2, 2017; Ord. 2110 & 2 (Exh. G), 2015; Ord. 2016 & 2 (Exh. F), 2015; Ord. 2051 & 2, 2012; Ord. 2036 & 3, 2011; Ord. 2025 & 2, 2011)

The surrounding neighborhood immediately adjacent to our site contains a mix of one and two story structures. Across the railroad tracks there is a commercial shopping center. This site is a natural transition point from the commercial use to the low-density neighborhood. Our proposal includes mitigation measures to blunt impacts of additional density on the low-density neighborhood and new and improved infrastructure to connect the housing areas to the commercial amenities. Our project will redevelop the existing brownfield into a well-connected transition site that adds needed housing to the community.

We designed the project to smoothly transition from the medium density housing we propose to the lower existing density. As discussed under criterion 1 above, we sited Building 1 toward the interior of the site, approximately 150 feet from Monroe Street and 180 feet from SE 37th where the single family homes are located. This horizontal distance makes Building 1 appear less prominent than it would if sited adjacent to the homes. Additionally, the site slopes downward between the homes and the Building 1 location. We took advantage of this natural grade change to further reduce the visual impact of Building 1's 5th story. Second, we ensured that landscaping (existing large trees and rows of additional street trees) and new 3-story apartment buildings located closer to the homes would blunt visual impacts from Building 1.

Our proposal also provides amenities to be used and enjoyed by the new residents and the existing neighborhood, providing for integration and a smooth transition between the housing areas and the adjacent commercial amenities. These include improvements to the public park that serves the neighborhood and the path along the rail corridor. The project includes on-site amenities such as a dog park, a club house and landscaped open space. The addition of these features will minimize the impacts of additional density on the open space facilities currently serving the existing neighborhood.

BUILDING HEIGHT VARIANCE - TYPE III

ZONING COMPLIANCE STATEMENT

DETAILED STATEMENT - DEVELOPMENT STANDARDS

PROPERTY INFORMATION					
Site Address	SE Monroe Street and SE 37th Street (SE Oak) Milwaukie Oregon				
Jurisdiction	City of Milwaukie Oregon				
County	Clackamas County				
Proposed Development	234 Multi-Family Dwelling Units (R-1 Occupancy) and a Clubhouse (B/A Occupancy)				
State Tax ID	Tract 1 -11E36AB03003 and Tract 2 11E36AA19203				
Parcel ID	Tract 1 - 00023174 Tract 2 00022825				
Tax Map	Tract 1 - 11E36AB Tract 2 11E36AA				
Property Use	Both tract 1 and 2 are Vacant - Tract 2 is a brownfield site.				
Pre Application	# 19-001 PA				
Lot Size		Site Acres	Site Area		
	Tract 1	4.716	205,429 SF		
	Tract 2	2.515	109,553 SF		
	Gross Lot Area	7.231	314,982 SF		
	ROW dedication	0.01652	720 SF		
Net Lot Area	7.21448	314,263 SF			
Building Size		Approx. Building Lot Coverage Area	Approx. Gross SF Building Area	Number of Units	Proposed Number of Stories
	Apartment Building 1	15,522 SF	72,435 SF	84	5
	Apartment Building 2	10,524 SF	29,455 SF	36	3
	Apartment Building 3	10,524 SF	29,455 SF	36	3
	Apartment Building 4	10,524 SF	29,455 SF	36	3
	Apartment Building 5	11,930 SF	33,471 SF	42	3
	Clubhouse	6,508 SF	5,676 SF		2
Sub-Total	65,532 SF	199,947 SF	234		
Accessory Building Size		Approx. Building Lot Coverage Area	Approx. Gross SF Building Area	Number of Parking	Proposed Stories
	Garage 1	5,188 SF	5,188 SF	16	1
	Garage 2	4,700 SF	4,700 SF	17	1
	Garage 3	4,150 SF	4,150 SF	15	1
	Garage 4/ Trash	3,050 SF	3,050 SF	10	1
	Garage5	4,109 SF	4,109 SF	15	1
	Carport	1,873 SF	1,873 SF	12	1
	Sub-Total	23,070 SF	23,070 SF	85	
TOTALS	88,602 SF	223,017 SF			
Property Owner	McFarland				
Adjacent Public Ways					
SE Monroe Street Front (60')	60' ROW	1/4 street Improvement Proposed - Street Frontage Length = 751'			
SE 37th Front Street (60')	60' ROW	1/4 street Improvement Proposed - Street Frontage Length = 609'			
Oak Street Frontage	60' ROW/66' ROW	6' ROW dedication Required - Street Frontage Length =			

BUILDING HEIGHT VARIANCE - TYPE III

ZONING COMPLIANCE STATEMENT

ZONING OVERVIEW		
Zone	Zoning Map	GMU, General Mixed Use
Metro Growth Boundary	County Maps	Metro UGB
Comprehensive Plan	Zoning Code	
Plan District	TC	Town Center
Adjacent Zones	zoning Map	GMU, R-5, BL
Proposed Use	19.303.2	Multifamily / Private Community Center
Fire District		City Of Milwaukie Fire

ZONING SUMMARY STATEMENT	Source	Zoning Requirement	Reference Sections	Calculations	Compliance Statement						
Commercial Mixed Use Zones	Chapter 19.303.1.A	General Mixed Use- Purpose			The General Mixed Use Zone is intended to recognize the importance of central Milwaukie as a primary commercial center and promote a mix of uses that will support a lively and economically robust district. The proposed development will add desired and needed dwelling units that will add to the vibrancy of the neighborhood and near by businesses. It is also intended to ensure high quality urban development that is pedestrian friendly and complementary to the surrounding area. The site development proposes enhancement to pedestrian and bike circulation around the entire perimeter of the site.						
Development Standards Allowed Uses	Uses 19.303.2	Row houses, Multifamily, cottage cluster, mixed uses, live work, senior, general office, eating establishments, retail, daycare, lodging and other commercial/ industrial uses			Permitted Use -The development is proposing 5 multi family buildings with a variety of dwelling units types and a community center clubhouse that will have a variety of uses for the management of the development as well as a community space for gathers, and fitness areas.						
Development Standards Minimum Lot size	A. Lot Standards 19.303.3 A1	1500 sf Minimum			Site exceeds Minimum lot area,						
Minimum Street frontage	19.303.3.A2	25 feet Minimum			Site exceed Minimum street frontage						
Development Standards Minimum floor area ratio	B. Development Standards 19.303.3.B1	0.5:1	19.303.4	0.64	Proposed Project exceeds Min FAR required. Calculation excludes parking.						
Building height (ft.)	19.303.3.B2	45' base maximum 57'-69' Max with height bonus	19.303.4B building height, 19.911.7 building height variance in the GMU zone		The perimeter apartments are proposed to be 3- story and comply with the base zoning standards. The 5 story building in the center of the site intends to use the bonus heights with a proposed building height of 61'-6". The 5-story building incorporates residential for one additional story and will apply for an approved green certification programs to allow an additional story for 5 total stories.						
Street setbacks (ft.)	19.303.3. B3	Front Setbacks- 15 feet minimum- 20' maximum 0' side and rear	19.303.4.C street setbacks 19.501.2 yard exceptions		The Buildings will comply with all setbacks. This does create some challenges for the building along the perimeter of this site because of the sloping site.						
Frontage occupancy	19.303.3.B4	50% Building Frontage	19.303.4.D, Figure 19.303.4.D								
			<table border="1"> <thead> <tr> <th>Building Length</th> <th>% of Street Frontage</th> </tr> </thead> <tbody> <tr> <td>504'</td> <td>67.00%</td> </tr> <tr> <td>192'</td> <td>31.50%</td> </tr> </tbody> </table>	Building Length	% of Street Frontage	504'	67.00%	192'	31.50%		SE Monroe Street SE 37th Street - NA since Monroe Street complies per D.2.b B. Residential edges -Buildings within 50' of SE Monroe and SE 37th Ave. shall provided a step back of at least 15' for any portion of the building above 35' .
Building Length	% of Street Frontage										
504'	67.00%										
192'	31.50%										
Lot Coverage	19.303.4.D 19.303.5.B5	Includes all buildings and their roof covered areas and decks - 85%		<table border="1"> <tbody> <tr> <td>88,602 SF</td> <td>Lot Coverage Area</td> </tr> <tr> <td>28.19%</td> <td>% of Net Lot area</td> </tr> </tbody> </table>	88,602 SF	Lot Coverage Area	28.19%	% of Net Lot area			
88,602 SF	Lot Coverage Area										
28.19%	% of Net Lot area										

BUILDING HEIGHT VARIANCE - TYPE III

ZONING COMPLIANCE STATEMENT

Minimum Vegetation	19.303.3.B6	15%	19.504.7	Required Area 47,139 SF 9,428 SF	Proposed landscape area will comply with > 15% of the site area and will be reviewed during the subsequent type ii development review application. No more than 20% of the required vegetation area shall be covered in mulch or bark dust. Mulch or bark dust under the canopy of trees or shrubs is excluded from this limit. Plans for development shall include landscaping plans which shall be reviewed for conformance to this standard during the subsequent type II development review Application
		Max. Mulch area < 20%			
Primary entrances	19.303.3.B7	Yes	19.303.4 E		Main access to the development is proposed off of SE 37th Ave. It is plan to be gated with resident access only.
Primary Entrances	19.303.4 E				Street facing Live work units all have entrances connecting to the public way. The public way affronting apartment Buildings have entrances to the internal corridor that are oriented to plazas. Mostly this is to accommodate the moderate sloping site and to provide accessible routes.
Off-street Parking required	19.303.3.B8	Yes	19.600, 19.606		
		Minimum Req. 2a. 1 per Dwelling Units 800 Sf or less		Parking Spaces Req.	
		Minimum Req. 2b 1.25 Dwelling Units > than 800 sf		161	211
		Total Require Min.		74.25	
		Maximum Allowed 2 spaces Per Dwelling Unit		235.25	85
		19.609 Bike Parking - 1 Per Dwelling Unit		468	296
		50% covered		234	234
		19.606.2 Landscaping	19.606.2.C-E.	117	
		Landscaping			
		19.606.3 Additional Paving/ wheel stops design Standards	19.606.3A/B		
		Site access and drive aisle	19.606.3 C		
		Site and Exterior Building Lighting	19.606.3 F		
Transit Street	19.303.3.B9		19.505.8		
Transition measures	19.303.3.B10	Yes	19.504.6		Where commercial, mixed-use, or industrial development is proposed abutting or adjacent to properties zoned for lower-density residential uses, the following transition measures shall be required. These additional requirements are intended to minimize impacts on lower-density residential uses.
Development Standards	C. Other Standards			Required	Provided
Residential density Req. (dwelling units per acre)	19.303.3 C1 and 19.303.3 F	Residential Min. 25 Units per Acre- Residential Max. 50 Units per Acre-		180.78	234.00
				361.55	
Signs	19.303.3.C2	Yes	14.16.040		Development signage is proposed along SE 37th at Main driveway access. Final Design to be submitted by Owner prior to Occupancy.

BUILDING HEIGHT VARIANCE - TYPE III

ZONING COMPLIANCE STATEMENT

COMMUNITY DESIGN STANDARDS	Source	Zoning Requirement	Reference Sections	Calculations	Compliance Statement																							
Building Design Standards	19.505.3 Multifamily Housing	Purpose			The proposed development endeavors to provide good site and building design that meet the intent of the Building standards guidelines. The proposed site amenities and site layout provide visual and physical access to the community which will promote livability, safety.																							
Purpose	19.505.3.A	<p>1. Livability</p> <p>2. Compatibility</p> <p>3. Safety and Functionality</p> <p>4. Sustain-ability</p>			Development will contribute to a livable neighborhood. first by, transforming a current vacant brownfield site into a visually pleasing landscaped site with a variety of housing and outdoor amenities. The proposed site design minimizes the impact of vehicles by having the apartments affront the neighbors with an attractive and interesting exterior design. An emphasizing for the site design is to provide pedestrian and bicycle connections between the site amenities and the public ways. The site design also proposes a variety of outdoor commons areas for the resident and their family's to enjoy as well as an enhanced pocket public park.																							
Applicability & Review Process	19.505.3.B & C	Subsequent type II application			Development proposes the 3 story building along the perimeter of the site to be compatible in scale to the 1 and 2 story single family homes and apartments adjacent to the site. The 5 story apartment building is located internally in the site towards the retail center to minimize the impact of the taller structure to the existing residential neighbors. A gated community is planned to provide safety and yet is functional. An open iron fenced is planned to providing visibility into and within a multifamily development The project proposes a socially responsible goal of obtaining a green building certification to support sustainability; helps create a stronger community; and fosters a quality environment for residents and neighbors. Plans for development shall include documentation which shall be reviewed for conformance to this standard during the subsequent type II development review application which proposes to use the discretionary process. The Type II application is chosen to provide more flexibility for some of the discretionary requirements which cannot be fully met.																							
Design Guidelines and Standards	Table 19.505.3D				<u>This application is focused on the Design Compliance for Building 1- the 5 story apartment building.</u>																							
Private Open Space	Table 19.505.3.D.1	ground floor patios 96 sf min with a min dimension of 5' upper floor decks 48sf min.			All units to have ground floor patios. The Project Proposes Upper story decks for approx. 95% of the units. This is offset with the community commons areas with in the 5700 sf Clubhouse.																							
Public Open Space	Table 19.505.3.D.2	10% of gross site area or 750 sf whichever is greater 20' minimum dimension Choose 4 of the following:																										
	<p>1. Recreation area</p> <p>2. Play field</p> <p>3. Children's play area</p> <p>4. Sport court</p> <p>5. Gardens</p> <p>6. picnic tables</p> <p>7. Swimming Pools</p> <p>8. Walking trails</p> <p>9. Pedestrian amenities</p> <p>10. similar items</p>	Children's play area must be visible from at least 50% of the abutting units	<table border="1"> <thead> <tr> <th>Required</th> <th>Provided</th> </tr> </thead> <tbody> <tr> <td>31,498 SF</td> <td>4,700 SF</td> </tr> <tr> <td></td> <td>5,700 SF</td> </tr> <tr> <td></td> <td>2,300 SF</td> </tr> <tr> <td></td> <td>5,600 SF</td> </tr> <tr> <td></td> <td>3,900 SF</td> </tr> <tr> <td></td> <td>2,200 SF</td> </tr> <tr> <td></td> <td>5,600 SF</td> </tr> <tr> <td></td> <td>6,000 SF</td> </tr> <tr> <td></td> <td>11,000 SF</td> </tr> <tr> <td></td> <td>4,700 SF</td> </tr> <tr> <td></td> <td>51,700 SF</td> </tr> </tbody> </table>	Required	Provided	31,498 SF	4,700 SF		5,700 SF		2,300 SF		5,600 SF		3,900 SF		2,200 SF		5,600 SF		6,000 SF		11,000 SF		4,700 SF		51,700 SF	<p>Playground</p> <p>Play Area</p> <p>BBQ / Outdoor eating Area</p> <p>Clubhouse</p> <p>Clubhouse Outdoor gathering area</p> <p>Outdoor Fitness area</p> <p>Plaza group seating areas for gathering</p> <p>Dog Walk</p> <p>Public Pad Pathway</p> <p>Enhanced Public Pocket park</p> <p>TOTAL COMMON AREAS</p>
Required	Provided																											
31,498 SF	4,700 SF																											
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Pedestrian Circulation	Table 19.505.3.D.3	Subsequent type II application	19.606.3 D&E		The Playground is located in the most visible location for 4 of the 5 buildings. 92 units have eyes on the playground which is 40% of the units Refer to Development Standards section for a proposed general statement. Plans for development shall include Civil and Landscape and detailed site Plans which shall be reviewed for conformance to this standard during the subsequent type II development review application.																							

BUILDING HEIGHT VARIANCE - TYPE III

ZONING COMPLIANCE STATEMENT

Vehicle and Bicycle Parking	Table 19.505.3.D.3		
Building Orientation & Entrances	Table 19.505.3.D.5	Subsequent type II application	
Building Façade Design	Table 19.505.3.D.6	Variance response for 5-story Building only	Table 19.505.3.D.6 a.
			Table 19.505.3.D.6 b
			Table 19.505.3.D.6 c
			Table 19.505.3.D.6 d
			Table 19.505.3.D.6 e
			Table 19.505.3.D.6 f
Building Materials	Table 19.505.3.D.7	Variance response for 5-story Building only	
Landscaping	Table 19.505.3.D.8	Subsequent type II application	
Screening	Table 19.505.3.D.9	Subsequent type II application	
Recycling Areas	Table 19.505.3.D.10	Subsequent type II application	
Sustain-ability	Table 19.505.3.D.11	Subsequent type II application	
Privacy Considerations	Table 19.505.3.D.12	Subsequent type II application	
Safety	Table 19.505.3.D.13	Subsequent type II application	

Refer to the Development standards section above for proposed parking. Plans for development shall include Civil and Landscape and detailed site Plans which shall be reviewed for conformance to this standard during the subsequent type II development review application

Refer to Development Standards section for a proposed general statement. Plans for development shall include Civil and Landscape and detailed site Plans which shall be reviewed for conformance to this standard during the subsequent type II development review application.

Street-facing building façades shall be divided into wall planes. The wall plane on the exterior of each dwelling unit shall be articulated by doing one or more of the following:

(1) Incorporating elements such as porches or decks into the wall plane.

(2) Recessing the building a minimum of 2 ft. deep x 6 ft. long.

(3) Extending an architectural bay at least 2 ft. from the primary street-facing façade.

The 5-story Building proposed window areas of greater than 25% but less than 30% which is governed by prescriptive path energy code requirements.

To minimize the scale of the 5-story building a strong base with a material / paint color change s proposed. Rather than apply a strong cornice a undulating gable end are playfully place to provide a distinct top.

To avoid long, monotonous, uninterrupted walls, the buildings incorporate exterior wall off-sets, projections and/or recesses. Refer to the exterior elevation for a diagram indicating the offsets proposed.

There are no Blank, windowless walls in excess of 750 sq. ft.

Garage doors shall be painted to match the color or color palette used on the rest of the buildings.

Project proposes to use fiber cement siding material in a variety of types, panel, lap and a simple pallet of three paint colors to enhance the building vertical modulation to break down the massing. This use of materials will also enhance the strong geometric expression of the building forms and is used to create a strong base.

Plans for development shall include Civil and Landscape and detailed site Plans which shall be reviewed for conformance to this standard during the subsequent type II development review application.

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BUILDING HEIGHT VARIANCE - TYPE III

SITE PLAN

GMU

SITE PLAN LEGEND

-  EXISTING TREE
-  STREET TREE
-  STREET TREE
-  DECIDUOUS CANOPY TREE
-  DECIDUOUS ORNAMENTAL TREE
-  CONIFER TREE

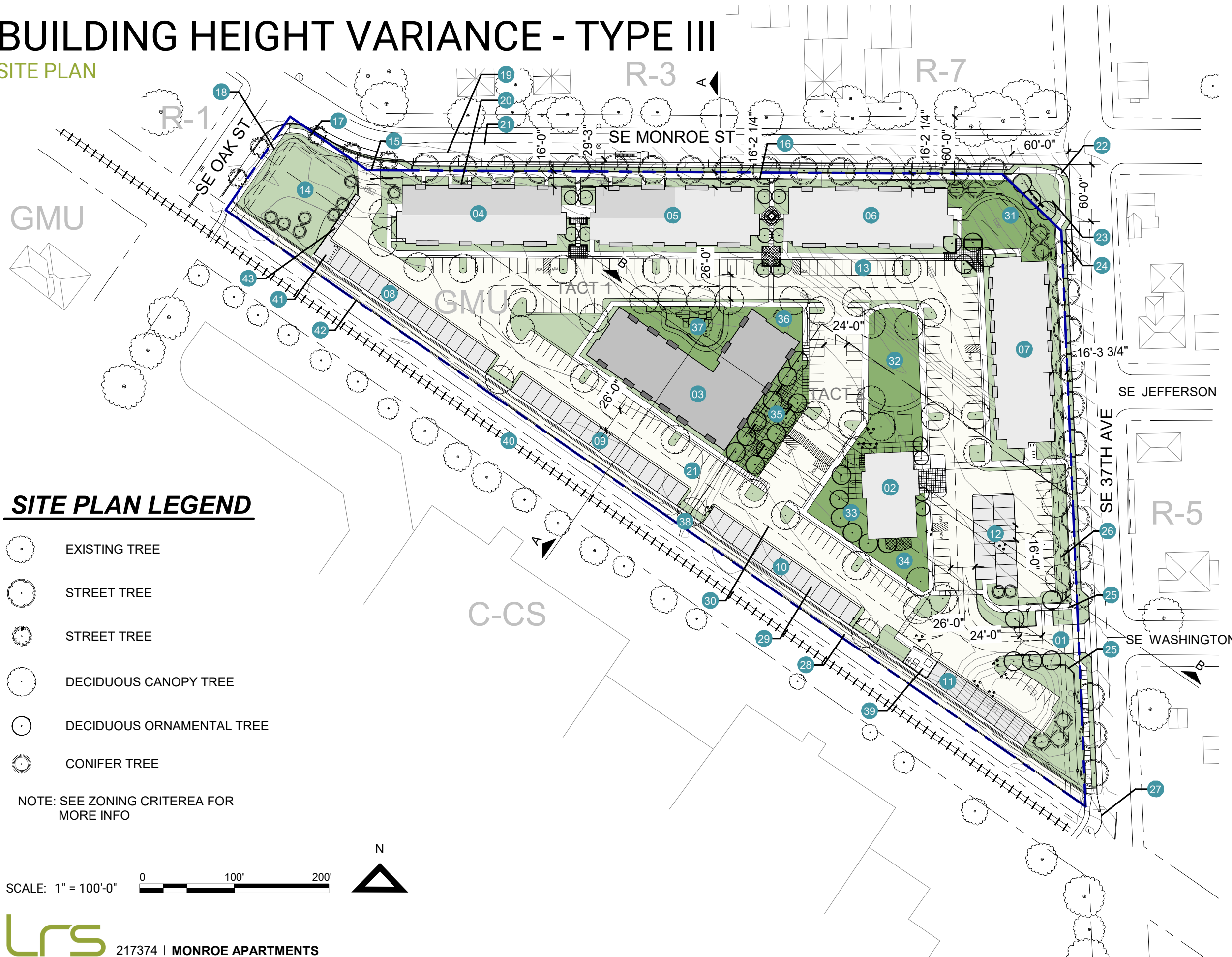
NOTE: SEE ZONING CRITEREA FOR MORE INFO

SCALE: 1" = 100'-0"



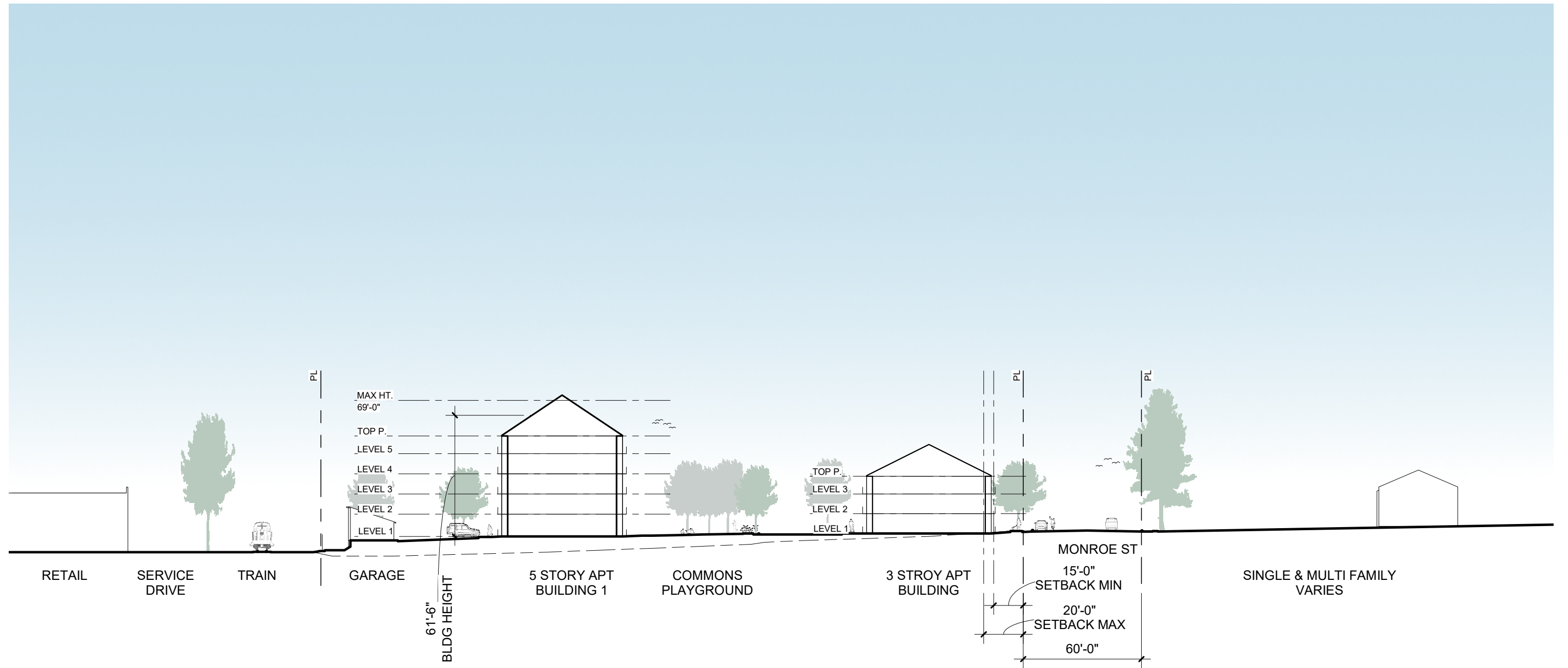
KEYNOTES XX

- 01 ENTRY / EXIT DRIVEWAY
- 02 CLUBHOUSE, 2 STORY
- 03 BUILDING 1, 5 STORIES, 84 UNITS, TYPE V
- 04 BUILDING 2, 3 STORIES, 36 UNITS, TYPE II
- 05 BUILDING 3, 3 STORIES, 36 UNITS, TYPE II
- 06 BUILDING 4, 3 STORIES, 36 UNITS, TYPE II
- 07 BUILDING 5, 3 STORIES, 42 UNITS, TYPE I
- 08 GARAGE 1 (G1)
- 09 GARAGE 2 (G2)
- 10 GARAGE 3 (G3)
- 11 GARAGE 4 (G4)
- 12 GARAGE 5 W/ ADA STALL (G5)
- 13 CARPORT
- 14 BIOSWALE
- 15 GATED FIRE ACCESS ONLY
- 16 42" CONTINUOUS GATED FENCE
- 17 PUBLIC SIDEWALK EASEMENT
- 18 6' ROW DEDICATION
- 19 6' BIKE LANE
- 20 LIVE WORK UNIT, TYPICAL
- 21 AERIAL APPARATUS
- 22 EXISTING ADA RAMP
- 23 ENHANCED PUBLIC POCKET PARK
- 24 NEW 5' PUBLIC SIDEWALK, CURB, AND GUTTER
- 25 MONUMENT SIGN
- 26 15' MINIMUM SETBACK 20' MAXIMUM
- 27 GUARDRAIL
- 28 10' PEDESTRIAN PATH / 15' EASEMENT
- 29 PRIVATE GARAGES, TYPICAL
- 30 FIRE TRUCK AERIAL ACCESS LOOP
- 31 DOG WALK
- 32 OUTDOOR AREA
- 33 OUTDOOR AREA
- 34 GARDEN
- 35 PLAZA
- 36 OUTDOOR AREA
- 37 PLAYGROUND
- 38 BIKE PATH
- 39 TRASH AREA
- 40 RAIL LINE
- 41 STORAGE
- 42 ODOT REQUIRED 8' FENCE
- 43 PERSONAL STORAGE



TYPE III ZONING VARIANCE

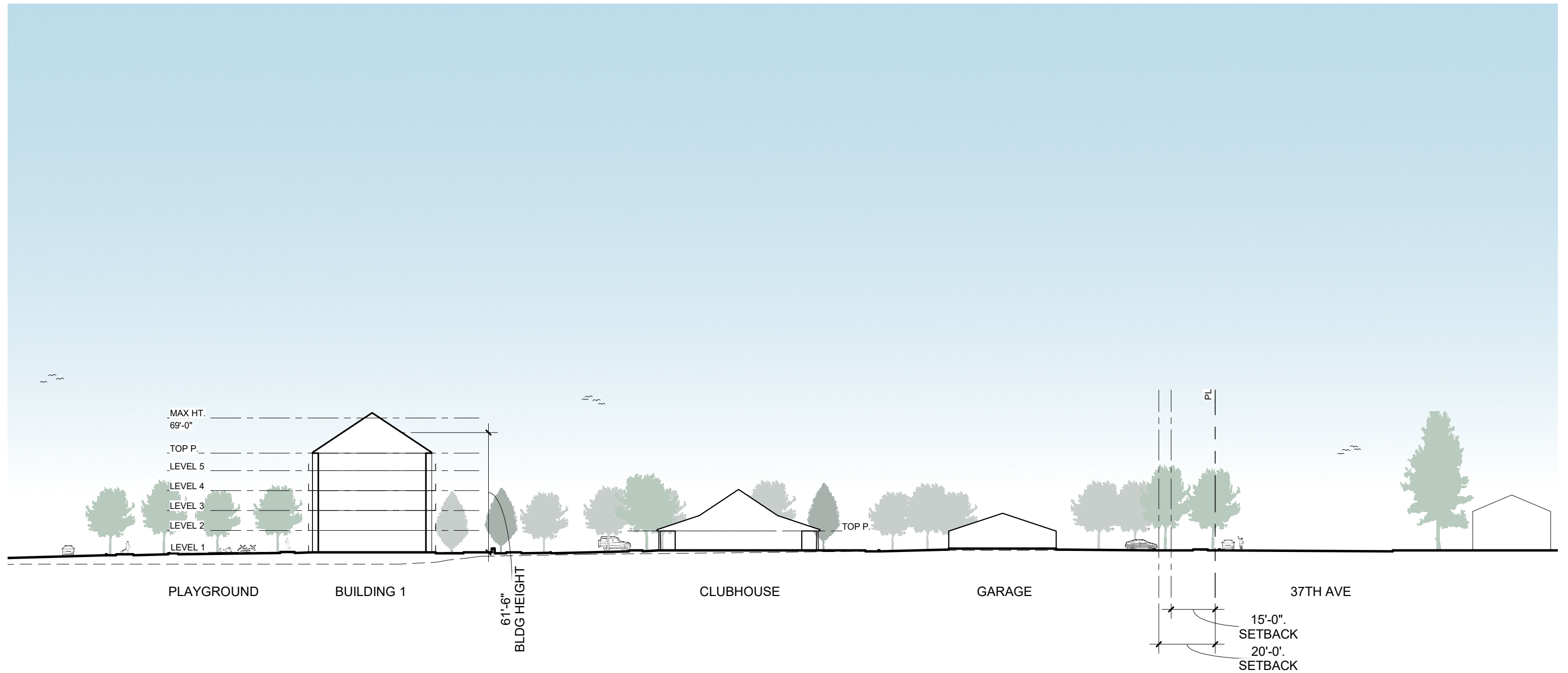
SITE SECTION A



SCALE: 1" = 50'-0" 0 50' 100'

TYPE III ZONING VARIANCE

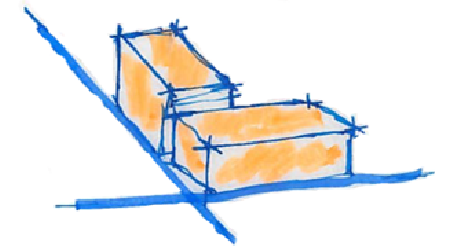
SITE SECTION B



SCALE: 1: = 50'-0"

TYPE III ZONING VARIANCE

SOUTH BUILDING PERSECTIVES



BUILDING PARTI

TYPE III ZONING VARIANCE

NORTH BUILDING PERSPECTIVES

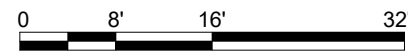


TYPE III ZONING VARIANCE

EAST ELEVATION



SCALE: 1/16" = 1'-0"



EXTERIOR MATERIALS

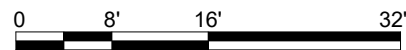
- A ASPHALT ROOFING
- B CEMENTISIOUS SIDING
- C VINYL WINDOW, TYP
- D FIBERGLASS PATIO DOOR, TYP
- E METAL RAILING, TYP
- F PTAC UNIT, TYP

TYPE III ZONING VARIANCE

NORTH ELEVATION



SCALE: 1/16" = 1'-0"



LRS ARCHITECTS
 217374 | MONROE APARTMENTS
 03.15.19

EXTERIOR MATERIALS

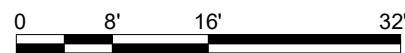
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- F PTAC UNIT, TYP

TYPE III ZONING VARIANCE

WEST ELEVATION



SCALE: 1/16" = 1'-0"



EXTERIOR MATERIALS

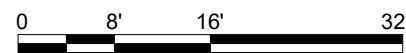
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- B CEMENTISIOUS SIDING
- C VINYL WINDOW, TYP
- D FIBERGLASS PATIO DOOR, TYP
- E METAL RAILING, TYP
- F PTAC UNIT, TYP

TYPE III ZONING VARIANCE

SOUTH ELEVATION



SCALE: 1/16" = 1'-0"



EXTERIOR MATERIALS

- A ASPHALT ROOFING
- B CEMENTISIOUS SIDING
- C VINYL WINDOW, TYP
- D FIBERGLASS PATIO DOOR, TYP
- E METAL RAILING, TYP
- F PTAC UNIT, TYP

NORTH EAST VIEW

SITE PERSPECTIVES



VIEW FROM: MONROE AND 37TH INTERSECTION LOOKING WEST



VIEW FROM: MONROE STREET



VIEW FROM: 37TH STREET LOOKING AT ENTRY DRIVEWAY



VIEW FROM: 37TH STREET AND THE TRAIN CROSSING



CITY OF MILWAUKIE

February 15, 2019

Marc Wyzykowski
Johnson Development Associates
88 Kearney St., Ste. 117
San Francisco, CA 94108

Re: Preapplication Report

Dear Marc:

Enclosed is the Preapplication Report Summary from your meeting with the City on January 24, 2019, concerning your proposal for action on property located at SE 37th Ave and Monroe St, known as the McFarland Site.

A preapplication conference is required prior to submittal of certain types of land use applications in the City of Milwaukie. Where a preapplication conference is required, please be advised of the following:

- Preapplication conferences are valid for a period of 2 years from the date of the conference. If a land use application or development permit has not been submitted within 2 years of the conference date, the Planning Director may require a new preapplication conference.
- If a development proposal is significantly modified after a preapplication conference occurs, the Planning Director may require a new preapplication conference.

If you have any questions concerning the content of this report, please contact the appropriate City staff.

Sincerely,

Alicia Martin
Administrative Specialist II

Enclosure

cc: Jesse Henry, Johnson Development
Jim Orr, DEQ
Matt McClincy, DEQ
Cynthia Schuster, LRS
Dean Masukawra, LRS

PRE-APPLICATION CONFERENCE REPORT

This report is provided as a follow-up to a meeting that was held on 1/24/2019 at 10:00am

Applicant Name: Marc Wyzykowski

Company: Johnson Development Associates

Applicant 'Role': Other

Address Line 1: 88 Kearney St, Ste. 1770

Address Line 2:

City, State Zip: San Francisco CA 94108

Project Name: McFarland Multifamily Development

Description: McFarland Multifamily Development with Accessory Building and Clubhouse

ProjectAddress: McFarland Site 37th & Monroe

Zone: General Mixed Use GMU

Occupancy Group: R, B

ConstructionType:

Use: Town Center TC

Occupant Load: TBA

AppsPresent: Jess Henry, Mar Wyzykowski, Jim Orr, Matt McClincy, Cynthia Schuster, Dean Masukawa

Staff Attendance: Denny Egner, Vera Koliass, Alma Flores, Alex Roller, Leila Aman, Samantha Vandagriff, Peter Passarelli, Dalton Vodden, Don Simenson, Izak Hamilton (CCFD)

BUILDING ISSUES

ADA: Building shall meet ADA requirements from the Oregon Structural Specialty Code (OSSC). A path way connecting the residents to the courthouse shall also be ADA compliant.

Structural: All buildings shall meet the requirements of the Oregon Structural Specialty Code (OSSC).

Mechanical: All buildings shall meet the requirements of the Oregon Mechanical Specialty Code (OMSC).

Plumbing: All buildings and on site inground utilities shall meet the Oregon Plumbing Speciality Code (OPSC) . Please note, the plumbing permit is separate from the grading permit submitted to engineering for review. 2 hard copies fo the plumbing plans will be required for review. Clackamas County does our commercial plumbing review for us, so timelines are not in our controll. Please allow plenty of time for these reviews.

Plumb Site Utilities: Inground utilities shall meet the Oregon Plumbing Speciality Code (OPSC) . Please note, the

plumbing permit is separate from the grading permit submitted to engineering for review. 2 hard copies fo the plumbing plans will be required for review. Clackamas County does our commercial plumbing review for us, so timelines are not in our controll. Please allow plenty of time for these reviews.

Electrical: All electrical work shall comply with the NEC. 2 hard copies fo the plumbing plans will be required for review. Clackamas County does our commercial plumbing review for us, so timelines are not in our controll. Please allow plenty of time for these reviews.

Notes: Building shall not cross property lines.

Please note all drawings must be individually rolled. If the drawings are small enough to fold they must be individually folded.

FIRE MARSHAL ISSUES

Fire Sprinklers: Will be required throughout any buildings with a residential component.

Fire Alarms: Shall be provided as per the Oregon Structural Specialty Code (OSSC) chapter 9 requirements.

Fire Hydrants:

Turn Arounds:

Addressing:

Fire Protection:

Fire Access:

Hazardous Mat.:

Fire Marshal Notes:

PUBLIC WORKS ISSUES

Water: A City of Milwaukie 12-inch water main on Monroe St and an 18-inch water main on 37th Ave are available to serve the proposed development. The water System Development Charge (SDC) is based on the size of water meter(s) serving the property (See City of Milwaukie Master Fee Schedule). The corresponding water SDC will be assessed with installation of a water meter. The water SDC will be assessed and collected at the time the building permits are issued.

Sewer: A City 8-inch wastewater main on Monroe St and 37th Ave are available to provide service to the proposed development. Currently, the wastewater SSDC is comprised of two components: the first component is the City's SDC charge, currently \$1,186 per 16 plumbing fixture units in accordance with the Uniform Plumbing Code; and the second component is the County's SDC for treatment, currently \$6,540 per equivalent dwelling unit, that the City collects and forwards to the County. The wastewater SDC will be assessed and collected at the time the building permits are issued.

There is currently a sewer easement running east/west through the site. The city has no concerns with vacating this easement, as long as improvements detailed in these notes are constructed.

Storm:

A City 12-inch storm main is available on Monroe St. The system is identified as overcapacity in the Milwaukie Stormwater Master Plan and a capital project has been identified and is currently in the design phase to provide service to the property. Timing of any proposed development with the future storm main will need to be addressed in the proposed developments stormwater management plan. Submission of a stormwater management plan by a qualified professional engineer is required as part of the proposed development. The plan shall conform to Section 2 - Stormwater Design Standards of the Milwaukie Pubic Works Standards.

The stormwater management plan shall demonstrate that the post-development runoff does not exceed the predevelopment, including any existing stormwater management facilities serving the development property. Also, the plan shall demonstrate compliance with water quality standards. The City has adopted the City of Portland 2016 Stormwater Management Manual for design of water quality facilities.

All new impervious surfaces, including replacement of impervious surface with new impervious surfaces, are subject to the water quality standards. See Milwaukie Public Works Standards for design and construction standards and detailed drawings.

Infiltration from all impervious surfaces, including roofs, will NOT be permitted on this site because of the soil contaminants and the proximity to the City water wells and pumps.

A future stormwater facility is planned on Taxlot 3000 located to the west of Oak St and may be available for the proposed development to incorporate into the stormwater management plan to accommodate stormwater from the site as an interim measure until a City stormwater line is available. Temporary overflows may be installed to the existing storm system depending on the findings of the stormwater management plan. The future facility design has the capacity to handle the proposed development as long as the release requirements within City standard design criteria are met. Temporary detention may be required. The storm SDC is based on the amount of new impervious surface constructed at the site. One storm SDC unit is the equivalent of 2,706 sq ft of impervious surface. The storm SDC is currently \$930 per unit. The storm SDC will be assessed and collected at the time the building permits are issued.

Street:

The proposed development fronts the south side of Monroe St, a collector street. The portion of Monroe St fronting the proposed development has a right-of-way width of 60 ft and a paved width of 36 ft with curb and sidewalk improvements on both sides and of the road.

The proposed development fronts the west side of 37th Ave, a collector street. The portion of 37th Ave fronting the proposed development has a right-of-way width of 60 ft and is unimproved on the development’s frontage.

The proposed development fronts the east side of Oak St which is a collector street. This section of Oak St has a right-of-way width of 60 ft and a paved width of 35 ft. Development’s frontage has curb and asphalt sidewalk.

The Transportation SDC will be based on the increase in trips generated by the new use per the Trip Generation Handbook from the Institute of Transportation Engineers. The SDC for transportation is currently \$2,114 per trip generated. Transportation SDCs will be assessed and collected at the time the build permits are issued.

Frontage:

Chapter 19.700 of the Milwaukie Municipal Code (MMC) applies to partitions, subdivisions, new construction, and modification and/or expansion of existing structures or uses.

Transportation Facility Requirements, MMC 19.708, states that all rights-of-way, streets, sidewalks, necessary public improvements, and other public transportation facilities located in the public right-of-way and abutting the development site shall be adequate at the time of development or shall be made adequate in a timely manner.

According to MMC Table 19.708.2 and Milwaukie Public Works Standards, the minimum roadway cross section for the roadways located along the development's frontage includes the following:

37th AVE AND MONROE ST

- 11-ft travel lanes
- 6-ft bike lanes
- 5-ft landscape strips
- 6-ft setback sidewalks

OAK ST

- 40-ft curb to curb roadway (3 travel lanes and a median)
- 3-ft landscape strips
- 12-ft setback sidewalks

Note that on-street parking is not required on these frontages. If applicant is electing to provide on-street parking, an additional 8-ft of width will be required. Also, the existing centerline striping on the Monroe St frontage does not appear to be in the center of the right-of-way. To accommodate the required frontages, additional right-of-way dedication will need to be provided.

No frontage improvements will be required along Oak St unless identified within the approved Transportation Impact Study (TIS). Frontage improvements are required along Monroe St and 37th Ave unless FILOC is requested and approved.

The 37th Ave frontage may be eligible for fee in lieu of construction (FILOC). The current FILOC rate is \$467 per linear foot of frontage. This FILOC payment could be paid for a portion of the frontage as well: possibly pay FILOC for the "tract 2" frontage and construct the remaining "tract 1" frontage on 37th Ave. This may eliminate the required crossing order modifications, as the southern portion of the 37th Ave frontage would remain unchanged.

Right of Way:

Right-of-way on Monroe St and 37th Ave must be wide enough to accommodate the proposed street improvements identified under the frontage section above plus 2 ft for the 6-inch separation from property line, and 6-inch curb width. The minimum sections identified would require a 6-ft right-of-way dedication along Oak St along with an accompanying radius with Monroe St to accommodate Americans with Disabilities Act (ADA) requirements. The TIS may require additional right-of-way dedication and corresponding improvements.

Driveways:

MMC 12.16.040.A states that access to private property shall be permitted with the use of driveway curb cuts and driveways shall meet all applicable ADA guidelines. Driveway approaches shall be improved to meet the requirements of Milwaukie Public Works Standards. The proposed accessway is not in conformance with City standards. Accessways must be located at street intersections or 300-ft from an intersection per MMC 12.16.040. Unless the TIS determines otherwise, this requires the accessway on 37th Ave to be located across from Washington St.

Erosion Control:

Per MMC 16.28.020(C), an erosion control permit is 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 results in the disturbance or exposure of soils exceeding 500 sq ft.

MMC 16.28.020(E) states that an erosion control permit is required prior to issuance of building permits or approval of construction plans. The erosion control permit for the proposed site will be issued by DEQ. Receipt of an approved erosion control plan is required prior to issuance of permits.

Traffic Impact Study:

MMC 19.704.1(A) states that the City will determine whether a TIS is required. In the event the proposed development will significantly increase the intensity of use, a TIS will be required. The

Engineering Director will make this determination based on proposed preliminary subdivision design and the number of lots created.

The Engineering Director has determined that a TIS is required for this development, see MMC 19.704, the TIS triggers a Transportation Facilities Review (TFR) Land Use Application to be filed prior to the land use application. A \$1000.00 reserve deposit is required to begin the scoping process (final scoping cost may or may not be more than this). Once the scope of the proposed development is determined and final scoping fees are paid, the City will provide a detailed TIS scope for the traffic study. When the TIS is completed in accordance with the TIS scope, the applicant shall submit the TIS for review along with an additional \$2500 reserve deposit and schedule a second preapplication meeting after review by the City. The fee for the second preapplication meeting is currently \$100.00. Upon completion of the second preapplication meeting, the applicant may submit their land use applications. The TIS will determine the final improvements/dedications/offsite mitigation that is required for this development and the requirements identified must be addressed in the land use application.

PW Notes:

MULTI-USE PATH

The TSP identifies a multiuse path between Oak St and Washington St through the site. The multiuse path along the north side of the railroad right-of-way satisfies this requirement, provided the connection at 37th Ave is relocated to the existing crossing location at Washington St. Per MMC 19.708.5 the minimum improved surface width is 10 ft with a minimum easement width of 15 ft. Ownership and maintenance requirements are addressed in MMC 19.708.5.D. Final selected ownership option will be determined by the Engineering Director. Pathway will follow lighting requirements addressed by the AASHTO Guide for the Planning, Design, and Operations of Bicycle Facilities, section 5.2.12.

SYSTEM DEVELOPMENT CHARGES (SDC)

There was insufficient information to estimate SDCs with the preapplication submitted. All SDCs are calculated, assessed, and collected at the time of building permit is issued. Any changes in the proposed use may result in a change in the SDCs that are assessed. If the applicant needs an estimate of SDCs, then staff can provide the specific information to be submitted by the applicant required to calculate SDCs for a given proposal.

In addition to the SDCs mentioned earlier, there is a Parks & Recreation SDC that is triggered when application for a building permit on a new dwelling is received. Currently, the Parks & Recreation SDC for each multifamily dwelling is \$3,908.00. The Parks & Recreation SDC will be assessed and collected at the time the building permits are issued.

ADDITIONAL REQUIREMENTS

- Engineered plans for public improvements (street, sidewalk, and utility) are to be submitted and approved prior to start of construction. Full-engineered design is required along the frontage of the proposed development.

- The applicant shall pay an inspection fee of 5.5% of the cost of public improvements prior to start of construction.

- The applicant shall provide a payment and performance bond for 100% of the cost of the public improvements prior to the start of construction.

- The applicant shall provide a final approved set of Mylar “As Constructed” drawings to the City prior to the final inspection.

- The applicant shall provide a maintenance bond for 100% of the cost of the public improvements prior to the final inspection

PLANNING ISSUES

Setbacks: Yard setbacks in the GMU zone are established in Milwaukie Municipal Code (MMC) Subsection 19.303.3. Subject to additional street setback details in 19.303.4.C, the minimum street setback = 0-15 feet; the maximum street setback = 10-20 feet; the side and rear setbacks = 0 feet. Development that fronts on 37th Ave and Monroe St will be subject to 19.303.5, which requires a minimum setback of 15 ft and buildings within 50 ft of 37th Ave and Monroe St shall provide a step back of at least 15 ft for any portion of the building above 35 ft.

Landscape: In the GMU zone, a minimum of 15% of the site must be landscaped. A maximum of 85% of the site may be covered by structures, including decks or patios over 18 inches above grade.

Parking: Off-street parking standards can be found in MMC Chapter 19.600. No vehicle parking is permitted between the street and the building in the GMU.

Various exemptions and by-right reductions to quantity requirements can be found in 19.605.3 and the process to request quantity modifications can be found in 19.605.2. The applicant should review 19.606 for parking area design and landscaping requirements, as well as 19.608 for requirements for loading areas, 19.609 for bicycle parking standards, and 19.610 for carpool and vanpool standards.

Transportation Review: Please see the Public Works notes for more information about the requirements of MMC 19.700 and MMC 12.16.

Application Procedures: The proposal is for a multi-family residential development on the entire property.

Relevant code sections:

- General Mixed Use zone GMU – MMC 19.303
- Design Standards for multi-family housing – MMC 19.505.3
- Live/Work Units – MMC 19.505.6
- Public Facility Improvements – MMC 19.700
- Development Review – MMC 19.906
- Fence/wall variance – MMC 911.3
- Building Height Variance – MMC 19.911.7
- Review Procedures – MMC 19.1000

Land use applications required:

- Transportation Facilities Review: Type II review
oMMC 19.704 – Transportation Impact Analysis
oIncludes separate pre-application conference and peer review by the City's consulting engineer
- Development Review land use applications – if the proposal meets all development and design standards, then the project is subject to Type I Development Review; if the multi-family design guidelines will be used, then the project is subject to Type II Development Review.
- Fence or wall exceeding base standards: Type II review for up to 8 ft; Type III review for greater than 8 ft.
- Building height variance in the GMU: Type III review for the proposed 5-story building – includes review by DLC and Planning Commission

Application fees are based on the current fee schedule. Fees are typically updated on July 1st of each year.

For the City's initial review, the applicant should submit 5 complete copies of the application, including all required forms and checklists. A determination of the application's completeness will be issued within 30 days. If deemed incomplete, additional information will be requested. If deemed complete, additional copies of the application will be required for referral to other departments, the Neighborhood District Association (NDA), and other relevant parties and agencies. City staff will inform the applicant of the total number of copies needed.

Land use application submission materials are listed below. Please refer to the land use application and submittal requirements form for detailed information.

1. All applicable land use applications forms with signatures of property owners.
2. All applicable land use application fees.
3. Completed and signed "Submittal Requirements" form.
4. 5 copies of an existing conditions and a proposed conditions site plan, both to scale. These two site plans can be combined onto one site plan. Once the application is deemed complete, additional copies will be requested for distribution to City departments, applicable governmental agencies, and the neighborhood district association for review.
5. Detailed narrative describing compliance with all applicable code sections.

Type I applications are administrative in nature and are decided by the Planning Director. A decision is generally issued within 14 days of the application being deemed complete. The current filing fee for a Type I application is \$200.

Type II applications are administrative in nature and are decided by the Planning Director with an opportunity for public comment. Once the application is deemed complete, notice of the application will be mailed to property owners and residents within 300 ft of the subject property, with 14 days to respond with comments. Within 7 days of being deemed complete, a sign giving notice of the application must be posted on the subject property, to remain until the decision is issued. A decision will not be issued before the end of the 14-day comment period. The current filing fee for a Type II application is \$1,000.

For Type III review, once the application is deemed complete, a public hearing with the Planning Commission will be scheduled. Staff will determine the earliest available date that allows time for preparation of a staff report (including a recommendation regarding approval) as well as provision of the required public notice to property owners and residents within 300 ft of the subject property, at least 20 days prior to the public hearing. A sign giving notice of the application must be posted on the subject property at least 14 days prior to the hearing. The current filing fee for a Type III application is \$2,000.

Issuance of a decision starts a 15-day appeal period for the applicant and any party who establishes standing. Permits submitted during the appeal period may be reviewed but are not typically approved until the appeal period has ended.

Given the significance of development on this large development site, prior to submitting the application the applicant is encouraged to present the project at a regular meeting of both the Ardenwald and Hector Campbell NDAs. Meeting information is as follows:

- Ardenwald meetings occur at 6:30 p.m. on the fourth Monday of every month at Milwaukie Café and Bottle Shop (9401 SE 32nd Ave). Contact information can be found here:

<http://www.milwaukieoregon.gov/citymanager/ardenwald-johnson-creek-nda>

- Hector Campbell meetings occur at 6:30 p.m. on the second Monday of every month at the Public Safety Building (3200 SE Harrison St). Contact information can be found here:

<https://www.milwaukieoregon.gov/citymanager/hector-campbell-nda>.

Natural Resource Review: There are no natural resources on the subject property.

Lot Geography: The subject property is made up of 2 individual parcels and is approximately 7.23 acres in area.

Planning Notes: Staff encourages the applicant to review MMC 19.911.7 to review the approval criteria for a 5-story building in the GMU to be sure that the narrative, plans and drawings clearly articulate how the proposal meets the criteria.

The following information was sent to the applicant after an initial staff review of the site plan and in response to some specific questions:

1. We would consider the entire site as the project site – not as 2 individual lots (for the purposes of FAR, density, etc.)
2. Please provide building elevations to assist staff in understanding the relationship of the buildings to the street
3. Calculations will be required for parking to confirm compliance, including bike parking (Note: Multifamily residential development with 4 or more units shall provide 1 bike space per unit.)
4. Calculations will be required minimum landscaping to confirm compliance, including required landscaping in parking areas – note perimeter landscaping requirements
5. The application should describe the proposed plaza – use, design, etc.
6. The application should include the design for the garages along the bikepath – solid walls, covered and unenclosed, etc.
7. The application should include the design of the fence around the site and around the bioswale at Oak St.
8. The proposed 10-ft wall along the bikepath exceeds city standards for fences/walls (6-ft max height). Type II fence variance allows a maximum 8-ft height. Type III variance approval would be required for a 10-ft wall. Please provide design details. There is concern about the effect this wall would have on the users of the bikepath.

Also in attendance at the pre-application conference were representatives from 2 state agencies: Oregon Department of Transportation (ODOT) and the Oregon Department of Environmental Quality (DEQ). Both of these agencies have submitted written comments for inclusion with the pre-application notes. The applicant is encouraged to review them carefully, as both agencies will be notified of any land use applications for development on the subject property and their comments may affect the proposed site plan and project timeline.

The applicant is encouraged to review the Central Milwaukie Land Use and Transportation Plan, an ancillary document to the Milwaukie Comprehensive Plan, which establishes the policies, goals, and objectives, for the central Milwaukie area. The document can be reviewed here: https://www.milwaukieoregon.gov/sites/default/files/fileattachments/planning/page/42741/cmlutp_12-31-15_final_sm.pdf.

The Milwaukie zoning code can be accessed at:
<http://www.qcode.us/codes/milwaukie/view.php?topic=19&frames=off>

ADDITIONAL NOTES AND ISSUES

County Health Notes:

Dated Completed: 2/11/2019

City of Milwaukie DRT PA Report

Page 8 of 9

Other Notes:

This is only preliminary preapplication conference information based on the applicant's proposal and does not cover all possible development scenarios. Other requirements may be added after an applicant submits land use applications or building permits. City policies and code requirements are subject to change. If you have any questions, please contact the City staff that attended the conference (listed on Page 1). Contact numbers for these staff are City staff listed at the end of the report.

Sincerely,

City of Milwaukie Development Review Team

BUILDING DEPARTMENT

**Sam Vandagriff - Building Official - 503-786-7611
Vacant - Permit Specialist - 503-786-7613**

ENGINEERING DEPARTMENT

**Chuck Eaton - Engineering Director - 503-786-7605
Jennifer Garbely - Asst. City Engineer - 503-786-7609
Rick Buen - Civil Engineer - 503-786-7610
Alex Roller - Engineering Tech II - 503-786-7695
Jennifer Backhaus- Engineering Tech I - 503-786-7608**

COMMUNITY DEVELOPMENT DEPARTMENT

**Alma Flores, Comm. Dev. Director - 503-786-7652
Leila Aman - Development Manager - 503-786-7616
Alicia Martin - Admin Specialist - 503-786-7669**

PLANNING DEPARTMENT

**Dennis Egner - Planning Director - 503-786-7654
David Levitan - Senior Planner - 503-786-7627
Brett Kelter - Associate Planner - 503-786-7657
Vera Kolias - Associate Planner - 503-786-7653
Mary Heberling - Assistant Planner - 503-786-7658**

CLACKAMAS FIRE DISTRICT

**Mike Boumann - Lieutenant Deputy Fire Marshal - 503-742-2673
Matt Amos - Fire Inspector - 503-742-2660**

Clackamas County Fire District #1

Fire Prevention Office



E-mail Memorandum

To: City of Milwaukie Planning Department
From: Izak Hamilton, Fire Inspector, Clackamas Fire District #1
Date: 2/11/2019
Re: Monroe Apartments 37th and Monroe Milwaukie, OR 19-001PA

This review is based upon the current version of the Oregon Fire Code (OFC), as adopted by the Oregon State Fire Marshal's Office. The scope of review is typically limited to fire apparatus access and water supply, although the applicant must comply with all applicable OFC requirements. When buildings are completely protected with an approved automatic fire sprinkler system, the requirements for fire apparatus access and water supply may be modified as approved by the fire code official. The following items should be addressed by the applicant:

A Fire Access and Water Supply plan is required for subdivisions and commercial buildings over 1000 square feet in size or when required by Clackamas Fire District #1. The plan shall show fire apparatus access, fire lanes, fire hydrants, fire lines, available fire flow, FDC location (if applicable), building square footage, and type of construction. The applicant shall provide fire flow tests per NFPA 291, and shall be no older than 12 months. Work to be completed by experienced and responsible persons and coordinated with the local water authority.

Emergency responder radio coverage must be tested or provided due to the following:

- 1. Any building 50,000 square feet in size or larger.**

Access:

1. Provide address numbering that is clearly visible from the street.
2. No part of the building may be more than 150 from an approved fire department access road.
3. The inside turning radius and outside turning radius for a 20' wide road shall not be less than 28' and 48', measured from the same center point.
4. Fire apparatus access roads shall have an unobstructed driving surface width of not less than 20' (26' adjacent to fire hydrants) and an unobstructed vertical clearance of not less than 13' 6".

5. Fire apparatus access roads must support a 75,000 lb. fire apparatus.
6. Buildings exceeding 30' in height shall require extra width and proximity provisions for aerial apparatus.
7. Provide at least two approved means of fire apparatus access to developments with more than 30 detached dwellings, or more than 100 multi-family dwelling units. Installation of fire sprinkler systems in all structures may exempt this requirement.

***Multi-family residential projects having more than 200 dwelling units shall be provided with two separate and approved fire apparatus access roads regardless of whether they are equipped with an approved automatic sprinkler system.**

8. Gates across access must be pre-approved by the Fire District.

Water Supply

1. **Fire Hydrants Commercial Buildings:** Where a portion of the building is more than 400 feet from a hydrant on a fire apparatus access road, as measured in an approved route around the exterior of the building, on-site fire hydrants and mains shall be provided.

Note: This distance may be increased to 600 feet for buildings equipped throughout with an approved automatic sprinkler system.

2. All new buildings shall have a firefighting water supply that meets the fire flow requirements of the Fire Code. Maximum spacing between hydrants on street frontage shall not exceed 500 feet. Additional private on-site fire hydrants may be required for larger buildings. Fire sprinklers may reduce the water supply requirements.
3. Prior to the start of combustible construction required fire hydrants shall be operational and accessible.
4. The fire department connection (FDC) for any fire sprinkler system shall be placed as near as possible to the street, and within 100 feet of a fire hydrant.

Notes:

1. Please visit our website for access to our Fire flow Worksheet, and Fire Code Application Guide.

<http://www.clackamasfire.com/fire-prevention/new-construction-resources/>

2. Emergency responder radio coverage must be tested or provided due to the following
 1. Any building with one or more basement or below-grade building levels.
 2. Any underground building.
 3. Any building more than five stories in height.
 4. Any building 50,000 square feet in size or larger.

Fire Code applications guide: <http://clackamasfire.com/wp-content/uploads/2017/02/Fire-Code-Applications-Guide-05-25-16.pdf>



Oregon

Kate Brown, Governor

Department of Transportation

Region 1 Headquarters
123 NW Flanders Street
Portland, Oregon 97209
(503) 731.8200
FAX (503) 731.8259

January 29, 2019

ODOT #8821

ODOT Response

Project Name: McFarland Site	Applicant: Marc Wyzykowski
Jurisdiction: City of Milwaukie	Jurisdiction Case #: 19-001 PA
Site Address: No Situs - Monroe/37th, Milwaukie, OR	Legal Description: 01S 01E 36AB Tax Lot(s): 03003
State Highway: OR 224	Rail Crossings: Oak St and 37 th St

The site of this proposed land use action is adjacent to public rail crossings at Oak St and SE 37th St and in the vicinity of OR 224. ODOT has jurisdictional authority for these facilities and an interest in ensuring that this proposed land use is compatible with their safe and efficient operation. **Please direct the applicant to the Rail Contact indicated below to determine Crossing Order requirements, to schedule a diagnostics meeting and obtain application information.**

RAIL COMMENTS

- Diagnostic meeting required due to plans showing a sound wall adjacent to railroad property would reduce the line of sight,
- If additional AADT at the SE Oak Street intersection with SE Railroad Avenue requires changes in traffic control a diagnostic would be required,
- Either of the above could be combined if appropriate and could require an Crossing Order application to proceed.

Responses (green text) to questions that may still need answers

- Characteristics of the rail line (i.e. type of use, frequency, etc.) **UP line, freight 16 per day counted 2009, Amtrak ~ 6 per day,**
- How is the Safe Stopping Distance measured between the crossing and an access? **measured back from the location of the stop clearance lines, (note this is different than what I said during the meeting on 1/24/19)**
- Can the access on 37th Street be for “emergency access” only? If so, and within the SSD, does that necessitate and require a Crossing Order? **Emergency access is not shown within the SSD in the documents provided so may not need answer.**

Corrections to documents

- 19 001PA application materials-WithNotes.pdf,
 - o Site Plan has the safe stopping distance shown as 150’ and it should actually be 155’,
 - o Comment regarding on-street parking (last comment on page 25) should be modified to:

- ODOT Rail and Public Transit Division objects to on-street parking within the safe stopping distance as vehicles could block the line of sight.

741-115-0080

Vegetation Control at Grade Crossings

- (1) The railroad shall control vegetation on its right-of-way for a distance of 250 feet in each direction from the edge of the crossing surface and for a distance of 50 feet in each direction from the centerline of the nearest track or to the edge of the railroad's right-of-way, whichever is less, so that the vegetation does not obstruct motorists' view of approaching trains.
- (2) The public authority shall control vegetation on its right-of-way within the SSD and within its right-of-way.

ODOT RECOMMENDED LOCAL CONDITIONS OF APPROVAL

Traffic Impacts

- The applicant shall submit a traffic impact analysis to assess the impacts of the proposed use on the State highway system. The analysis must be conducted by a Professional Engineer registered in Oregon and include four OR 224 intersections at Harrison St, Monroe St, Oak St and 37th St. **Contact the ODOT Traffic representative identified below if you have questions regarding the scope of the study.**

Property Location Adjacent to Rail Tracks

- The applicant shall install continuous fencing (no gates) along the property line fronting the rail tracks to ensure the safe operation of trains by preventing illegal trespassing of pedestrians across the tracks (see attached Rail Fence Detail).

Property Location Within Safe Stopping Distance of a Public Rail Crossing

- A Crossing Order is required for any alterations within the safe stopping distance of the public rail crossing. To alter means any change to the roadway or tracks at a crossing that materially affects use of the crossing by railroad equipment, vehicles, bicyclists or pedestrians. Alterations include, but are not limited to: changing the width of the roadways; installing or removing protective devices; creating an additional travel lane; installing curbs, sidewalks, or bicycle facilities. **Contact the ODOT Rail Crossing Specialist below for information on the Crossing Order application process.**

ADVISORY INFORMATION

Noise

- The applicant is advised that a residential development on the proposed site may be exposed to noise from heavy rail freight trains, passenger trains or transit vehicles. It is generally not the State's responsibility to provide mitigation for receptors that are built after the noise source is in place. Builders should take appropriate measures to mitigate the noise impacts.

Please send a copy of the Land Use Notice including conditions of approval to:

ODOT Region 1 Planning
Development Review
123 NW Flanders St
Portland, OR 97209

Region1_DEVREV_Applications@odot.state.or.us

Development Review Planner: Marah Danielson	503.731.8258, marah.b.danielson@odot.state.or.us
Traffic Contact: Avi Tayar, P.E.	503.731.8221
Rail Contact: Bob Stolle	503.986.6802 Bob.Stolle@odot.state.or.us

Matt McClincy
Oregon Department of Environmental Quality
Northwest Region
700 NE Multnomah St., Suite 600
Portland, Oregon 97232-4100
Phone 503-229-5538
Fax 503-229-6945

January 24, 2019 Meeting

Parcel 2 Bioswale

We discussed DEQ concerns with the bioswale identified on the conceptual development figure for Parcel 2. A representative from Johnson Development, noted that the bioswale would be lined and was not intended to be an infiltration basin. He also noted that they were looking to relocate it onto Parcel 1. Given this understanding, DEQ agrees that this is not a significant concern for exacerbation of the existing Parcel 2 contamination.

Naphthalene Soil Gas Investigation Results

DEQ provided a figure (Figure 3) from the January 23, 2018 report *Results of Naphthalene Soil Sampling at Former L.D. McFarland Wood Treating Site Milwaukie, Oregon*. This figure illustrates the soil gas sample locations and results. DEQ noted that the soil gas result collected from the excavation 5 footprint area exceeds the level considered protective for potential migration of soil gas to indoor air. Should a structure be constructed over this area, DEQ will require an active soil gas mitigation system to be part of the structure design. The need to treat soil gas discharge will also need to be evaluated as part of the design review. Johnson Development may want to proactively plan for treatment (e.g., activated carbon filtration) as the naphthalene levels exceed odor thresholds.

I need to modify one of our review comments. It was subsequently pointed out to me that current DEQ guidance uses a 100 foot buffer between a soil gas source and a structure. The initial DEQ comment provided to you was limited to future structures constructed over the excavation 5 area. What this means for the McFarland site is that either additional soil gas data would be necessary to document vapor levels are below standards for a potential structure built within the excavation 5 area 100 foot buffer or a soil vapor mitigation system installed. The 2017 soil vapor study does partially bound the excavation 5 soil gas concentrations but not in all directions.

DEQ would also require utility trenches in the vicinity the excavation 5 area to include vapor migration barriers.

Johnson development asked if DEQ has a more detailed figure of the excavation 5 location. DEQ is reviewing its records.

Monitoring Wells

Johnson Development asked if DEQ would require all of the monitoring wells to be maintained. DEQ explained that we have not done a cross walk between the existing monitoring well network constructed to support the remedial investigation and the wells required to be monitored as part of the ongoing groundwater monitoring program. The site remedy allows for modification of the groundwater monitoring program with DEQ approval. DEQ will work closely with the City of Milwaukie to evaluate any such proposal.



CITY OF MILWAUKIE

To: Planning Commission
Through: Design and Landmarks Committee
From: Brett Kelter, Associate Planner
Date: May 7, 2019
Subject: Design Review Recommendation for File #VR-2019-003

BACKGROUND

At its regular meeting on May 6, 2019, the Design and Landmarks Committee (DLC, or Committee) held a public design review meeting to consider a request for a building height variance for a proposed development in the General Mixed Use (GMU) zone, as required by Milwaukie Municipal Code (MMC) Subsection 19.911.7 and MMC Section 19.1011.

The proposed “Monroe Apartments” development is a multifamily project consisting of multiple buildings on the vacant GMU-zoned site at Monroe St and 37th Ave. The project includes a 5-story building in the center of the site, which was the focus of the Committee’s review on May 6. Three (3) DLC members participated in the design review meeting, with one member recusing herself and one position being vacant.

RECOMMENDATION

After hearing presentations from City staff and the applicant team as well as public testimony, the DLC deliberated and voted unanimously to **recommend that the Planning Commission approve the requested building height variance**, with the recommended findings provided in the meeting packet.

In addition, the Committee formally suggested that the Planning Commission discuss a potential requirement that the applicant break up the 3 large gable ends to further reduce the massing and visual impacts of those 5-story elevations on surrounding properties. For example, each large gable end could be re-designed with 2 gable ends.



Monroe Apartments Variance

To:
Vera Kolias, Associate Planner
Milwaukie Planning Commission

CC Marc Wyzykowski, Johnson Development Associates

RE: Monroe Apartments Variance #VR-2019-003

At the April meeting of the Hector Campbell Neighborhood Association [HCNDA], a presentation for a variance for building height for a 5 story building at the McFarland site at 37th and Monroe presented. After the presentation and group discussion the HCNDA voted to unanimously approve the variance.

During discussion about the Monroe Apartments and the Building Variance other items of concern arose. Some of those items are:

The need for Traffic Study to address the future impacts for 37th Ave and the surrounding intersections.

There are concerns about how the Quiet Zone Diverters for left turns are designs. The paving of the crossing at 37th and Railroad not level on both sides of the railroad tracks. The south side of the crossing is ruff and uneven.

Some of the positives of the discussion are:

Storm water site management plan that include fencing and regular maintenance of the facility by the owner.

On street parking along Monroe for the Live Work units.

Maintaining of current Triangle Park at 37th and Monroe.

Market rate housing rents.

Landscaping

We know at this time the only part up for discussion is the building height for the one 5 story building. We just wanted to share other concerns and positives we see in the overall project. If you have questions for the HCNDA please contact us at info@HectorCampbellNDA.org

David Aschenbrenner, Chair
Hector Campbell Neighborhood Assoc.
503-804-3837
2dasch@gmail.com



Oregon

Kate Brown, Governor

Department of Transportation

Region 1 Headquarters
123 NW Flanders Street
Portland, Oregon 97209
(503) 731.8200
FAX (503) 731.8259

April 12, 2019

ODOT #8821

ODOT Response

Project Name: McFarland Site Monroe St and 37th Ave	Applicant: Jennifer Garbely, City of Milwaukie
Jurisdiction: City of Milwaukie	Jurisdiction Case #: VR-2019-003
Site Address: No Situs - Monroe/37th, Milwaukie, OR	Legal Description: 01S 01E 36AB Tax Lot(s): 03003
State Highway: OR 224	

The site of this proposed land use action is in the vicinity of OR 224. ODOT has permitting authority for this facility and an interest in ensuring that this proposed land use is compatible with its safe and efficient operation.

COMMENTS/FINDINGS

The proposed height variance from a 3 story to 5 story building on the site will increase the traffic generated from the site. A traffic study or trip generation analysis is needed to determine whether transportation facilities adequate to support the increase in traffic generation from the proposed height variance.

ODOT RECOMMENDED LOCAL CONDITIONS OF APPROVAL

Traffic Impacts

- The applicant shall submit a traffic impact analysis to assess the impacts of the proposed use on the State highway system. The analysis must be conducted by a Professional Engineer registered in Oregon and include four OR 224 intersections at Harrison St, Monroe St, Oak St and 37th St.. **Contact the ODOT Traffic representative identified below and the local jurisdiction to scope the study.**

Please send a copy of the Notice of Decision including conditions of approval to:

ODOT Region 1 Planning
Development Review
123 NW Flanders St
Portland, OR 97209

Region1_DEVREV_Applications@odot.state.or.us

Development Review Planner: Marah Danielson	503.731.8258, marah.b.danielson@odot.state.or.us
Traffic Contact: Avi Tayar, P.E.	503.731.8221
District Contact: BKM_DistrictRevName	BKM_DistrictRevPhone

Vera Kolias

From: Jill Bowers <tinyjillbo@gmail.com>
Sent: Saturday, April 27, 2019 2:58 PM
To: Vera Kolias
Subject: Exit on SE 37th and Washington for new development

Follow Up Flag: Follow up
Flag Status: Flagged

Hello,

Please reconsider the safety of those people using SE 37th and Washington when you plan for an exit for use by so many other vehicles from the new apartments planned. The train being so close, and 37th being quite busy already, it doesn't seem to be a very good decision for the safety of the drivers. Shouldn't that be the first priority?

Thank you,

Jill Bowers
4688 SE Ada Lane
Milwaukie, OR 97222

Vera Kolia

From: Patti Dryden <p_dryden@hotmail.com>
Sent: Sunday, April 28, 2019 8:25 PM
To: Vera Kolia
Subject: Monroe Apartments 2019

Follow Up Flag: Follow up
Flag Status: Flagged

Hello MS. Kolia...I noticed flyers attached to telephone pole next to my house on Washington Street. I am very concerned about the amount of traffic that will be put on my, quiet, residential street. I have not been able to participate in, nor have I been notified of these plans. I find this inappropriate and do not see why Washington street has to be involved in This traffic mess. We have school bus stops...3 of them on Washington Street, as well as many children who play on the sidewalks and are in danger of more traffic, should they need to retrieve a ball or whatever. There are people who do not leash their dogs and they said dogs run out into the street. I have to park on the street, as my car has a moon roof and it plugs and water swamps my car, if I park in my driveway. Why were the neighbors, who are unable to get to whatever meetings you have held, not been notified in a more timely manner, so as to be able to question this project? Thank you for your attention to this matter. Patti Dryden

Sent from [Mail](#) for Windows 10



BUILDING AMERICA®

May 6, 2019

Vera Kolias
Planning Department
6101 SE Johnson Creek Blvd
Milwaukie, OR 97206
koliasv@milwaukieoregon.gov

Re: Comments to VR-2019-003 Multi-Family Development at land generally located at Monroe Street and 37th Avenue (the "Project")

Dear Ms. Kolias:

Thank you for allowing Union Pacific Railroad Company ("UP") the opportunity to submit the following comments regarding the above-referenced Project. UP is a Delaware corporation that owns and operates a common carrier railroad network in the western half of the United States, including the State of Oregon. UP's rail network is vital to the economic health of Oregon and the nation as a whole and its rail service to customers in Oregon is crucial to the future success and growth of those customers.

The proposed Project location is adjacent to UP's property and railroad operations. Any land planning decisions should consider that train volumes near the Project area may increase in the future. UP also asks that the City and the applicant keep in mind that this is an active rail corridor and nearby land uses should be compatible with this continuing rail use.

Trespassing

Approval of this Project will likely increase pedestrian traffic and trespassing onto the railroad right-of-way. UP strongly recommends that the developer and the City evaluate such impacts and set forth appropriate mitigation measures. If the Project is approved, we request that the City require the Project developer to install vandal resistant fencing at least 8 feet or taller (without impairing visibility), pavement markings and "no trespassing" signs designed to prevent individuals from trespassing onto the railroad tracks. All pedestrians and cyclists should be directed to use designated pedestrian rail crossings by utilizing appropriate signage and paths. Buffers and setbacks should also be required adjacent to the right-of-way.

Increased Traffic Impact

Rail crossing safety is critical to the public and to UP. Any increase in traffic from the Project may render inadequate the current safety devices in place on the nearby at-grade crossings. Additionally, an increase of pedestrian and vehicular traffic may conflict with train operations causing trains to proceed more slowly through the City, and/or make more frequent emergency stops, which would make rail service less effective and efficient. Should this Project be approved, the Project developer and the City should examine any increase in vehicular and pedestrian traffic and the impacts on the nearby at-grade road crossings to see what additional mitigation measures should be included in the Project.

Noise and Vibration Impact

UP's 24-hour rail operations generate the noise and vibration one would expect from an active railway. Any increase in pedestrian and vehicular traffic over and around at-grade crossings may result in additional horn use by railroad employees. As a mitigation measure, the developer should disclose to the general public, including residents of the proposed development, the daytime and nighttime noise levels naturally occurring with rail service, including sounding horns at vehicle crossings where required, as well as the pre-existing and predictably-occurring vibration. These disclosures should note that train volume may increase in the future. The Project's development plans should also include appropriate mitigation measures, such as construction of sound barrier walls or landscape buffers, and/or use of sound-proofing materials and techniques.

Drainage and Project Construction

UP requests the City ensure that the drainage plan relating to the Project does not shift storm water drainage toward UP property and infrastructure. Any runoff onto UP's property may cause damage to its facilities resulting in a potential public safety issue. If the Project is approved, we ask that the City require the applicant to mitigate all safety risks and the impacts of the railroad's 24-hour operations during the construction of the Project, including contacting UP to arrange for flaggers for work performed within twenty-five feet (25') of the nearest track.

UP appreciates the developer and the City giving due consideration to the above concerns, as this proposed Project may result in impacts to land use and public safety. Please give notice to UP of all future hearings and other matters with respect to the Project as follows:

Aaron P. Galley – Real Estate Analyst
Union Pacific Railroad Company
1400 Douglas Street - STOP 1690 Omaha, NE 68179
(402) 544-8043
apgalley@up.com

Please do not hesitate to contact Aaron P. Galley if you have any questions or concerns.

Sincerely,



Madeline E. Roebke
Senior General Attorney
Union Pacific Railroad Company

cc: Aaron P. Galley
Aaron M. Hunt

Vera Kolias

From: linda keeling <keeco2000@yahoo.com>
Sent: Sunday, May 19, 2019 6:44 PM
To: Vera Kolias
Subject: File #VR2019-003

I want to go on record as being against the building proposed at Monroe St & 37th. The construction would be a further infringement on the wetlands that companies like those on International Way have protected for many years. The geese feed in this field as they migrate and the people in this area enjoy the open space as park-like to walk their dogs, play with their children and so forth.

As a resident across the street at this address, I also want to address the STUPID traffic interference at Monroe St and Linwood Ave where the Monroe St traffic is stopped as thru traffic. Many of the people who live nearby shop at Winco Grocery Store and now we have to detour either to Kind Rd or Harmony Ave which take extra gasoline that many of us can't afford. I feel that a 4-way stop would handle the traffic problem much more effectively!!

Sincerely yours,

Linda Keeling

Resident of Village Monroe

Vera Kolias

From: Vera Kolias
Sent: Tuesday, May 21, 2019 9:51 AM
To: 'Landon Donsbach'; Daniella Gleeson
Cc: Dennis Egnor; OCR
Subject: RE: Public Comment on Monroe Street and 37th Ave., VR-2019-003, TL11E36AB03003 + TL11E36AA19203
Attachments: DEQ notes.pdf; 19-001PA DEQ Comments.pdf

Hello Landon,

Thank you for your comment and questions. Please note that Oregon DEQ and the City's Water Quality Coordinator have been active participants in all discussions involving this proposed project and will be actively involved in the plan and permit review to confirm compliance with all regulations.

Attached please find the DEQ comments that were submitted as part of the two pre-application conferences that have been held for this project.

I will also forward your comments to City staff, DEQ, and to the Applicant directly so that they can respond with any additional information. I will forward any responses to you.

-Vera

VERA KOLIAS, AICP

Associate Planner
503.786.7653
City of Milwaukie
6101 SE Johnson Creek Blvd • Milwaukie, OR 97206

From: Landon Donsbach [mailto:ldonsbach@yahoo.com]
Sent: Tuesday, May 21, 2019 9:21 AM
To: OCR <OCR@milwaukieoregon.gov>; Vera Kolias <KoliasV@milwaukieoregon.gov>; Daniella Gleeson <dmgpearl@yahoo.com>
Subject: Public Comment on Monroe Street and 37th Ave., VR-2019-003, TL11E36AB03003 + TL11E36AA19203

Hi,

I'm unable to make the Public Comment Hearing for the Monroe Street Apartments, but I wanted to make sure the question was asked about what will be done about mitigating/abating the risk and hazard of disrupting the creosote during and after construction. I know there are groundwater concerns at the very least.

"The contaminants of concern are constituents of creosote: polynuclear aromatic hydrocarbons (PAHs) and dibenzofurans. "

Please let me know if this is the appropriate channel to get this question addressed and this concern recorded into the record.

Thank you,

Landon Donsbach
3905 SE Adams

Vera Kolias

From: Vera Kolias
Sent: Tuesday, May 21, 2019 10:45 AM
To: Bernie Stout
Cc: Dennis Egnor
Subject: RE: VR-2019-003
Attachments: 2019_02_15 McFarland MultiFamily_Preapp Report.pdf

Good morning Mr. Stout,

In answer to your questions:

1. Per the Building Official, a bladder and venting is not necessarily required as long as they can demonstrate compliance with another solution.
2. The frontage improvements required for 37th Ave and Monroe St are identified in the pre-application notes (see attached page 4 of 9).
3. Off-site parking, if desired, would be in the form of parallel on-street parking. This would require additional frontage improvements to accommodate the new parking stalls.

Please let me know if you need any additional information.

-Vera

From: Bernie Stout <usabs1@nethere.com>
Sent: Tuesday, May 21, 2019 9:22 AM
To: Vera Kolias <KoliasV@milwaukieoregon.gov>
Subject: VR-2019-003

Tuesday, May 21, 2019

Dear Vera Kolias, Associate Planner

VR-2019-003
Monroe Apartments

1. Will the Club House be required to be built with a bladder and venting?
Note: Oregon City Home Depot built on Landfill had to protect the people using the building.

2. What design changes will be made on
 - a) SE 37th Avenue
 - b) SE Monroe Street

Will the current bike lane remain on SE Monroe Street?

3. Where will the "Off Site Parking (TBD)" be located?

Thank you,

5 story apartment? NO!

The developer has been working with the planning commission and has a head start against us. The city has to balance everyone's rights.

These scenarios speak to a corrupt intent by the developers. Let them run rough shod over the community. Change the complexion of the town laughing all the way to the bank. *Activists in the community are already stretched thin making Milwaukie vulnerable to this exploitation without checks and balances.* Build "it" higher, and smaller... Keep it expensive for those in need. Simply stated...

I feel the decision is already made. This is just a warning technically.

Zoning variance shouldn't be approved for the following reasons:

1. How can they safely build homes on top of the toxic waste?

The property in question is condemned land due to creosote spills (vandalism and poor business management).

<https://www.deq.state.or.us/lq/ECSI/ecsidetail.asp?seqnbr=887>

READ THE STATE OF OREGON DEQ REPORT: *Environmental/Health Threats: "Soil and groundwater contamination confirmed. Milwaukie drinking water supply wells located adjacent to site; wetlands adjacent to site; site is located in residential area adjacent to shopping center. Potential threats to humans by contact with site soils and ingestion of drinking water."*

*"Past practices and vandalism at pole-treating facility caused releases of creosote. The facility operated from the 1920s to 1953. **Ten thousand gallons were released in 1951** when young vandals opened valves on the creosote vats. The contaminants of concern are constituents of creosote: polynuclear aromatic hydrocarbons (PAHs) and dibenzofurans."*

Only part of it is hazardous waste. Isn't that enough? **How reassuring to the apartment residents. They can warn their children not to play on the railroads tracks or the hazardous waste site. Will residents be notified the land is a toxic waste dump? Look for lawsuits when they get sick!!!**

2. Noise pollution for the apt. residents – one building butts right up to railroad.

3. The city has a plan in place that would develop Monroe as a greenway. This includes using traffic diverters, and features that will limit traffic, discourage traffic, and slow traffic. A project this size depending on number of units, would **not fit** with the planned use of Monroe as a greenway.

4. Parking overload - Depending on the final route, there would be limited to no street parking on that section of Monroe. Usually developers can get away with little to no parking if they designate a certain number of units. Developers can be pretty sneaky. High-density housing with inadequate parking will be a disaster for our neighborhood.

5. School overload - Class sizes at local schools are already too high with many teachers having 35+ students.

6. The size is wrong for the neighborhood. A lesser size could be negotiable. This is a quiet laid back neighborhood. More people will only bring noise and congestion. It is over powering the houses around it.

7. There is concern for the Minthorn Natural Area.

Carolyn Corthell, MSW
Milwaukie, OR 97222

503.654.6325

Vera Kalias

From: Scott Stauffer
Sent: Tuesday, May 21, 2019 10:51 AM
To: Vera Kalias
Subject: FW: Ardenwald's Vote on McFarland height variance & general housing policy reticence

SCOTT STAUFFER, CMC

City Recorder
p: 503.786.7502
City of Milwaukie

From: OCR
Sent: Tuesday, May 21, 2019 9:49 AM
To: 'Elvis Clark' <eclarkmilwor@yahoo.com>; Angel Falconer <FalconerA@milwaukieoregon.gov>; Lisa Batey <BateyL@milwaukieoregon.gov>; Wilda Parks <ParksW@milwaukieoregon.gov>; Kathy Hyzy <HyzyK@milwaukieoregon.gov>; Mark Gamba <GambaM@milwaukieoregon.gov>
Cc: OCR <OCR@milwaukieoregon.gov>; Ann Ober <OberA@milwaukieoregon.gov>; Alma Flores <FloresA@milwaukieoregon.gov>
Subject: RE: Ardenwald's Vote on McFarland height variance & general housing policy reticence

Mr. Clark,

We have received your comments and have forwarded them to the Planning Commission. They will be included in the meeting record of this evening's (5/21) Council Regular Session.

If we may be of further assistance please let us know.

SCOTT STAUFFER, CMC

City Recorder
p: 503.786.7502
City of Milwaukie

From: Elvis Clark [<mailto:eclarkmilwor@yahoo.com>]
Sent: Tuesday, May 21, 2019 9:00 AM
To: Angel Falconer <FalconerA@milwaukieoregon.gov>; Lisa Batey <BateyL@milwaukieoregon.gov>; Wilda Parks <ParksW@milwaukieoregon.gov>; Kathy Hyzy <HyzyK@milwaukieoregon.gov>; Mark Gamba <GambaM@milwaukieoregon.gov>
Cc: OCR <OCR@milwaukieoregon.gov>; Ann Ober <OberA@milwaukieoregon.gov>; Alma Flores <FloresA@milwaukieoregon.gov>
Subject: Ardenwald's Vote on McFarland height variance & general housing policy reticence

Hello Councilors and Mayor of our Milwaukie. Also, if Scott could forward this to Planning Commission Board members, would be appreciative.

I attend last night's Ardenwald-Johnson Creek NDA meeting. There is a vote on the height variance (5 story versus 4) for the proposed McFarland apartment complex development.

The NDA, including myself, voted in favor of granting the variance (there is one no vote at the meeting). But we voted in favor of the height variance with some reticence.

*My own take away from the NDA meeting, and not official record for the NDA....**just my own takeaway:***

We generally believe the McFarland site holds its own potential characteristics, not of established neighborhoods that make up most of Ardenwald-Johnson Creek.

We would hope our McFarland vote doesn't set a precedent for other places; for instance, along 32d between Johnson Creek and Harrison or possibly just to Harvey (my own take away from last night's NDA meeting, not something I am conveying for the group as official record). Those in attendance generally might not favor, for instance, five story or higher development along the commercial/residential zones of 32nd.

I think this issue of new housing and development in general fitting into established neighborhoods is something being echoed in development of the Housing block of the Comp Plan update. The on-line survey of housing block component of Comp Plan touches on this issue of fitting-in-with-the-existing-neighborhood, with Figure 37, page RS152 of May 21, 2019 E-packet.

FYI,

Elvis Clark
Ardenwald

Sent from Yahoo Mail. [Get the app](#)



CITY OF MILWAUKIE

To: Planning Commission

Through: Dennis Egner, Planning Director

From: Vera Kalias, Associate Planner
Dalton Vodden, Associate Engineer

Date: May 20, 2019, for May 28, 2019, Public Hearing

Subject: **File:** NR-2018-005 (master)
Applicant: Gillis Properties, LLC
Owner(s): Same
Address: 12205-12225 SE 19th Ave
Legal Description (Map & Tax Lot): 11E35DD 03200 & 03300
NDA: Island Station

ACTION REQUESTED

Deny application NR-2018-005 to allow the construction of a natural resources cluster development consisting of 10 new homes and 2 remodeled homes on the property located at 12205-12225 SE 19th Ave.

As an alternative to denial, the Commission could reconsider this recommendation if the applicant provides additional information to adequately address the proposal's deficiencies.

BACKGROUND INFORMATION

The applicant is proposing a natural resources cluster development with a total of 12 single family detached homes (10 new and 2 existing homes to be remodeled) on a site located between 19th St and the Willamette slough adjacent to Elk Rock Island and Spring Park. The site includes 100-yr floodplain, mapped natural resource areas, and the Willamette Greenway. Variances are requested to a side yard setback, a front yard setback, building height for the homes facing the slough, and to allow garage doors to exceed 50% of the building width.

The application materials were reviewed and analyzed by ESA Associates, the City's peer review natural resources consultant.

A. Site and Vicinity

The site is located at 12205-12225 SE 19th Ave. The site is made up of two tax lots and contains a total of 3.66 acres. There are two existing single-family home on the site, which will be remodeled and will part of the proposed development. The surrounding area is zoned Residential R-5 and consists of detached single-family homes to the north and east, Elk Rock Island to the west, and Spring Park to the south. See Figures 1-2.

The project site is bisected by the Willamette slough, effectively limiting the developable portion of the site to the eastern portion. The site includes Willamette Greenway over the entire site, Water Quality Resource Areas (WQR) along the slough and river, Habitat Conservation Areas (HCA), and the 100-yr floodplain over all of the site but the upland area along 19th Ave (See Figures 2, 3, and 4).



Figure 1. Site and Vicinity

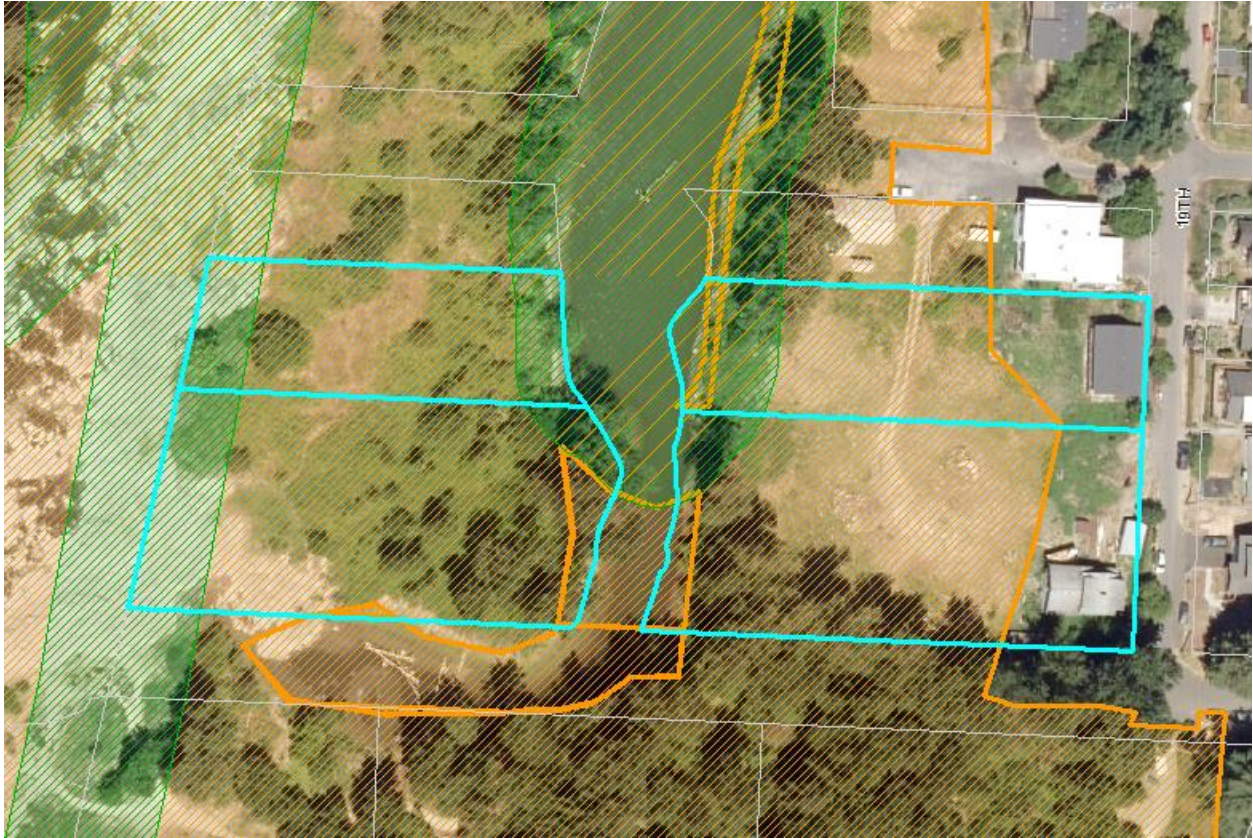


Figure 2. Legend: WQR (green) and HCA (orange)

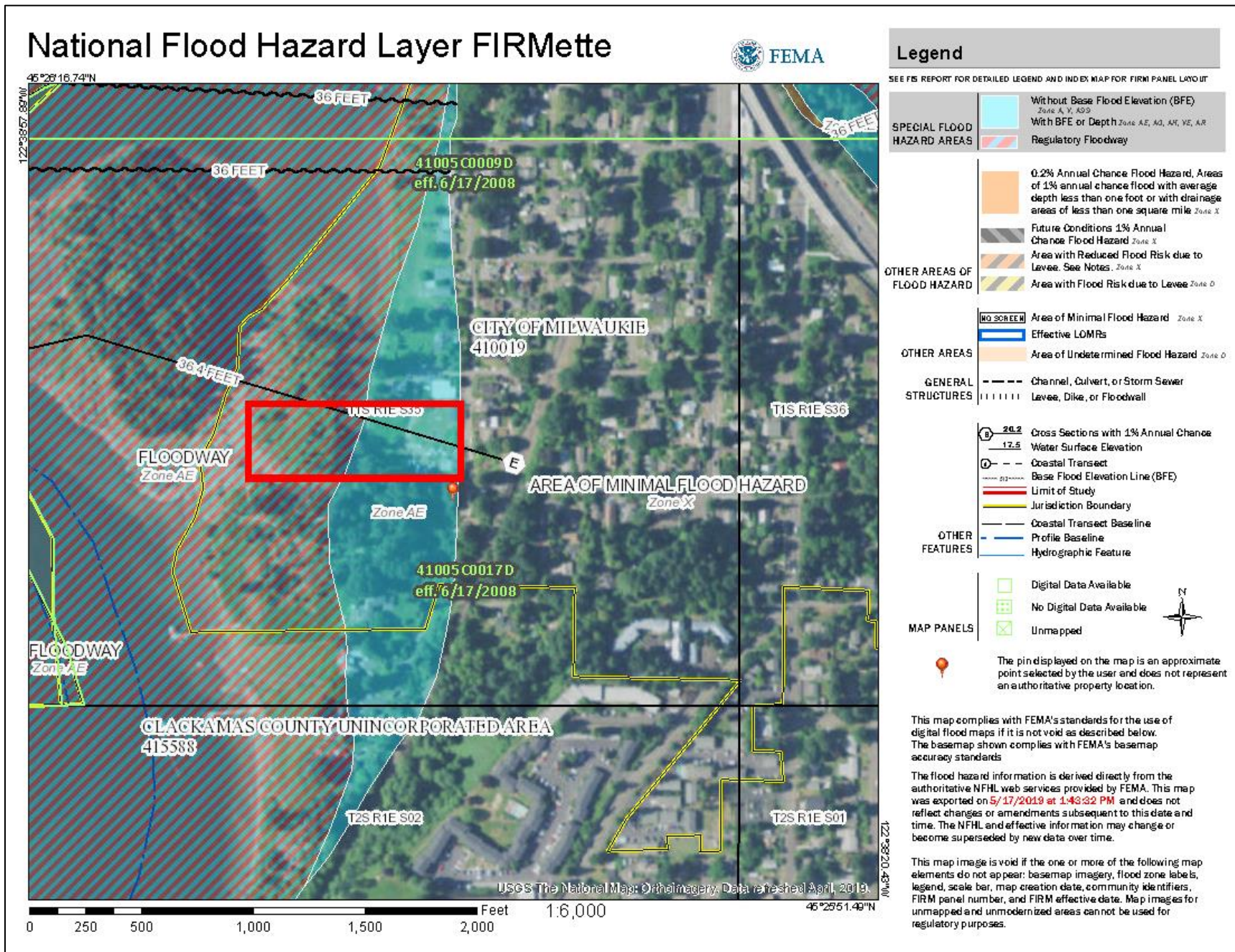


Figure 3. FEMA Special Flood Hazard Area, Approximate Site Location Added in Red for Clarity (Unaltered Image in Attachment 6)

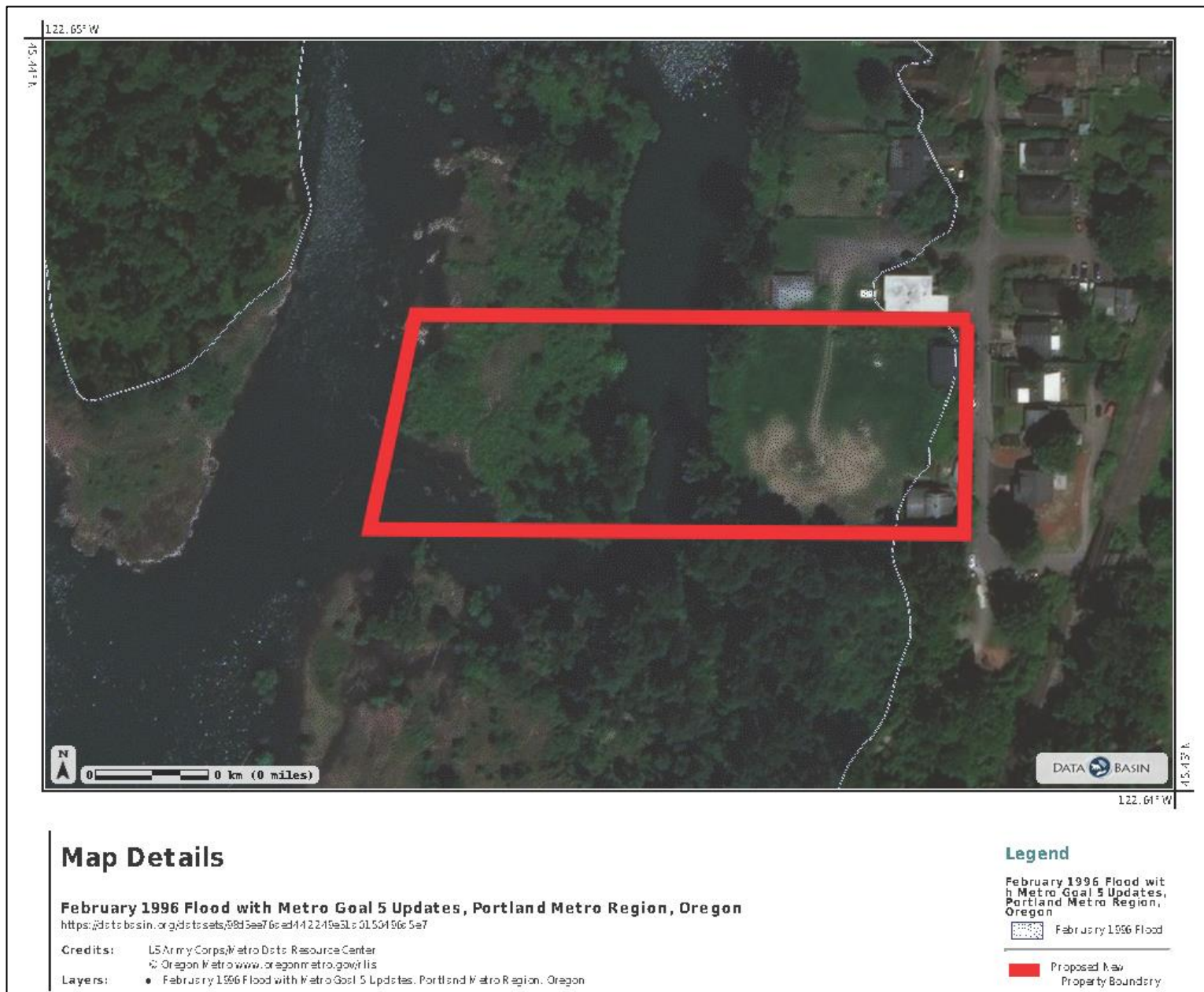


Figure 4. Metro Special Flood Hazard Area, 1996 flood limits is indicated by the white line. Approximate Site Location Added in Red for Clarity (Unaltered Image in Attachment 6)

B. Zoning Designation

Residential R-5

C. Comprehensive Plan Designation

Moderate Density MD

D. Land Use History

- City records indicate no previous land use actions for 12225 SE 19th Ave.
- **August 22, 1972:** Land Use File #C-72-10 was a request to convert the single-family home at 12205 SE 19th Ave to a duplex. Staff recommended denial of the application due to the presence of floodplain and the lack of public sewer service to the site. Public testimony in opposition to the proposal was presented at the public hearing. Upon hearing the opposition, the applicant withdrew the application.

E. Proposal Summary

The applicant is seeking land use approvals for construction of a natural resources cluster development (see Figure 5). The proposal includes the following:

1. 10 new single-family homes and 2 remodeled existing homes.
2. Lot consolidation to locate the entire development on one tax lot.
3. Preservation of designated natural resources on western portion of the site.
4. Pedestrian path and dock extending into the slough.
5. Variances to front and side yard setbacks, building height, width of garage doors, and access spacing standards.

The project requires approval of the following applications:

1. Natural Resource Review (master file, #NR-2018-005)

The project is a natural resources cluster development and is subject to natural resources review.

2. Variance Request (VR-2018-014; VR-2018-015)

As proposed, the project requires 4 variances: (1) to exceed the maximum allowed building height of 2.5 stories or 35 ft for single-family homes; (2) relief from the 25-ft side yard setback; (3) relief from the 25-ft front yard setback; (4) relief from the number of access points in close proximity on the same frontage; and (5) relief from the requirement that garage doors not exceed 50% of the width of the street facing façade.

3. Lot Consolidation (LC-2018-001)

The proposal includes consolidation of the two underlying lots into one.

4. Willamette Greenway Review (WG-2018-001)

The site is in the Willamette Greenway and the project requires a Willamette Greenway Conditional Use review, both for the main development as well as the non-commercial dock.

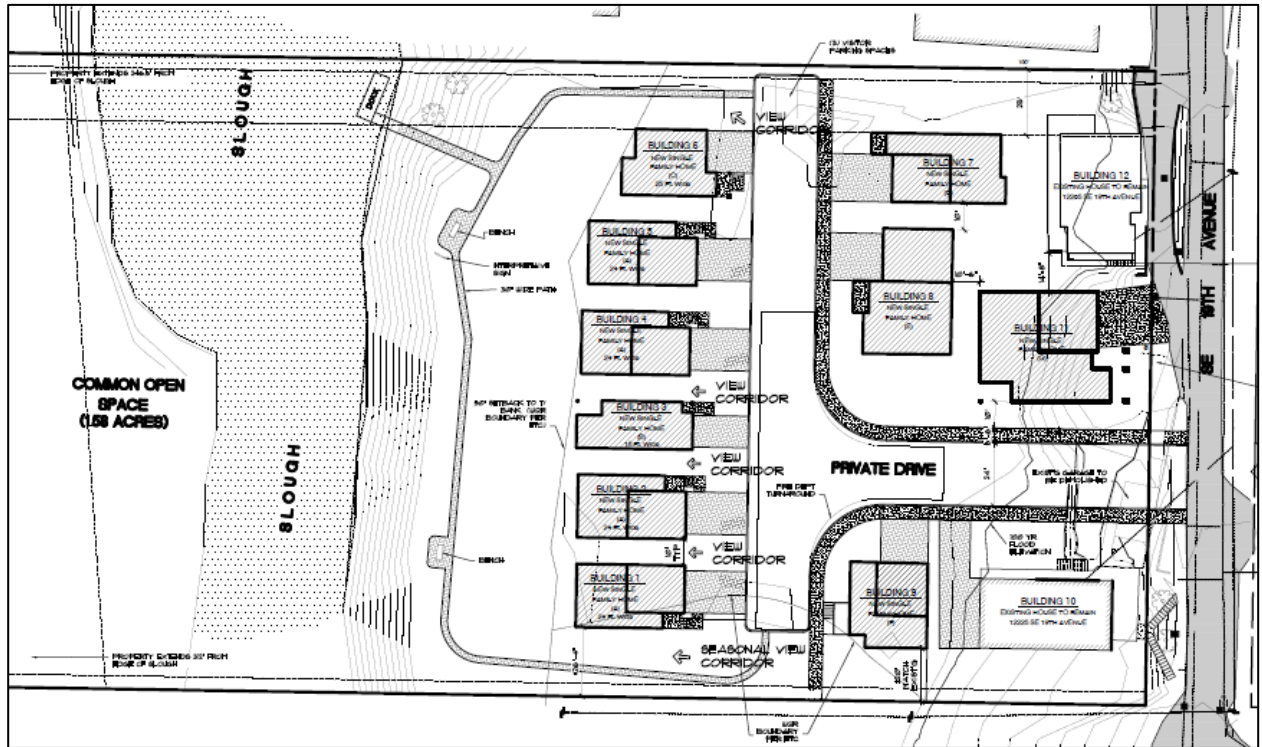


Figure 5. Site Plan

KEY ISSUES

Summary

Staff has identified the following key issues for the Planning Commission's deliberation. Aspects of the proposal not listed below are addressed in the Findings (see Attachment 1) and generally require less analysis and discretion by the Commission.

- A. Floodplain: How would the proposed development impact the 100-year floodplain?
- B. Natural Resources: Does the proposed development adequately address impacts to mapped natural resources to avoid, minimize, and mitigate with a reasonable footprint for the cluster development?
- C. Willamette Greenway: Does the proposed development adequately address the approval criteria for a Willamette Greenway Conditional Use?

- D. Variance to Building Height: Is the proposed variance to allow 3-story homes reasonable? What are the effects of the variance on views as it relates to the Willamette Greenway?

Analysis

A. How would the proposed development impact the 100-year floodplain?

The applicant's proposed impacts to mapped FEMA and Metro special flood hazard areas include construction of ten new homes, renovation of two existing homes, construction of a private street, and construction of common space amenities. Please see Figures 3 and 4 for mapped special flood hazard areas on site. City floodplain standards found in MMC 18 apply to both FEMA and Metro identified special flood hazards areas.

The ten new homes proposed include one fronting SE 19th Ave, identified on applicant plans as building 11, with a tall crawl space at the rear due to site topography. The nine other new buildings will have enclosed garage floors below the base flood elevation (BFE). Habitable floors, including a potential half story being sought through a variance, will be located above the enclosed garages. The applicant has proposed stem wall foundations for all new buildings with 18" of enclosed void space under the first floor. These spaces are proposed as cut in the floodplain. The applicant proposes that all buildings will be built in accordance with FEMA standards for construction within the floodplain and that the slough area is "not in the velocity zone of the river." The slough is identified as within the floodway on applicant provided materials. The area in the floodplain that is not the floodway is the flood fringe.

The FEMA mapped special flood zone on site is designated AE on the flood insurance rate map (FIRM, see figure 4). This zone is identified by FEMA as an area of flooding where high velocity flows are likely. Cross section E of the FIRM of the area intersects the site. The flood insurance study (FIS) of the cross-section identifies a mean floodway (which contains the slough) velocity of 5.9 ft/s. The floodway's mean velocity is not a good measure of actual flood velocity within the flood fringe but can be used as a general measure for an upper limit. When flood velocities are expected to exceed 5 ft/s, city code (MMC 18.04.150.G) states crawlspaces should not be used. Additionally, FEMA technical guidance states, "open foundations are recommended in riverine flood hazard areas where flow velocities are expected to exceed 5 feet per second because of the anticipated hydrodynamic loads and potential for debris impact and scour. These loads may be sufficient to damage typical solid perimeter foundation walls, even though flood openings are provided." Information regarding openings in foundation walls and walls of enclosures can be found in FEMA Technical Bulletin 1 (https://www.fema.gov/media-library-data/20130726-1502-20490-9949/fema_tb_1_1_.pdf).

The applicant is proposing enclosed below grade foundations in an area where open foundations are recommended. If the proposed enclosed space foundations are below-grade on all sides, their internal floor elevation must be raised to one foot above flood elevation per MMC 18.04.160.A. The enclosed garages represent added enclosed space

below BFE that will likely require professionally designed features to accommodate the hydrodynamic loading. If compliant openings are not feasible, the garage floor becomes the buildings lowest floor. This will require the garages to be raised one foot above BFE. The applicant has only indicated building 11 will have a foundation with enclosed space below the BFE that is not below grade on all sides. The applicant is relying on enclosed space foundations below BFE to provide cut to balance their expected fill from proposed private right-of-way improvements, but buildings with foundation floors one foot above the BFE would result in more fill and not in cut. The applicant has not established that it is feasible to balance cut and fill as proposed. Additionally, fill beyond what the applicant has proposed will be required for their private right-of-way improvements.

The applicant has provided an email to the record, dated April 29th 2019, claiming that they have not proposed a private street in the floodplain, but only driveways. They acknowledge that MMC 19.200 definitions are applicable. They noted, accurately, that as defined, a right-of-way “may be privately owned.” The definition also indicates that when not publicly owned, it is usually in a tract or easement. In this application, no tract or easement has been proposed. The applicant also acknowledged the definition of driveway and accessway. The application includes private driveways and private accessways. The applicant has proposed a condominium form of ownership.

A condominium form of ownership can allow for common space under private ownership without easements or tracts. This application proposes a private right-of-way. Contained in this right-of-way would be a street and sidewalk. Buildings identified as 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10 in the application, would have accessways and private driveways onto a private street. This street would provide the only access to SE 19th Ave for these buildings. The street proposed by this application includes sidewalks, underground utilities, shared parking, and design for emergency vehicle access, common street features.

The letter the applicant submitted mischaracterized the portion of their development that is a private street as a private driveway. Please see Figure 6, a rendering of the proposed development provided by the applicant, with annotations by City staff, indicating the location of defined design elements found in Milwaukie Municipal Code 19.201.



Figure 6. Annotations on Applicant Provided Rendering

The City's comprehensive plan states in chapter 3, objective 1, policy 3, "(T)he finished elevations of the lowest floor of buildings and streets will be a minimum of 1.0 foot above the 100-year flood elevation." Standards set forth in the comprehensive plan must be met by this proposed development to satisfy the approval criteria of Willamette Greenway review. The street proposed by the applicant serves nine of twelve residences on the site at an elevation below this elevation. During a 100-year flood event, these nine residences would be cut off from public infrastructure a significant distance from the road, not be accessible to emergency vehicles, and suffer a greater risk from continued debris blockage during and after the event. This is a significant impact within the floodplain that requires significant amounts of fill to mitigate. Code requirements mandate that fill must be balanced with at least an equal amount of cut. The applicant has not established that it is feasible to balance the fill required to raise the street by an additional 3.31 feet from the lowest street center line proposed.

The impacts proposed by the applicant are extensive and have not been adequately addressed. Developing ten new homes, constructing a private road, and designing common space amenities to be used in an area of special flood hazard requires compliance with city codes, NFIP technical guidance, and engineering best practices. Absent this compliance clearly found in application materials, approval cannot be recommended.

B. Does the proposed development adequately address impacts to mapped natural resources to avoid, minimize, and mitigate with a reasonable footprint for the cluster development?

MMC 19.402 provides a discretionary process to analyze the impacts of development on WQRs and HCAs, including measures to prevent negative impacts and requirements for mitigation and enhancement. The approval criteria for evaluating a development's impacts require that a development demonstrate how the proposed activity:

- Avoids the intrusion of development into resource areas to the extent practicable;

- Minimizes detrimental impacts if there is no practicable alternative to avoiding disturbance; and
- Mitigates for adverse impacts if the applicant demonstrates that there is no practicable alternative that will avoid disturbance of the designated natural resources.

The application, as submitted, does not include an alternative that avoids impacts to the mapped natural resource areas. Avoiding or minimizing impacts is also a criterion for approval of a cluster development.

The applicant prepared three design alternatives for evaluation under this discretionary review process. The following table summarizes potential impacts of the three alternatives:

Alternative	WQR/HCA impacts (combined)	Wetland fill	Below OHWM of the Willamette River
Preferred – 12 units	29,062 ft ²	0	Proposed Dock
#2 – 23 units	57,213 ft ²	3,363 ft ²	Proposed Dock
#3 – 16 units	31,053 ft ²	0	Proposed Dock

Based on the alternatives presented, the preferred design impacts the least amount of natural resources. However, the applicant did not propose an alternative that focused on avoiding impacts. An alternative, or alternatives, that emphasizes fewer homes, duplexes, or multifamily units outside of the WQR was not provided and should have been considered. The alternatives analysis is deficient and staff cannot recommend approval without a more thorough analysis by the applicant.

The applicant proposes to mitigate for natural resource impacts in the open area adjacent to the proposed development as well as in the western portion of the parcels near Elk Rock Island (see Figure 7). However, as identified by ESA, site-specific surveys are needed west of the slough to inform the mitigation plan. The application materials state that only non-wetland areas above ordinary high-water mark (OHWM – identified as 20 ft elevation) would be used as mitigation on the island. However, based on ESA’s cursory Google Earth examination of the elevation profile of the possible mitigation areas, it appears that the western-most mitigation area is below OHWM. A site-specific survey is recommended to verify the suitability of the proposed mitigation areas west of the slough. In addition, much of the area to the west is rocky and scoured by seasonal flooding.



Figure 7. Subject property with the slough and the Willamette River

The lack of specific information about the proposed mitigation areas is important because if a majority of the area west of the slough is below OHWM or not suitable, this would require a modification to the proposed mitigation plan and possibly an adjustment to the density of plantings proposed adjacent to the development. Currently, the plan calls for a “grass area with perimeter plantings of trees and shrubs, 13,185 ft².” Based on this concept, it is not clear how the applicant will fit in 291 trees and 1,453 shrubs at the required

densities in the proposed mitigation areas. A fully developed mitigation plan that evaluates areas west of the slough is required. The plan should provide details about soil conditions, the existing invasive plants that would need to be cleared in order to establish native plantings, and typical planting schematics to show how proposed plantings would fit with existing vegetation.

C. Does the proposed development adequately address the approval criteria for a Willamette Greenway Conditional Use?

The purpose of the Willamette Greenway Zone (WG) is to protect, conserve, enhance, and maintain the natural, scenic, historic, economic, and recreational qualities of lands along the Willamette River and major courses flowing into the Willamette River. The subject property is entirely within the Willamette Greenway. The following criteria are to be taken into account in the consideration of a greenway conditional use:

- Compatibility with the scenic, natural, historic, economic, and recreational character of the river;
- Protection of views both toward and away from the river;
- Landscaping, aesthetic enhancement, open space, and vegetation between the activity and the river, to the maximum extent practicable;
- Public access to and along the river, to the greatest possible degree, by appropriate legal means;
- Emphasis on water-oriented and recreational uses;
- Maintain or increase views between the Willamette River and downtown;
- Protection of the natural environment according to regulations in Section 19.402;
- Conformance to applicable Comprehensive Plan policies;
- The request is consistent with applicable plans and programs of the Division of State Lands;
- A vegetation buffer plan.

The applicant's materials state that the proposal is consistent with the character of the river because this section of the river has been developed over the past 100 years for residential and commercial use and that the proposed residential development is consistent with the surrounding uses on both sides of the river.

The applicant's narrative states that views to the Willamette River will not be impacted by the development because the main channel of the river is not visible from the property. While the proposal would remove invasive vegetation, and enhance the vegetated buffer, it is clear that the development would also greatly intensify the development on the site.

As related to the approval criteria, views to the river are considered from the public right-of-way. When staff visited the site, and stood on 19th Ave in front of the property, small areas of the Willamette River to the north and south and the properties on the west bank were visible across the property (see Figures 8 and 9). Existing views from the public right-of-way are limited.



Figure 8. Looking southwest from 19th Ave



Figure 9. Looking northwest from 19th Ave

The presence of Elk Rock Island blocks any views directly west across the property, in addition to dense vegetation blocks views in the summer months. But, as shown above, there are portions of the river that are visible from the public right-of-way in the winter and spring. The proposed site plan identifies view corridors from the right-of-way (see Figure 10). It appears that the proposed development will provide some narrow views to the river. As shown in Attachment 5, numerous comments were received related to this issue and they unilaterally opposed the development based on its impact on views.

The overall views from the public right-of-way toward the river are limited today and are not significant enough to preclude approval of the WG conditional use application.

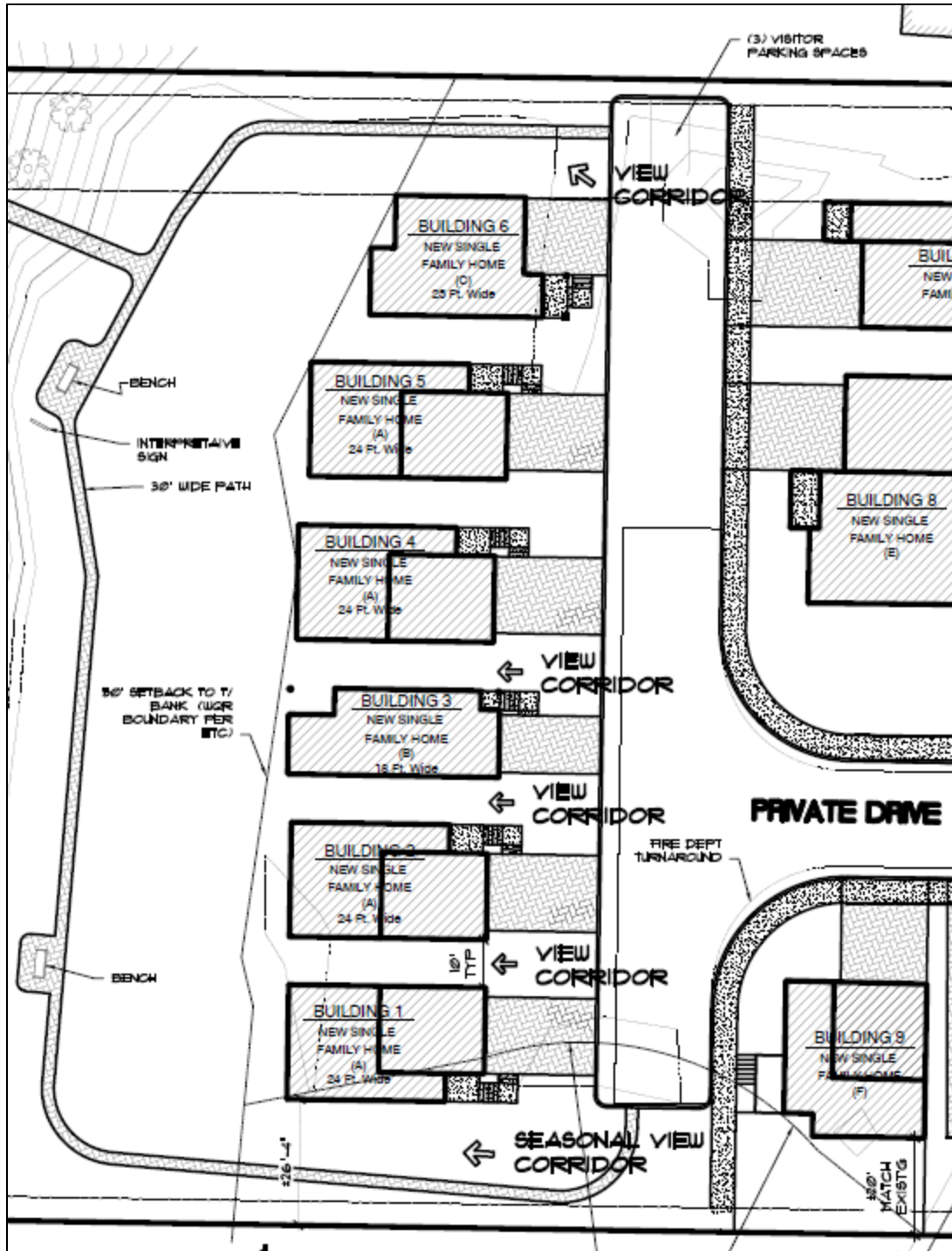


Figure 10. View corridors

The WG conditional use criteria require conformance with the comprehensive plan. As identified in Key Issue #1, the proposal has a direct impact on the 100-year floodplain. The proposal does not comply with a regulatory Plan policy which states that streets must be a minimum of 1 ft above the 100-year flood elevation (Chapter 3, Environmental and Natural Resources – Natural Hazards Element, Objective #1, Policy #3: The finished elevations of

the lowest floor of buildings and streets will be a minimum of 1.0 foot above the 100-year flood elevation.). The applicant has not provided a plan that meets this policy. Therefore, the proposal does not comply with all of the Willamette Greenway approval criteria. If a plan is provided that raises the street above the base flood elevation, a corresponding cut would be required to meet the requirement for balanced cut and fill.

D. Is the proposed variance to allow 3-story homes reasonable?

The new homes proposed at the lower level of the site would be 3 stories with a garage located within the floodplain and living areas above (see Figure 10). Per the applicant's materials, all proposed buildings would comply with the maximum measured height requirements and have "low pitched roofs to minimize the impact on views from the Willamette River and the public right of way."

The development standards in the R-5 zone limit building height to 2.5 stories or 35 ft, whichever is less. The use of stories in addition to building height generally limits the shape and bulk of buildings in residential areas. In this case, allowing structures that meet with height limit, but exceed the story limit, would allow for larger homes than would otherwise be permitted, because 2 full stories of living space would be permitted rather than 1.5 above the garage.

The variance is requested to allow for narrower footprints that would allow for a greater overall open space on the site, more efficient use of space, and because the "lower level" of these homes is not habitable space. The lower level can only be utilized as a garage or unfinished storage area due to FEMA and building code requirements. The applicant argues that since the proposed lower floor of these buildings is located within the floodplain and about 20 ft below the elevation of 19th Ave they will have less impact on views than two story homes constructed along 19th Ave (See Figure 13 for homes that require variance approval).

All of the proposed homes would comply with the height limits as measured in feet. The proposed home design allows for lower homes due to lower roof pitch. Note that for homes designed with a pitched roof, the height is measured to the midpoint of the ridge (See Figures 11 and 12).

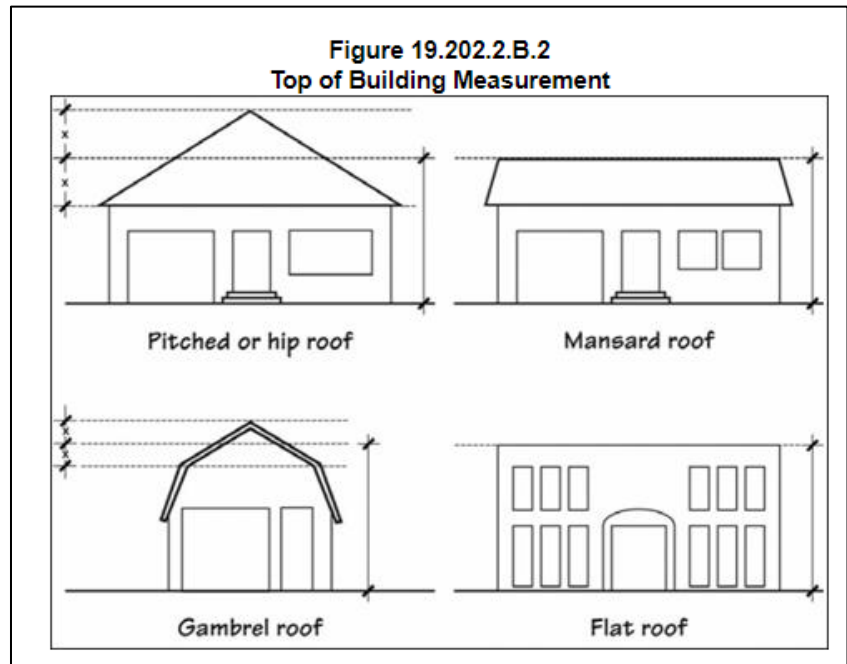


Figure 11. Building height measurement - MMC 19.202.2

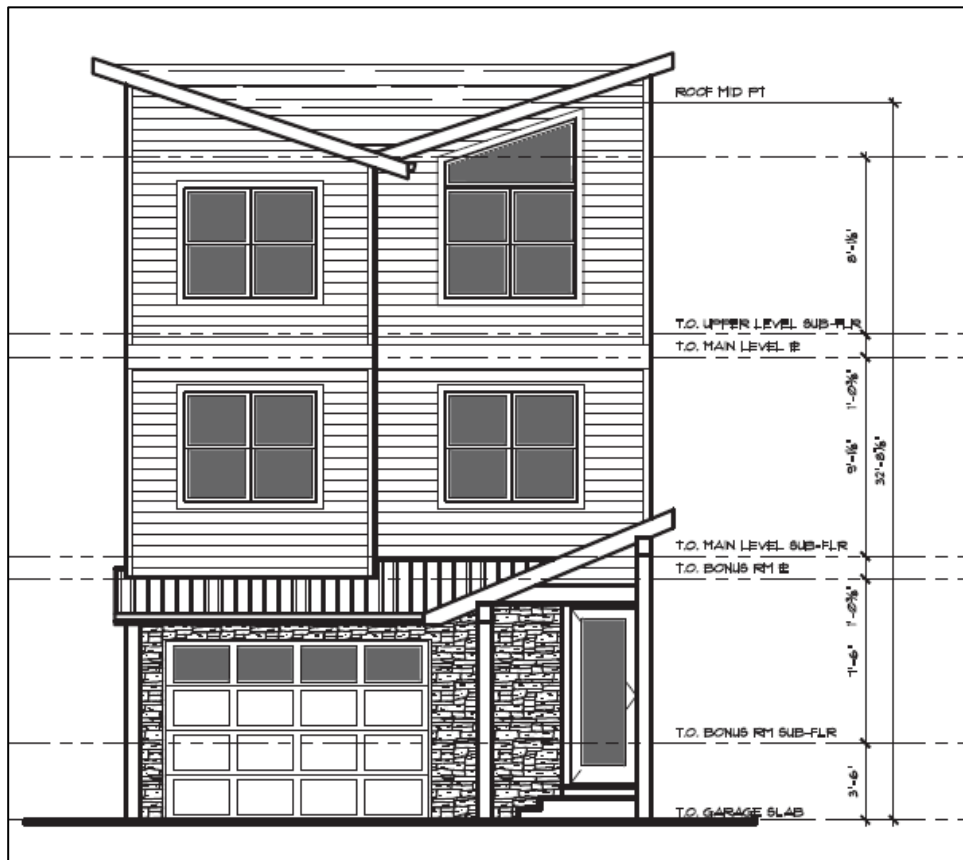


Figure 12. Building Type A.

The height variance request is reasonable given the proposed home design, that the structures will comply with the measured height limit, and that the first floor is effectively not usable as living space.

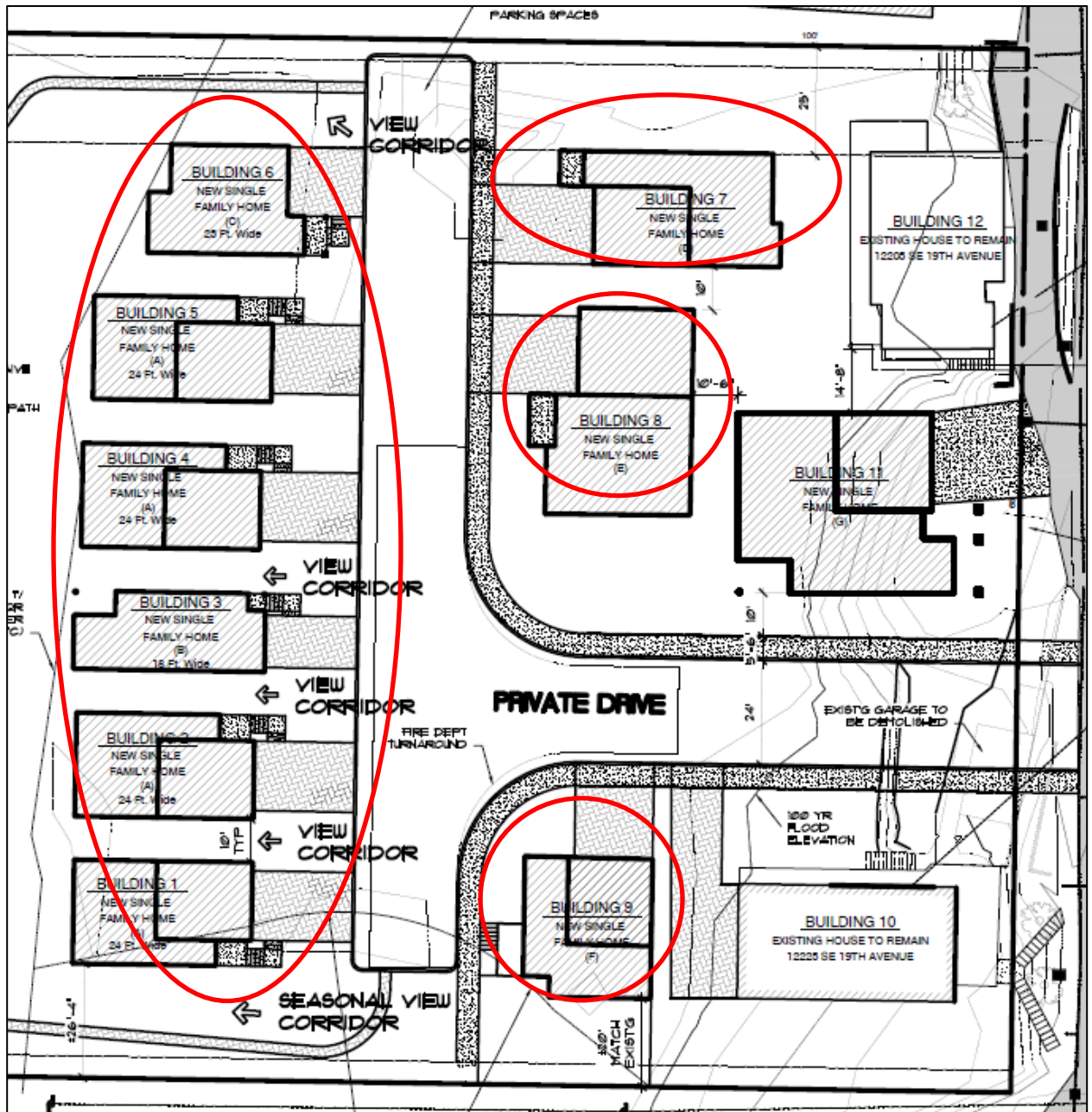


Figure 13. Site plan showing proposed 3-story homes.

CONCLUSIONS

A. Staff recommendation to the Planning Commission is as follows:

1. Deny application NR-2018-005 to allow the construction of a natural resources cluster development consisting of 10 new homes and 2 remodeled homes on the property located at 12205-12225 SE 19th Ave.
2. Adopt the attached Findings of Denial.

CODE AUTHORITY AND DECISION-MAKING PROCESS

The proposal is subject to the following provisions of the Milwaukie Municipal Code (MMC).

- MMC 18.04 Flood Hazard Area
- MMC 19.301 Low Density Residential Zones
- MMC 19.401 Willamette Greenway Zone
- MMC 19.402 Natural Resources
- MMC 19.504 Site Design Standards
- MMC 19.505 Building Design Standards
- MMC 19.600 Off-Street Parking and Loading
- MMC 19.700 Public Facility Improvements
- MMC 19.911 Variances
- MMC 19.1006 Type III Review

This application is subject to Type III review, which requires the Planning Commission to consider whether the applicant has demonstrated compliance with the code sections shown above. In Type III reviews, the Commission assesses the application against review criteria and development standards and evaluates testimony and evidence received at the public hearing.

The Commission has 3 decision-making options as follows:

- A. Deny the application subject to the recommended Findings of Denial.
- B. Approve the application and continue the hearing to allow, with direction from the Commission, for preparation of Findings and Conditions of Approval.
- C. Continue the hearing to allow the applicant the opportunity to address the application's deficiencies.

The final decision on these applications, which includes any appeals to the City Council, must be made by August 26, 2019, in accordance with the Oregon Revised Statutes and the Milwaukie Zoning Ordinance. The applicant has extended the time period in which the application must be decided to August 26, 2019 – a 61-day extension.

COMMENTS

Notice of the proposed project was given to the following agencies and persons: City of Milwaukie Building, Engineering, and Public Works Departments, Island Station Neighborhood District Association (NDA), Oregon Marine Board, Oregon Department of Fish and Wildlife, Division of State Lands, Oregon Parks and Recreation Department, North Clackamas Park and Recreation District, Clackamas Fire District #1, and properties within 300 ft of the subject site. The following is a summary of the comments received by the City. See Attachment 5 for further details.

- **Chris Stevenson, Jurisdiction Coordinator, Oregon Department of State Lands:** The Department concurs with the wetland and waterway boundaries as mapped for the site. The letter included information regarding permitting for fill or removal of material from the site.
- **Sarah Hartung, Senior Biologist, ESA (City's on-call Natural Resource consultant):** ESA has provided two memos serving as peer review of the applicant's Natural Resource Review report.
- **Dalton Vodden, Associate Engineer, City of Milwaukie Engineering Department:** Comments related to the proposal's compliance with MMC Title 12 Streets, Sidewalks, and Public Places; MMC Chapter 13.14 Stormwater Management; MMC Title 18 Flood Hazard Regulations; and MMC Chapter 19.700 Public Facility Improvements. These comments have been incorporated into the recommended Findings.
- **Izak Hamilton, Fire Inspector, CFD#1:** Standard comments related to fire access and water supply.
- **Steve Gerken, 12114 SE 19th Ave:** Comments related to the proposal's compliance with Title 18 Flood Hazard Regulations; MMC Chapter 19.401 Willamette Greenway Overlay; MMC Chapter 19.402 Natural Resources; federal law regarding bald eagle nesting sites; and a comment that the originally submitted planting plan was based on a different site plan for the project.
- **Steve Gerken, 12114 SE 19th Ave:** Numerous concerns related to development in the floodplain, impacts on views of the Willamette River, impacts of the dock on a bald eagle nesting site, and development in the Willamette Greenway. The comments included photos and an overall objection to approval of the project.
- **Theresa Silver, 12114 SE 19th Ave:** Concerns regarding development in the floodplain and concerns that the flood elevation will increase over time.
- **Milo Denham, 12106 SE 19th Ave:** Comments related to the impact on parking in the neighborhood, provide additional on-street parking in the proposed development for guest vehicles.
- **Island Station NDA Land Use Committee:** comments related to the impacts on views, traffic on 19th Ave, provide additional on-street parking in the development, and concern that the proposed development not be gated.

ATTACHMENTS

Attachments are provided as indicated by the checked boxes. All material is available for viewing upon request.

	Early PC Mailing	PC Packet	Public Copies	Packet
1. Recommended Findings in Support of Denial	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
2. Applicant's Narrative and Supporting Documentation received February 26, 2019.				
a. Narrative	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
b. Site Plan and building elevations	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
c. Stormwater Report	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
d. Natural Resources Reports	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
3. Applicant's additional info submitted April 30, 2019				
a. Revised site plan showing view corridors	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. Response to Engineering review	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. Revised Natural Resources Mitigation Plan	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. Natural Resources review provided by ESA (dated March 18 and May 7, 2019)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
5. Comments Received	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
6. Flood Hazard Maps	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
7. Attorney Michael C. Robinson letters to staff	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

Key:

Early PC Mailing = paper materials provided to Planning Commission at the time of public notice 20 days prior to the hearing.

PC Packet = paper materials provided to Planning Commission 7 days prior to the hearing.

Public Copies = paper copies of the packet available for review at City facilities and at the Planning Commission meeting.

Packet = packet materials available online at <https://www.milwaukieoregon.gov/bc-pc/planning-commission-29>.

**Recommended Findings in Support of Denial
File #NR-2018-005, Elk Rock Estates**

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, Matthew Gillis of Gillis Properties LLC, has applied for approval of a natural resources cluster development at 12205-12225 SE 19th Ave. This site is in the R-5 Zone. The land use application file number is NR-2018-005.
2. The applicant seeks approval for a Natural Resources Cluster Development with a total of 12 single family detached homes (10 new and 2 existing homes to be remodeled) on a site located between 19th Ave and the Willamette slough adjacent to Elk Rock park. The site includes 100-yr floodplain, mapped natural resource areas, and the Willamette Greenway. Variances are requested to a side yard setback, a front yard setback, building height for the homes not adjacent to 19th Ave, and to allow garage doors to exceed 50% of the building width.
3. The proposal is subject to the following provisions of the Milwaukie Municipal Code (MMC):
 - MMC 12.16 Access Management
 - MMC 12.24 Clear Vision at Intersections
 - MMC 18.04 Flood Hazard Area
 - MMC 19.301 Low Density Residential Zones
 - MMC 19.401 Willamette Greenway Zone
 - MMC 19.402 Natural Resources
 - MMC 19.504 Site Design Standards
 - MMC 19.505 Building Design Standards
 - MMC 19.600 Off-Street Parking and Loading
 - MMC 19.700 Public Facility Improvements
 - MMC 19.911 Variances
 - MMC 19.1006 Type III Review
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 on May 28, 2019, as required by law.
5. MMC Title 12 Streets, Sidewalks, and Public Places
 - a. MMC Chapter 12.08 – Street & Sidewalk Excavations, Construction, and Repair

- (1) This will apply to all construction that is completed in the right of way and for all public utilities. The public improvement process will follow MMC 12.08.020.
- b. MMC Chapter 12.16 Access Management
 - (1) MMC 12.16.040 Access Requirements and Standards

MMC 12.16.040 establishes standards for access (driveway) requirements.

 - (a) MMC Subsection 12.16.040.A requires that all properties be provided street access with the use of an accessway.

The proposed development has access to 19th Ave. This standard is met.
 - (b) MMC Subsection 12.16.040.B Governs access spacing onto arterial and collector streets.
 - (i) *19th Avenue is a local street, 12.16.040.B is not applicable.*
 - (c) MMC Subsection 12.16.040.C establishes standards for accessway location.
 - (i) Double Frontage

When a lot has frontage on two (2) or more streets, access shall be provided first from the street with the lowest classification. For example, access shall be provided from a local street before a collector or arterial street.

The subject property currently has frontage on 19th Ave, a local street, and undeveloped Sparrow St. The proposal is for all access to be from 19th Ave.

This standard is met.
 - (ii) Limiting driveway access from arterials and collectors.

Not applicable.
 - (iii) Distance from property line

The nearest edge of the driveway apron shall be at least seven and one-half (7½) feet from the side property line in residential districts and at least ten (10) feet from the side property line in all other districts

No planned access ways are within 7 ½ ft of the property line.

This standard is met.
 - (iv) Distance from Intersection

To protect the safety and capacity of street intersections, the following minimum distance from the nearest intersecting street face of curb to the nearest edge of driveway apron shall be maintained: At least forty-five (45) feet for single-family residential properties accessing local and neighborhood streets.

All construction that is completed in the right-of-way and for all public utilities the improvement process will follow MMC 12.08.020.

(d) MMC Subsection 12.16.040.D Sets standards for the number of accessway locations

- (i) Requires the number of accessway locations be the minimum necessary without inhibiting safe circulation and carrying capacity of the street.

The applicant has proposed a private right-of-way labeled as Private Drive to provide access for buildings 1-10. This access point will replace the existing accessway at 12225 SE 19th Ave. Building 11 is proposed to share an accessway with the existing accessway for building 12 at 12205 SE 19th Ave. The safe circulation and carrying capacity of 19th Ave will not be reduced as the number of access points on 19th Ave will remain the same.

The proposed development is consistent with MMC 12.16.040.D.1.

- (ii) Requires shared access to be used on collector and arterial streets to minimize the number of access points.

Not applicable.

- (iii) Specifies accessway number and spacing for single-family residential. One accessway per property is allowed for single-family residential uses. One additional accessway per property is allowed on a second local road frontage or when spaced 50 feet apart on the same frontage. Existing conditions conform.

Not applicable to the proposed cluster development.

- (iv) Specifies accessway number and spacing for all uses other than single-family residential. One accessway is allowed on local streets. One additional accessway is allowed per frontage where the driveway approaches, including adjacent property accessways, can be spaced 150' apart, measured from the nearest edges of the driveway aprons.

The applicant proposes a cluster development on a single parcel with two access points onto a local street spaced less than 40 feet apart.

A variance is required. See section 19.911 for variance procedure.

(e) MMC Subsection 12.16.040.E Requires accessway designs meet ADA and Public Works Standards.

The applicant has indicated that accessways shall meet ADA and Public Works Standards.

- (f) MMC Subsection 12.16.040.F establishes accessway size to minimize surface water runoff and reduce conflicts between vehicles, bicyclists, and pedestrians.

Plans submitted by the applicant show access points on 19th Ave with current road width and design. Final improvements on 19th Ave will include a 15 ft paved asphalt width, flush curbs, and a 3 ft load bearing shoulders. This may significantly alter how access is taken, particularly for buildings 11 and 12.

The existing driveway for building 12 is non-conforming and will need to be brought into conformance. As proposed, the accessway of building 12 remains mostly unchanged with additional paved width for access to be provided to building 11. This accessway is proposed to be wider than City code allows.

The proposed width of the access point labeled "Private Drive" in the application materials meets City code.

- c. MMC Chapter 12.24 – Clear Vision at Intersections

This code section defines a clear vision area for safe access and use of City streets.

The applicant has not proposed any violations. This standard is met.

- 6. MMC Title 17 Land Division

- a. MMC Chapter 17.12 Application Procedure and Approval Criteria

- (1) MMC Section 17.12.020 Application Procedure

MMC 17.12.020 requires that property line adjustments and lot consolidations be processed as described in Table 17.12.020. Property line adjustments that are consistent with the Oregon Revised Statutes (ORS) and Title 19 shall be processed through Type I review and any adjustment that modifies a plat restriction shall be processed through Type II review. Lot consolidations other than replats, involving legal lots created by deed, shall be processed through Type I review.

The Planning Commission finds that the proposed lot consolidation is not a replat and involves legal lots established by deed and that the proposed boundary adjustment does not modify any known plat restriction. Therefore, the proposed lot consolidation could be processed with Type I review. As noted in Finding 4, the entire application submittal has been processed concurrently with Type III review.

- (2) MMC Section 17.12.030 Approval Criteria for Lot Consolidation, Property Line Adjustment, and Replat

MMC 17.12.030 specifies the approval criteria for lot consolidations and property line adjustments.

- (a) MMC Subsection 17.12.030.A.1 requires compliance with Title 17 Land Division Ordinance and Title 19 Zoning Ordinance.

As evidenced by these finding, the proposed lot consolidation and boundary adjustment meet all applicable standards of Titles 17 and 19.

- (b) MMC Subsection 17.12.030.A.2 requires that the proposed change allow for reasonable development of the affected lots and not create the need for a variance of any land division or zoning standard.

The proposed lot consolidation would combine the two tax lots into one single tax lot for the purposes of a natural resources cluster development described in Finding 2. The property is of adequate size for reasonable development without requiring a variance of any land division or zoning standard.

- (c) MMC Subsection 17.12.030.A.3 requires that the proposed change not reduce the residential density below the minimum density requirements of the zoning district.

The subject property is currently developed for residential use. The proposed lot consolidation would not affect the minimum residential density of the site.

The Planning Commission finds that these criteria are met.

The Planning Commission finds that the proposed lot consolidation and boundary adjustment meet the applicable standards of MMC 17.12.

b. MMC Chapter 17.16 Application Requirements and Approval Criteria

MMC 17.16 establishes the submittal requirements for boundary changes and land division. For property line adjustments and lot consolidations, MMC Section 17.16.040 requires a completed application form, application fee, narrative report addressing approval criteria, scaled plan showing sufficient details of the subject properties, and deeds of the properties involved.

The applicant's submittal materials include the necessary forms and fees, a narrative that addresses all applicable approval criteria, the deed for the subject property, and a site plan that shows the proposed change.

The Planning Commission finds that no additional information is required for a decision but additional information may be needed to satisfy the applicable standards of the municipal code.

c. MMC Chapter 17.28 Design Standards

MMC 17.28 establishes design standards for land division. In particular, MMC Section 17.28.040 establishes general design standards for lots, including standards for size, shape, compound lot line segments, and frontage.

- (1) MMC 17.28.040.A requires that the lot size, width, shape, and orientation shall be appropriate for the location and the type of use contemplated. Minimum lot standards shall conform to Title 19.

As a result of the proposed lot consolidation, the resulting property would have adequate size and dimensions for development and uses allowed in the underlying R-5 zone and conform to the lotting standards of Title 19 as described in these findings.

- (2) MMC 17.28.040.B requires that lot shape shall be rectilinear, except where not practicable due to location along a street radius, or existing lot shape. The sidelines of lots, as far as practicable, shall run at right angles to the street upon which the lots face. As far as practicable, the rear lot line shall run parallel to the street.

As proposed, the consolidated property would be rectilinear in shape.

- (3) MMC 17.28.040.C discourages cumulative lateral changes in direction of a side or rear lot line exceeding 10% of the distance between opposing lot corners along a given lot line. Changes in direction shall be measured from a straight line drawn between opposing lot corners.

The proposed lot consolidation would not result in any lateral changes in direction of a side or rear lot line.

- (4) MMC 17.28.040.D provides that lot shape standards may be adjusted subject to Section 19.911 Variances.

No adjustments to lot shape standards are requested or required.

- (5) MMC 17.28.040.E limits double and reversed frontage lots except where essential to provide separations of residential development from railroads, traffic arteries, or adjacent nonresidential uses, or to overcome specific disadvantages of topography and orientation.

The existing subject property has public street frontage on 2 sides (19th Ave and unimproved Sparrow St). The proposed lot consolidation would not change the multiple-frontage status of the newly consolidated lot.

- (6) MMC 17.28.040.F requires that required frontage be measured along the street upon which the lot takes access.

The consolidated lot would continue to have access from 19th Ave, where it has 240 ft of frontage.

The Planning Commission finds that the proposed lot consolidation complies with all applicable design standards of MMC 17.28.

The Planning Commission finds that the proposed lot consolidation meets all applicable standards of MMC Title 17. This standard is met. However, as per Findings 7, 9-a and 9-b, the overall project has been found deficient and is recommended for denial.

7. MMC 18 Flood Hazard Regulations

- a. MMC 18.04 provides standards intended to minimize public and private losses due to flood conditions in specific areas. The regulations established in MMC Title 18 do this in part by controlling the alteration of natural floodplains, stream channels, and natural protective barriers, which help accommodate or channel flood waters; controlling filling, grading, dredging, and other development which may increase flood damage; and preventing or regulating the construction of flood barriers which

will unnaturally divert flood waters or which may increase flood hazards in other areas. As per MMC Section 18.04.100, a development permit is required prior to any construction or development within the flood management area.

The project site is identified as a special flood hazard area with a majority of the site at an elevation below the 100-year flood elevation of 36.4 ft above sea level. The Applicant states within the application materials that they acknowledge the inherent risks of building within the floodplain and will construct the project in accordance with current federal and local requirements for construction of homes within a floodplain. A development permit is required to be obtained prior to beginning work upon approval of this application. Floodproofing of all structures need to be appropriately certified and surveyed prior to completion of construction. No watercourses are proposed to be altered or relocated as part of the proposed development.

The Planning Commission finds that MMC 18 applies to the proposed development.

(1) MMC 18.04.150 General Standards

MMC 18.04.150 establishes the required standards for development in a flood hazard area.

(a) Anchoring

- (i) All new construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure.
- (ii) All manufactured homes shall be anchored to resist flotation, collapse, or lateral movement to the structure, and shall be installed using methods and practices that minimize flood damage. Anchoring methods may include, but are not limited to, over-the-top and frame ties to ground anchors (reference FEMA's "Manufactured Home Installation in Flood Hazard Areas" guidebook for additional techniques).

The applicant proposes that all new structures in this development will be securely anchored to properly designed foundations to prevent flotation, lateral movement or collapse in accordance with accepted engineering practices.

Additionally, the applicant must meet these requirements for structures that are substantially improved.

(b) Construction Materials and Methods

- (i) All new construction and substantial improvements shall be constructed with materials and utilize equipment resistant to flood damage.

- (ii) All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.
- (iii) 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 applicant proposes that all new structures would be constructed with concrete foundations extending above the 100-year flood elevation with flood vents to allow for unrestricted flow of flood water. Electrical, heating, ventilation and plumbing systems would be elevated above flood elevation or designed to be watertight per local and federal design guidelines for “floodproof” construction. These standards must also apply to substantially improved structures.

The proposed development is in an area likely of high flood velocity and will require additional consideration for floodproofing. No additional details have been provided by the applicant.

(c) Utilities

- (i) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system;
- (ii) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharge from the systems into floodwaters; and
- (iii) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

The applicant proposes that all new water supply and sanitary sewer systems would be designed to minimize or eliminate infiltration of floodwaters in accordance with accepted engineering practices. No on-site waste disposal systems are proposed.

(d) Subdivision Proposals

- (i) All subdivision proposals shall be consistent with the need to minimize flood damage.
- (ii) All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize or eliminate flood damage.
- (iii) All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage.

- (iv) Base flood elevation data shall be provided for subdivision proposals and other proposed development which contain at least fifty (50) lots or five (5) acres (whichever is less).

No subdivision is proposed with this application. This application is for a 12-unit condominium development. This criterion does not apply.

- (e) Review of Building Permits

Where elevation data are not available, applications for building permits shall be reviewed to assure that proposed construction will be reasonably safe from flooding. The test of reasonableness is a local judgment and includes use of historical data, high water marks, photographs of past flooding, etc., where available. Failure to elevate at least two (2) feet above grade in these zones may result in higher insurance rates.

Federally established flood elevation data is available for the site. The applicable Flood Insurance Rate Map (FIRM) is 41005C0017D.

- (f) 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:

- (i) The placement of fill or structures that displaces ten (10) cubic yards or less of flood storage area is exempt from the requirements of subsection 2 below.
- (ii) The placement of fill or structures that displaces more than ten (10) cubic yards of flood storage area shall comply with the following standards:
 1. No net fill in any floodplain is allowed.
 2. All fill placed in a floodplain shall be balanced with at least an equal amount of soil material removal.
 3. Any excavation below bankfull stage shall not count toward compensating for fill.
 4. 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:
 - a. The proposed excavation and fill will not increase flood impacts for surrounding properties as determined through hydrologic and hydraulic analysis;

- b. The proposed excavation is authorized under applicable municipal code provisions including Section 19.402 Natural Resources; and
- c. Measures to ensure the continued protection and preservation of the excavated area for providing balanced cut and fill shall be approved by the City.

The applicant proposes each new building will have a flow through below grade foundation to act as floodplain storage. The applicant provided a letter that estimated the average cut for each new building will be 40 cubic yards. This assumed that each new building will have a stem wall foundation for the entire first floor (approximately 800 sqft). This is likely an overestimation. It would be more typical for the portion of the first floor that is a garage to have a slab on grade foundation, which would not provide flood storage or cut.

Even with the over estimation, it has not been established that enough cut is possible to offset the required fill for grading the private street to one foot above base flood elevation.

Additionally, it has not been sufficiently proven that the proposed foundation type is feasible to use in this floodplain zone. Crawlspace below grade on all sides are considered basements by the NFIP and must be raised 1 ft above the BFE.

- 5. Temporary fills permitted during construction shall be removed at the end of construction.

Any temporary fills needed for construction will be removed at the end of construction. No temporary fills have been proposed.

- 6. 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.

No new culverts, stream crossings or transportation projects are proposed. This criterion does not apply.

7. 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.

Stormwater planters and drywells have been proposed without design details inside the floodplain. No levees have been proposed.

(g) Crawlspace Construction

Below-grade crawlspaces are allowed subject to the following standards as found in FEMA Technical Bulletin 1101, Crawlspace Construction for Buildings Located in Special Flood Hazard Areas.

- (i) The building must be designed and adequately anchored to resist flotation, collapse, and lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy. Hydrostatic loads and the effects of buoyancy can usually be addressed through the required openings stated in Section B of FEMA Technical Bulletin 1101. Because of hydrodynamic loads, crawlspace construction is not allowed in areas with flood velocities greater than five (5) feet per second unless the design is reviewed by a qualified design professional, such as a registered architect or professional engineer. Other types of foundations are recommended for these areas.

The proposed development is in FEMA zone AE where high flow velocities are likely. The development is intersected by mapped floodplain cross section E of FIS study number 41005CV001A. Table 5 of the study lists a mean flooding velocity of 5.9 ft/s at the floodway located at cross section E. The applicant proposes that all new structures would be constructed with flow through, enclosed foundations with crawl spaces or garages below the 100-year base flood elevation. The applicant is required to have all enclosed areas below the BFE reviewed by a design professional for hydrodynamic loading. Design documentation has not been provided.

Additionally, the applicant must meet these requirements for structures that are substantially improved.

- (ii) The crawlspace is an enclosed area below the base flood elevation (BFE) and, as such, must have openings that equalize hydrostatic pressures by allowing the automatic entry and exit of floodwaters. The bottom of each flood vent opening can be no more than one (1) foot above the lowest adjacent exterior grade.

The applicant has proposed all crawlspaces and garages located below the base flood elevation will have appropriately sized automatic flood vents properly installed. Hydrodynamic forces in addition to hydrostatic forces are expected in high velocity floodzones. Additional design review is required by a licensed professional be conducted to verify the feasibility of using crawlspaces in this floodzone. A crawlspace below grade on all sides is considered a basement by the NFIP. All basements must be raised 1 ft above BFE.

Additionally, the applicant must meet these requirements for structures that are substantially improved.

- (iii) Portions of the building below the BFE must be constructed with materials resistant to flood damage. This includes not only the foundation walls of the crawlspace used to elevate the building, but also any joists, insulation, or other materials that extend below the BFE. The recommended construction practice is to elevate the bottom of joists and all insulation above BFE.

The applicant proposes that all wood joists, insulation and other building components would be located above the 100-year base flood elevation. The applicant proposes garages and building entry areas located below the base flood elevations will have concrete floors and walls.

Additionally, the applicant must meet these requirements for structures that are substantially improved.

It is not clear the applicant considered the hydrodynamic loads likely in this flood zone.

- (iv) Any building utility systems within the crawlspace must be elevated above BFE or designed so that floodwaters cannot enter or accumulate within the system components during flood conditions. Ductwork, in particular, must either be placed above the BFE or sealed from floodwaters.

The applicant has proposed that all building utility systems within the crawlspaces of the proposed homes would be designed so that floodwaters cannot enter the systems. The applicant proposes all ductwork and HVAC units would be located above the BFE.

Additionally, the applicant must meet these requirements for structures that are substantially improved.

Utility systems not locate above the BFE would be inundated during the 100-year flood. The development is proposed in a high velocity flood zone. These utilities would be susceptible to significant hydrodynamic forces.

- (v) The interior grade of a crawlspace below the BFE must not be more than two (2) feet below the lowest adjacent exterior grade.

The applicant proposes that all crawl spaces would be less than 2' below lowest adjacent grade to allow for drainage.

Additionally, the applicant must meet these requirements for structures that are substantially improved.

- (vi) The height of the below-grade crawlspace, measured from the interior grade of the crawlspace to the top of the crawlspace foundation wall, must not exceed four (4) feet at any point. The height limitation is the maximum allowable unsupported wall height according to the engineering analyses and building code requirements for flood hazard areas.

The applicant proposes that no crawlspace foundation walls would have more than 4 ft of unbalanced fill as proposed. The applicant has not established the feasibility of crawlspaces within this flood zone.

Additionally, the applicant must meet these requirements for structures that are substantially improved.

- (vii) There must be an adequate drainage system that removes floodwaters from the interior area of the crawlspace. The enclosed area should be drained within a reasonable time after a flood event. The type of drainage system will vary because of the site gradient and other drainage characteristics, such as soil types. Possible options include natural drainage through porous, well-drained soils and drainage systems such as perforated pipes, drainage tiles or gravel or crushed stone drainage by gravity, or mechanical means.

No specific drainage system has been proposed by the applicant.

- (viii) The velocity of floodwaters at the site should not exceed five (5) feet per second for any crawlspace. For velocities in excess of five (5) feet per second, other foundation types should be used.

The development is in flood zone AE where FEMA considers high velocity floods as likely. The FIS table for the nearest cross-section lists 5.9 ft/s as the mean flood velocity. The applicant has proposed flow through enclosed foundations as a source of floodplain cut; these behave as crawlspaces. No modeling has been supplied to provide alternate velocity data to the FIS table. The applicant has not demonstrated that proposed foundation types are feasible.

The Planning Commission finds that the standards in MMC 18.04.150 are not met.

- (2) 18.04.160 Specific Standards

MMC 18.04.160 establishes specific required provisions and standards for development in special flood hazard and flood management areas where base flood elevation data has been provided.

(a) Residential Construction

New construction and substantial improvement of any residential structure shall have the lowest floor, including basement, elevated one (1) foot above base flood elevation.

The applicant proposes that all new structures would be constructed with concrete foundations extending above the 100-year flood elevation with finished floors at least 1 ft above the base flood elevation. The applicant must also meet these requirements for substantial improvements of the existing buildings. The NFIP defines a "basement" as any area that is below-grade on all sides. The regulations do not allow basements to extend below the BFE.

The applicant has proposed cut as floodplain storage in enclosed areas that may be defined as basements by the NFIP. Basements, by NFIP requirements, must be located above the floodplain. The applicant's proposed method of reaching a balanced cut and fill may not be feasible.

(b) Miscellaneous Provisions

(i) For all new construction and substantial improvements, fully enclosed areas below the lowest floor that are subject to flooding are prohibited or shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria:

- (i) A minimum of two (2) openings having a total net area of not less than one (1) square inch for every square foot of enclosed area subject to flooding shall be provided.
- (ii) The bottom of all openings shall be no higher than one (1) foot above grade.
- (iii) Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

The applicant proposes that automatic flood vents would be installed at all areas below the 100 year BFE.

Additionally, the applicant must meet these requirements for structures that are substantially improved.

(3) MMC 18.04.170 Floodways

MMC 18.04.107 establishes the standards and requirements for development in floodways, which are areas located within areas of special flood hazard. These standards are established since the floodway is an extremely hazardous area due to the velocity of floodwaters.

The applicant has proposed a dock in the floodway. This will require state authorization after city planning approval is obtained.

As proposed, the development does not meet MMC 18 and is not recommended for approval. The most critical issues include: 1) it is not evident the applicant can meet the requirement of no net fill in the floodplain (MMC 18.04.15.F), 2) that the applicant has not demonstrated the design requirements of floodzone AE can be met with the proposed foundations (MMC 18.04.15.G), or 3) the applicant has not provided plans to elevate basements to the required elevation (18.04.160.A).

8. MMC 19.301 Low Density Residential Zones (including R-5)

a. Table 19.301.4 establishes standards for development in the R-5 zone.

Table 19.301.4 Residential Zone R-5 Development Standards			
Standard	Required	Proposed	Staff Comment
1. Minimum Lot Size	5,000 sq ft	3.66 acres	<i>Per Finding 9-b, the proposal is a natural resources cluster development. More than 1 principal building or structure may be placed on a lot</i>
2. Minimum Lot Width	50 ft	N/A	<i>Per Finding 9-b, the proposal is a natural resources cluster development. Minimum lot width and lot depth standards do not apply.</i>
3. Minimum Lot Depth	80 ft	N/A	<i>Per Finding 9-b, the proposal is a natural resources cluster development. Minimum lot width and lot depth standards do not apply.</i>

4. Minimum Setbacks	20 ft (front, rear) 5 ft (side) 15 ft (street side)	N/A	<i>Per Finding 9-b, the proposal is a natural resources cluster development. MMC 19.402.14.C establishes a minimum yard depth of 25 ft. A variance has been submitted requesting relief from this standard.</i>
5. Off-Street Parking and Loading	Min 1/dwelling unit; no maximum	20 spaces in garages + 16 spaces in driveways	<i>Complies with standard.</i>
6. Height Restriction	2½ stories or 35 ft, whichever is less	3 stories/32 ft	<i>Per Finding 14, a variance has been requested to allow 3-story homes.</i>
7. Lot Coverage	30% max.	8.1% lot coverage	<i>Complies with standard.</i>
8. Minimum Vegetation	35% min.	83.6%	<i>Complies with standard.</i>
9. Frontage	35 ft	240 ft along 19 th Ave. 680 ft along Sparrow St.	<i>Complies with standard.</i>
10. Density	7.0-8.7 units/net acre	12 dwelling units	<i>Per Finding 9-b, the development is proposed as a cluster development in accordance with the provisions of Section 19.402.14. The density allowed for the gross property area would be 25-32 dwelling units based on the ratio of 7-8.7 dwelling units per the base R-5 zone. The proposed density of 12 dwellings is 3.28 dwellings per gross acre.</i>
11. Transportation Requirements	Yes	<i>Requesting adjustment to sidewalk width, planting strip requirement.</i>	<i>As conditioned, application will comply.</i>

With conditions, the Planning Commission finds that this standard would be met.

However, as per Findings 7, 9-a and 9-b, the overall project has been found deficient and is recommended for denial.

9. MMC 19.400 Overlay Zones and Special Areas

a. MMC 19.401 Willamette Greenway Overlay Zone

MMC 19.401 establishes criteria for reviewing and approving development in the Willamette Greenway.

(1) 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 construction of new primary structures constitutes “development” as defined in MMC Subsection 19.401.4 and is subject to the conditional use review standards of MMC 19.905 and the approval criteria of MMC 19.401.6.

(2) MMC Subsection 19.401.6 Criteria

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

(a) 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 subject properties are lots that were platted in 1884 and shown with a residential zoning designation on the City’s zoning map since at least 1968. The upland portion of the property is committed to an urban use. The majority of the area in the floodplain is undeveloped and, while in urban use, is not appropriate for urban use.

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

The site is adjacent to the Willamette slough and according to 1967 aerial photographs, it was actively used for agricultural or logging use in the past. The proposal is consistent with the character of the river because this section of the greenway includes residential property to the north and has been developed over the past 100 years for residential and commercial use.

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

The site is adjacent to the Willamette slough and provides views to the main channel of the river to the northwest and to the southwest. There are limited views from the 19th Ave public right-of-way, so consideration is required with respect to view protection. The proposed development has been configured to maximize river views through identified view corridors between the proposed homes and aligned with the access drive as applicable.

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

The existing site has been disturbed over the years and although it is located in the floodplain, there is little significant natural vegetation on the site east of the slough. The proposed development will include new plantings to enhance the site and provide native vegetation in the mapped natural resource areas.

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

No public access is provided by the development. The subject properties are private residential properties that are adjacent to the river via the slough. The proposed development would only provide private access to the river.

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

The subject properties are private residential properties. The project would provide direct access to the Willamette River via a proposed dock into the slough.

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

The site is not in the downtown.

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

As identified in Finding 9-b, the application is deficient and does not meet the applicable approval criteria for development and disturbance in mapped natural resource areas.

- (i) Advice and recommendations of the Design and Landmarks Committee, as appropriate

The subject properties are not within a downtown zone and the proposed activity does not require review by the Design and Landmarks Committee.

- (j) 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 development is being reviewed through the Willamette Greenway conditional use process as provided in MMC Subsection 19.401.5. The project will not significantly impact visual corridors from 19th Ave given the limited view opportunities that currently exist. The proposed development is on private property and does not provide public access to the river over private land.

Policy number 3 of Chapter 3 Objective 1 of subsection 1.6 of the Comprehensive Plan is a regulatory policy that states that streets are to be at a minimum of 1.0 foot above the 100-year flood elevation.

The applicant proposes a private street system, open to public travel, providing emergency service access to the development labeled as Private Drive 1 and Private Drive 2. Unit specific driveways provide buildings 1,2,3,4,5,6,7,8,9, and 10 access to the private street system.

Portions of Private Drive 1 and the entirety of Private Drive 2 are shown at elevations below the 100-year flood elevation. Nine of the twelve proposed residences would be served by a street below the 100-year flood elevation. This does not conform to city standards and presents a potential barrier for the provision of emergency services.

- (k) 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).

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

The subject properties are not immediately adjacent to the main channel of the Willamette River. The proposed residential development is providing a 50 ft buffer from the top of the slough bank and no areas of riverbank (or slough bank) erosion have been identified as requiring stabilization. No existing large trees or pristine sections of native vegetation exist on the portion of the site proposed to be developed. The vegetated buffer as identified on the planting plan using native species will be an enhancement to the existing conditions.

The Planning Commission finds that the proposed activity does not meet all relevant approval criteria provided in MMC 19.401.6.

(3) MMC Subsection 19.401.9 Private Noncommercial Docks

MMC 19.401.9 establishes the requirements for private noncommercial docks.

(a) Only 1 dock is allowed per riverfront lot of record.

A single 8 ft wide and 24 ft long dock is proposed for this development. It is proposed to be located at the slough and not along the river.

(b) In areas designated as open water areas or special management areas by the Division of State Lands, docks may be restricted or additional requirements may be applied to docks. Restrictions or additional requirements will be identified by DSL in their review of the development application.

No special requirements for docks have been identified by DSL for this proposal.

(c) Private, noncommercial docks shall not exceed 400 sq ft (square footage is measured as the width times the length of the outer edge of the structure).

The proposed dock is less than 200 sq ft.

(d) Docks, pilings, and walkways shall either be dark natural wood colors, or painted dark earthtones (dark brown or green).

The proposed dock will be a dark natural wood color and pilings will be painted dark brown steel.

This standard is met.

The Planning Commission finds that the proposed activity does not meet all applicable standards of development activity in the Willamette Greenway zone.

b. MMC 19.402 Natural Resources

Note: ESA, the City's environmental consultant, reviewed the applicant's technical report and presented its assessment to the City in a summary memo, which informs this portion of the findings.

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.

(1) 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 project site is bisected by the Willamette Slough. The City's NR Administrative Map shows WQR and HCA designations on the majority of site and portions of these natural resource areas will be disturbed by the proposed development.

As presented in the applicant's submittal materials, the proposed development will temporarily or permanently disturb approximately 29,062 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.

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

(2) 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 level of disturbance proposed within the designated 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 is subject to Type III review and the discretionary process established in MMC 19.402.12. As noted in Finding 11-b above, the Natural Resource review is associated with other applications being processed concurrently with Type III.

The Planning Commission finds that the proposed activity is subject to Type III review.

(3) 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 Natural Resource Review report states that a construction management plan will be submitted for review at the time of submittal for development permits.

(4) MMC Subsection 19.402.11 Development Standards

MMC 19.402.11 establishes development standards for projects that impact a designated natural resource, including requirements to protect natural resource areas during development and general standards for required mitigation (e.g., plant species, size, spacing, and diversity).

MMC Subsection 19.402.11.D establishes mitigation requirements for disturbance within HCAs. Because the proposed development will not result in the removal of any trees, and the few trees on the site are on the margins, the applicant proposes to calculate required mitigation via Option 2. Mitigation Option 2 calculates required mitigation

based on the size of the disturbance area and assigns required trees and shrubs based on this area.

Using the mitigation planting ratio provided in MMC Subsection 19.402.11.D.2.b as a guide, for the total WQR and HCA disturbance of approximately 29,062 sq ft, the applicant proposes to plant 291 native trees and 1,453 native shrubs. The mitigation areas have been identified as the mainland mitigation area of 13,185 sq ft, and 2 areas on the “island” west of the slough. Mitigation on the “island” includes removal of invasive species and soil remediation to support the new plantings. As proposed, the mitigation plantings will meet the minimum requirements established in MMC Subsection 19.402.11.B. Mitigation trees will be of at least ½-in caliper (measured at 6 ft above the ground level after planting) and shrubs will be of at least 1-gallon size and at least 12-in height. A full planting list was submitted identifying the proposed mix of species.

However, as identified by ESA, a site-specific survey is necessary to verify the suitability of the proposed mitigation areas west of the slough. Further, the submitted mitigation plan does not provide details about: soil conditions; existing invasive plants that would need to be cleared in order to establish native plantings; or typical planting schematics to how proposed plantings would fit with existing vegetation. Staff is unable to confirm that the proposed mitigation planting locations are suitable to accommodate the required plantings.

The Planning Commission finds that the applicable development standards of MMC 19.402.11 are not met.

(5) 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.

(a) Impact Evaluation and Analysis

MMC Subsection 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:

(i) Identification of ecological functions

The application materials do not provide a detailed assessment of water quality, flood storage, or habitat functions of the site. This assessment would include the proposed dock in order to assess impacts of the proposed development to ecological functions and whether the proposed mitigation addresses the loss or modification of these functions.

(ii) Inventory of vegetation

The applicant’s submittal materials include a technical report prepared by Environmental Technology Consultants, a private firm providing a range of environmental consulting services including natural resource assessment, wetland delineation, and environmental restoration. The technical report includes an impact evaluation and alternatives analysis, as well as an inventory of existing vegetation. The natural resource documentation concludes that the WQR of the slough is “degraded” which appears accurate based on the lack of shrub and tree cover on-site. An assessment of the condition of the natural resources west of the slough was not provided.

(iii) Assessment of water quality impacts

The application materials do not provide a detailed assessment of water quality, flood storage, or habitat functions of the site. This assessment would include the proposed dock in order to assess impacts of the proposed development to ecological functions and whether the proposed mitigation addresses the loss or modification of these functions.

(iv) Alternatives analysis

The application materials consider 2 alternatives to the proposed development: an alternative with 23 dwelling units and an alternative with 16 dwelling units. Both alternatives would result in significantly more disturbance to the WQR and HCA. The report concludes that the proposed development is the most practicable alternative that results in the least impact to designated natural resources on the site.

Alternative	WQR/HCA impacts (combined)	Wetland fill	Below OHWM of the Willamette River
Preferred – 12 units	29,062 ft ²	0	Proposed Dock
#2 – 23 units	57,213 ft ²	3,363 ft ²	Proposed Dock
#3 – 16 units	31,053 ft ²	0	Proposed Dock

The preferred design impacts the least amount of natural resources of the three development alternatives. A large part of the impacts from the preferred option are due to Private Drives 1 and 2 which are required for access. Retaining the two existing structures (buildings 10 and 12) at the east end of the project site also limits layout and roadway options. However, an alternative that emphasizes fewer homes, duplexes, or multifamily units outside of the WQR was not provided and should have been considered. The application, as submitted, does not include an alternative that avoids impacts

to the mapped natural resource areas. Avoiding or minimizing impacts is also a criterion for approval of a cluster development. The alternatives analysis is deficient without a more thorough analysis by the applicant.

The Planning Commission finds that the applicant's impact evaluation and alternatives analysis is not sufficient for purposes of reviewing the proposed activity against the approval criteria provided in MMC 19.402.12. This standard is not met.

- (v) 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

As identified above, The Planning Commission finds that the applicant's impact evaluation and alternatives analysis is not sufficient for purposes of reviewing the proposed activity against the approval criteria provided in MMC 19.402.12. This standard is not met.

- (vi) Mitigation plan

The applicant's submittal materials include a mitigation plan for permanent and temporary impacts to the WQR and HCA.

ESA has evaluated the proposed mitigation plan and concluded that it is deficient. As identified by ESA, site-specific surveys are needed west of the slough to inform the mitigation plan. The application materials state that only non-wetland areas above ordinary high-water mark (OHWM – identified as 20 ft elevation) would be used as mitigation on the island. However, based on ESA's cursory Google Earth examination of the elevation profile of the possible mitigation areas, it appears that the western-most mitigation area is below OHWM. A site-specific survey is necessary to verify the suitability of the proposed mitigation areas west of the slough. Further, the mitigation plan does not provide details about: soil conditions; existing invasive plants that would need to be cleared in order to establish native plantings; or typical planting schematics to how proposed plantings would fit with existing vegetation.

The Planning Commission finds that the applicant's mitigation plan is not sufficient for purposes of reviewing the proposed activity against the approval criteria provided in MMC 19.402.12. This standard is not met.

- (b) Approval Criteria

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

Note: ESA reviewed the applicant's technical report and presented its assessment to the City in a summary memo, which informs this portion of the findings.

- (i) 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.

The Willamette Slough bisects the site and the 100-year floodplain covers nearly all of the site, resulting in significant areas of designated WQR and HCA. Site development that avoids any impacts to the WQR and HCA at permitted densities is not possible. The applicant has proposed a development of 12 single family homes and a private drive for access and concentrates impacts in the eastern portion of the site. However, the buildings and associated roadway and stormwater facilities would intrude into the WQR and HCA and disturb approximately 0.60 acres of natural resource area. As noted in the discussion of alternatives noted in Finding 11-f(1) above, an alternative that would allow the proposed development to further avoid the WQR and HCA was not provided or analyzed.

- (ii) 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.

As noted in the above discussion of avoiding impacts, it appears that another alternative could be proposed to further reduce impacts to the WQR and HCA. Absent another alternative that avoids the resource areas, the preferred alternative impacts the least amount of resource area of the alternatives provided.

- (iii) 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.

As noted in Finding 9-b(5), the applicant's submittal includes a mitigation plan for the WQR and HCA disturbance that will accompany the proposed development. The applicant has proposed to plant 291 native trees and 1,453 native shrubs and to remove nuisance plants and noxious material and debris. However, the mitigation is deficient in key areas (See Findings above).

The Planning Commission finds that the proposed development does not meet the approval criteria for discretionary review as established in MMC 19.402.12.B.

(c) Limitations and Mitigation for Disturbance of HCAs

MMC Subsection 19.402.12.C establishes the discretionary review process for mitigation of more HCA disturbance than would be allowed by the nondiscretionary standards of MMC Subsection 19.402.11.D.1. In such cases, the applicant must submit an Impact Evaluation and Alternatives Analysis consistent with the standards established in MMC 19.402.12.A and subject to the approval criteria established in MMC 19.402.12.B.

As discussed in Finding 9-b(5), the applicant's submittal materials include a technical report that provides an evaluation of impacts to the WQR as well as to those impacted HCA areas beyond the WQR that does not meet the standards established in MMC 19.402.12.A. As discussed in Finding 9-b(5), the proposed development does not meet the approval criteria established in MMC 19.402.12.B.

The Planning Commission finds that the proposed development does not meet the discretionary standards for disturbance of HCAs as established in MMC 19.402.12.C.

The Planning Commission finds that the proposed development does not meet the applicable discretionary review standards of MMC 19.402.12.

(6) MMC Subsection 19.402.14 Adjustments and Variances

To encourage applicants to avoid or minimize impacts to WQRs and/or HCAs, several types of adjustments and variances are available for use on any property that includes a WQR or HCA. These include adjustments to specific base zone and lot design standards, discretionary variances, and allowances for residential cluster development.

(a) MMC Subsection 19.402.14.C Residential Cluster Development

MMC 19.402.14.C establishes the standards for developments that are clustered so that land can be developed at allowed densities while avoiding or minimizing impacts to WQRs or HCAs. The intent of this section is to encourage creative and flexible site design that enables the allowable density to be transferred elsewhere on a site to protect environmentally sensitive areas and preserve open space and natural features. A residential cluster development may be permitted in any residential or mixed-use zoning district, subject to Type III review and approval by the Planning Commission.

(i) Calculation of Permitted Number of Dwelling Units

1. The maximum number of dwelling units proposed for a residential cluster development shall not exceed the number of dwelling units otherwise permitted for the residential zoning district in which the parcel is located. The number of units allowed on a parent lot may be

transferred to one or more newly created lots or parcels on the site. The cumulative density for all lots or parcels shall not exceed the density allowed for the parent lot.

The subject property is 3.66 acres. Based on a density range of 7.0 - 8.7 dwelling units per acre, 25-32 dwelling units would be permitted. It would appear that the only way to achieve the densities without significant environmental impact would be to transfer density to another site.

2. The number of permitted dwelling units on a site shall be calculated in the following manner:
 - a. Measure the gross area of the proposed cluster development site in acres and tenths of an acre.
 - b. From the gross area, subtract the area of public streets, other publicly dedicated improvements, and common open space (whether or not it is conveyed pursuant to Subsection 19.402.14.C.2.c), measured in acres and tenths of an acre. The remainder shall be the net buildable area.
 - c. Convert the net buildable area from acres to square feet, using the equivalency of 43,560 sq ft = 1 acre.
 - d. Divide the net buildable area by the smallest minimum lot size (in square feet) per unit for a dwelling unit permitted in the zoning district. This figure shall be rounded to the nearest lower number to establish the maximum number of dwelling units permitted in the cluster development.

The gross site area is 3.66 acres. The common area consisting of HCA and WQR and the area west of the slough is 1.58 acres, leaving 2.08 acres, or 90,605 sq ft, of net buildable area. Minimum lot size in the R-5 zone is 5,000 sq ft, resulting in a maximum number of dwelling units for the cluster development of 18 units. 12 units are proposed.

(ii) Development Standards

1. All principal and accessory uses authorized in the underlying zoning district(s) shall be allowed in the cluster development. In addition, single-family attached dwellings, multifamily dwellings, and townhouses may be permitted for a cluster development located in a residential zoning

district that does not otherwise allow attached dwelling units.

The proposed development consists of 12 single-family homes. Townhomes were not considered but could have been an option to reduce impacts to mapped natural resources.

2. Maximum lot coverage, building height, and off-street parking requirements for the applicable zoning district shall apply to the cluster development. Maximum lot coverage, floor area ratios, and off-street parking requirements shall be applied to the entire site rather than to any individual lot.

The maximum lot coverage and off-street parking for the R-5 zone will be met with the proposed development. Variances have been requested to the building height for some of the proposed homes.

3. The following provisions shall apply to any residential cluster development, regardless of the general requirements of the applicable residential zoning district:

- a. The adjustments allowed by Subsection 19.402.14.A shall be available for cluster development proposals.

No adjustments are being requested per Subsection 19.402.14.A. The requested variances are addressed by this section.

- b. Minimum lot width and lot depth standards shall not apply.

The proposal is a single lot condominium development.

- c. A minimum separation of 10 ft shall be provided between all principal buildings and structures.

Proposed site plan shows this standard is met.

- d. A minimum yard or common open space shall be provided, with a minimum depth of 25 ft, as measured from all public streets and from the side and rear lot lines of the entire cluster development.

Variances have been requested to allow a 20-ft side setback on the south side of the site. As shown in the application materials, a variance to allow a 15-ft front yard setback for building 11 is also required, but has not been requested. The applicant has indicated that revised plans will show compliance with this standard.

- e. Each lot shall provide at least 12 ft of frontage on a public street.

The consolidated lot will have 240 ft of frontage on 19th Ave.

- f. More than 1 principal building or structure may be placed on a lot.

- g. No less than 25% of the site shall be conveyed as common open space.

1.58 acres (43% of gross site area) is proposed to be conveyed as common open space.

- h. No less than 50% of the designated natural resources on the site shall be included in calculating the common open space.

94% of the designated natural resource area on the site is being proposed as common open space.

(iii) Site Plan Requirements

The preliminary and final site plans for a residential cluster development shall include the following information, in addition to the items listed on the City's Site Plan Requirements:

1. The maximum number and type of dwelling units proposed.
2. The areas of the site on which the dwelling units are to be constructed or are currently located and their size. This may take the form of the footprint of the dwelling unit or a building envelope showing the general area in which the dwelling unit is to be located.
3. The calculations for the permitted number of dwelling units, derived pursuant to Subsection 19.402.14.C.1.
4. The areas of the site on which other principal and accessory uses are proposed to be located and their size.
5. The areas of the site designated for common open space and their size.

The site plans submitted with the application materials contain this information.

(iv) Approval Criteria

1. Proposals for residential cluster development shall demonstrate compliance with the following criteria:

- a. The site plan satisfies the requirements of Subsections 19.402.14.C.1 and 2.
- b. Buildings and structures are adequately grouped so that at least 25% of the total area of the site is set aside as common open space. To the greatest degree practicable, common open space shall be designated as a single tract and not divided into unconnected small parcels located in various parts of the development. Common open space shall be conveyed as allowed by Subsection 19.402.13.J.

A single common space tract is proposed with instrument of conveyance acceptable to the City, such as via a deed restriction, public ownership, common tract, or easement.

- c. Individual lots, buildings, structures, streets, and parking areas are situated to minimize the alteration of natural features, natural vegetation, and topography.

Per Finding 9-b(5), the Planning Commission finds that the proposed development's disturbance of WQR and HCA areas on the subject property does not meet this standard.

- d. Impacts to WQRs and HCAs are avoided or minimized to the greatest degree practicable.

Per Finding 9-b(5), the Planning Commission finds that the proposed development's disturbance of WQR and HCA areas on the subject property does not meet this standard.

- e. The cluster development advances the purposes established in Subsection 19.402.1.

Per Finding 9-b, the Planning Commission finds that the proposed development's disturbance of WQR and HCA areas on the subject property does not meet this standard.

2. The Planning Commission may apply such conditions or stipulations to its approval as may be required to maintain harmony with neighboring uses and promote the objectives and purposes of the Comprehensive Plan and the Zoning and Land Division Ordinances.
3. If the Planning Commission finds that the criteria in Subsection 19.402.14.C.4.a are met, it shall approve the

residential cluster development, subject to any conditions established pursuant to Subsection 19.402.14.C.4.b.

Per Finding 9-b(5), the Planning Commission finds that the proposed development's disturbance of WQR and HCA areas on the subject property does not meet the applicable standards of MMC 19.402. The Planning Commission finds that the criteria in 19.402.14 have not been met.

10. MMC 19.500 Supplementary Development Regulations

a. MMC 19.505 Building Design Standards

MMC 19.505 establishes design standards for single-family dwellings. The design standards apply to the closest street-facing façade that is within 50 ft of a front or street side lot line.

The project consists of new detached, single-family homes on a common lot. Only Building 11 is within 50 ft of 19th Ave and the front lot line. Therefore, compliance with these standards is only required for Building 11. However, per the applicant's materials, compliance with these standards is voluntary and being applied to all of the new homes to the greatest extent possible.

(1) MMC 19.505.2 Garages and Carports

MMC 19.505.2 establishes standards for garages and carports, with the intent of preventing garages from obscuring or dominating the street-facing façade of a dwelling and providing a pleasant pedestrian environment.

- (i) The width of a street-facing garage door(s), as measured between the inside of the garage door frame, may not exceed 40% of the total width of the street-facing façades on the same street frontage as the garage door. See Figure 19.505.2.C.2. Notwithstanding this limit, a dwelling is allowed 1 12-ft-wide garage door, regardless of the total width of street-facing façades.

The maximum allowed garage door width may be increased to 50% of the total width of the street-facing façade if a total of 7 detailed design elements in Subsection 19.505.1.C.4 are included on the street-facing façade.

The total width of the façade of Building 11 is 26 ft. The width of each garage door is 9 ft for a total of 18 ft, which is 69% of the width of the façade. A Type III variance has been submitted.

Conditional upon approval of the Type III variance to maximum garage door width, this standard is met. However, as per Findings 7, 9-a and 9-b, the overall project has been found deficient and is recommended for denial.

11. MMC Chapter 19.600 Off-Street Parking and Loading

MMC 19.600 regulates off-street parking and loading areas on private property outside the public right-of-way. The purpose of these requirements includes providing adequate space for off-street parking, minimizing parking impacts to adjacent properties, and minimizing environmental impacts of parking areas.

a. MMC Section 19.602 Applicability

MMC 19.602 establishes the applicability of the provisions of MMC 19.600, and MMC Subsection 19.602.3 establishes thresholds for full compliance with the standards of MMC 19.600. Development of a vacant site is required to provide off-street parking and loading areas that conform fully to the requirements of MMC 19.600.

The proposed development consists of 10 new single-family homes on a site containing 2 single-family homes and is required to conform fully to the requirements of MMC 19.600.

The Planning Commission finds that the provisions of MMC 19.600 are applicable to the proposed development.

b. MMC Section 19.605 Vehicle Parking Quantity Requirements

MMC 19.605 establishes standards to ensure that development provides adequate vehicle parking (off-street) based on estimated parking demand. MMC Subsection 19.605.2 establishes a process for determining parking requirements when a use is not listed in MMC Table 19.605.1 or if the applicant seeks a modification from the minimum required or maximum allowed quantities as listed in the table.

The proposed residential development will have a total of 12 single-family homes.

As per MMC Table 19.605.1, the minimum number of required off-street parking spaces single-family homes is 1 space per dwelling with no maximum. According to MMC Table 19.605.1, the proposed development should provide a minimum of 12 spaces.

The proposed development provides 36 off street parking spaces with 20 spaces in private garages and an additional 16 located in driveways serving these garages.

This standard is met.

12. MMC Chapter 19.700 Public Facility Improvements

MMC 19.700 is intended to ensure that development, including redevelopment, provides public facilities that are safe, convenient, and adequate in rough proportion to their public facility impacts.

a. MMC Section 19.702 Applicability

MMC 19.702 establishes the applicability of the provisions of MMC 19.700, including partitions, subdivisions, new construction, and modification or expansion of an existing structure or a change or intensification in use that result in any projected increase in vehicle trips or any increase in gross floor area on the site.

The applicant proposes to construct 10 single family houses. The Natural Resources cluster development triggers the requirements of MMC Chapter 19.700.

b. MMC Section 19.703 Review Process

MMC 19.703 establishes the review process for development that is subject to MMC 19.700, including requiring a preapplication conference, establishing the type of application required, and providing approval criteria.

The applicant had a preapplication conference with City staff on March 28th, 2018, prior to application submittal. The proposed development does not require a Transportation Facilities Review application. The applicant will provide transportation improvements and mitigation in rough proportion to the potential impacts of the development.

c. MMC Section 19.704 Transportation Impact Evaluation

MMC 19.704 establishes the process and requirements for evaluating development impacts on the surrounding transportation system, including determining when a formal Transportation Impact Study (TIS) is necessary and what mitigation measures will be required.

The Engineering Director determined that a transportation impact study was not required as the existence of impacts on the transportation system was evident.

d. MMC Section 19.705 Rough Proportionality

MMC 19.705 requires that transportation impacts of the proposed development be mitigated in proportion to its potential impacts.

Transportation impacts of the proposed development are to be mitigated through the required improvements along the full width of 19th Ave fronting the development.

e. MMC Section 19.707 Agency Notification and Coordinated Review

MMC 19.707 establishes provisions for coordinating land use application review with other agencies that may have some interest in a project that is in proximity to facilities they manage.

The application does not trigger general notice provisions.

f. MMC Section 19.708 Transportation Facility Requirements

MMC 19.708 establishes the City's requirements and standards for improvements to public streets, including pedestrian, bicycle, and transit facilities.

(1) MMC Subsection 19.708.1 General Street Requirements and Standards

MMC 19.708.1 provides general standards for streets, including for access management, clear vision, street layout and connectivity, and intersection design and spacing.

The applicant has not provided a public improvement plan set. The applicant will need to comply with the applicable standards of MMC 19.708.1.

(2) MMC Subsection 19.708.2 Street Design Standards

MMC 19.708.2 provides design standards for streets, including dimensional requirements for the various street elements (e.g., travel lanes, bike lanes, on-street parking, landscape strips, and sidewalks).

Applicant is responsible for constructing 15-feet of asphalt, 6-inch flush mount curbs and 3-foot load bearing gravel shoulders on both sides of the roadway, and ADA pedestrian accommodation. This roadway design that is unique to 19th Avenue. The asphalt surface functions as the ADA pedestrian route and requires ADA longitudinal delineation within the roadway structure in addition to specialized signing.

The ADA component requires construction of the full roadway. Half right of way construction will not be accepted. The remaining portion of the right-of-way along the frontage is flexible for the applicant to propose such items as on street parking, landscaping, bioswales, etc. For additional information, see the Island Station Neighborhood Greenway concept plan dated January 2016.

Right-of-way improvements for internal streets in the development shall conform to MMC 19.708.2.

(3) MMC Subsection 19.708.3 Sidewalk Requirements and Standards

MMC 19.708.3 provides standards for public sidewalks, including the requirement for compliance with applicable standards of the Americans with Disabilities Act (ADA).

The applicant proposes to construct public facilities aligned with the Island Station Neighborhood Greenway design concept. This is consistent with City of Milwaukie Resolution No. 53-2016.

(4) MMC Subsection 19.708.4 Bicycle Facility Requirements and Standards

MMC 19.708.4 provides standards for bicycle facilities, including a reference to the Public Works Standards.

The portion of 19th Avenue fronting the proposed development is designated as a neighborhood greenway in the Milwaukie Transportation Plan and is governed by the design plan for the Island Station Neighborhood Greenway. Bicycle facility improvements are to be consistent with the greenway concept plan.

(5) MMC Subsection 19.708.5 Pedestrian/Bicycle Path Requirements and Standards

MMC 19.708.5 provides standards for pedestrian and bicycle paths and requires such connection be built in addition to public streets in residential districts every 300ft when a street connection is not feasible, in residential districts where a path would reduce walking distance by at least 400ft to a transit stop, school, shopping center, or park, or where a path would provide a midblock connection between blocks that exceed 800ft or would link the end of a turnaround with a nearby street or activity center.

The proposed development does not present an opportunity to construct a public path that would provide for defined connectivity.

(6) MMC Subsection 19.708.6 Transit Requirements and Standards

MMC 19.708.6 provides standards for transit facilities.

Transit facility improvements are not required for the proposed development.

With conditions, the Planning Commission finds that the proposed development could meet the applicable public facility improvement standards of MMC 19.700. However, as per Findings 7, 9-a and 9-b, the overall project has been found deficient and is recommended for denial.

13. MMC Section 19.905 Conditional Uses

MMC 19.905 establishes regulations for conditional uses, including standards for establishing uses identified as conditional uses in any overlay zones. As noted in Finding 7-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 must be reviewed.

As noted in Finding 7-a, the proposed activity is development as defined for the Willamette Greenway zone and so requires review as a conditional use.

MMC 19.905.3.A requires that establishment of a new 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 in the 100-yr floodplain and not suitable for development for the reasons described in Findings 7 and 9.

The Planning Commission finds that this standard is not met.

- (2) The operating and physical characteristics of the proposed use will be reasonably compatible with, and have minimal impact on, nearby uses.

As described in Finding 7, impacts of the development on the 100-yr floodplain may impact surrounding properties.

The Planning Commission finds that this standard is not met.

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

As described in Findings 7 and 9, as designed, mitigation of floodplain impacts and impacts to mapped natural resources has not been demonstrated.

The Planning Commission finds that this standard is not 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 is for a residential condominium development of 12 single-family homes in a residential zone and will not generate any unmitigated nuisance impacts due to that use.

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 Residential R-5 zone, Willamette Greenway zone, 100-yr floodplain, and contains mapped WQR and HCA. In addition to the R-5 standards for building height, side-yard height plane, lot coverage, and minimum vegetation, the proposed development is subject to the standards for development in the floodplain, the WG zone, and for natural resources cluster development. As addressed in Finding 14, the applicant has requested variances from the side yard setbacks for one of the lots, the width of garage doors, building height and requires variances from the front yard setback and number of accessways.

As addressed in Findings 7 and 9 the proposed activity will not comply with the relevant standards of the flood hazard area, Willamette Greenway overlay zone, or the Natural Resources chapter in the code. As addressed elsewhere in Finding 13, the proposed activity is not compliant with the other standards of MMC 19.905.

The Planning Commission finds that this standard is not met.

- (6) The proposed use is consistent with applicable Comprehensive Plan policies related to the proposed use.

As addressed in Finding 9-a(2), the proposed development is not consistent with all relevant polices in the Comprehensive Plan.

The Planning Commission finds that this standard is not 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.

As addressed in Finding 12, the proposed development triggers the requirements of MMC 19.700 and will be reviewed for compliance with the applicable provisions of this chapter at the time development permits are submitted.

The Planning Commission finds that this standard is met. However, as per Findings 7, 9-a and 9-b, the overall project has been found deficient and is recommended for denial.

The Planning Commission finds that the proposed development does not meet the approval criteria outlined in MMC 19.905.4.A for establishing a 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 the proposed development does not sufficiently mitigate floodplain or natural resources impacts, as proposed. As per Findings 7, 9-a and 9-b, the overall project has been found deficient and is recommended for denial.

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 inconsistent with the relevant standards established in MMC 19.905 for conditional uses.

14. MMC Section 19.911 Variances

MMC Section 19.911 establishes the variance process for seeking relief from specific code sections that have the unintended effect of preventing reasonable development or imposing undue hardship.

a. MMC Subsection 19.911.2 Applicability

MMC 19.911.2 establishes applicability standards for variance requests.

Variances may be requested to any standard of MMC Title 19, provided the request is not specifically listed as ineligible in MMC Subsection 19.911.2.B. Ineligible variances include requests that result in any of the following: change of a review type, change or omission of a procedural step, change to a definition, increase in density, allowance of a building code violation, allowance of a use that is not allowed in the base zone, or the elimination of restrictions on uses or development that contain the word "prohibited."

The applicant has requested the following 4 variances:

- (1) to exceed the maximum building height of the underlying R5 zone (2.5 stories or 35 ft) for the proposed homes to allow 3 story houses;*
- (2) for relief from the minimum side yard requirements in a natural resources cluster development to allow 20 ft rather than 25 ft;*

- (3) *for relief from the maximum garage door width of 50% of the width of the street-facing façade; and*
- (4) *As shown in the application materials, building 11 would require a variance to allow a 15-ft front yard setback, but a variance has not been requested. The applicant has indicated that revised plans will show compliance with this standard.*

The requested variances meet the eligibility requirements established in MMC 19.911.2.

b. MMC Subsection 19.911.3 Review Process

MMC 19.911.3 establishes review processes for different types of variances. Subsection 3-B establishes the Type II review process for limited variations to certain numerical standards. Subsection 3-C establishes the Type III review process for larger or more complex variations to standards that require additional discretion and warrant a public hearing.

None of the requested variances are identified in MMC 19.911.3.B as being eligible for Type II review. Therefore, the requested variances are subject to the Type III review process and the approval criteria established in MMC Subsection 19.911.4.B.

c. MMC Subsection 19.911.4 Approval Criteria

MMC 19.911.4 establishes approval criteria for variance requests. Specifically, MMC Subsection 19.911.4.B.1 provides the following approval criteria for Type III variances where the applicant elects to utilize the Discretionary Relief Criteria:

- (1) The applicant's alternatives analysis provides, at a minimum, an analysis of the impacts and benefits of the variance proposal as compared to the baseline code requirements.

Building Height: To minimize the building footprint, provide greater overall open space, and reduce impacts to the WQR and HCA resources on the site, the applicant has proposed 3-story homes that meet the measured height limits. Because the property is in the floodplain, the lower level of the homes is not habitable and can only be used as a garage or unfinished storage space. Without increasing the height, homes of similar capacity would have a larger footprint, which would likely impact a larger portion of the WQR and HCA on site.

Side yard setback: The proposal includes retention of 2 existing homes. The home located at the south of the site (#12225 SE 19th Ave) has an existing street side yard setback of 20 ft. The proposed 20-ft setback rather than 25 ft would allow the proposed new home to the west align with the existing home. The 20-ft setback, along with the 40-ft adjacent unimproved Sparrow St right-of-way provides an effective 60 ft of buffer to Spring Park.

Front yard setback: As designed, Building 11 does not have the required 25-ft setback from 19th Ave. The applicant has not submitted any materials to address the variance criteria, but has indicated that revised plans will show compliance with this standard.

Garage door width: *The proposal includes some house designs with garage doors that exceed the maximum 50% of the width of the street-facing façade. This allows the homes to provide traditional 2-car garages rather than tandem-style garages for the narrow homes proposed for the site.*

Number of Accessways or minimum spacing: *The proposal includes multiple accessways on a single lot on 19th Ave, which does not conform to city standards. The applicant has not submitted any materials to address the variance criteria.*

The Planning Commission finds that the applicant's submittal provides an adequate analysis of the impacts and benefits of the requested variances compared to the baseline requirements, except for front yard setback and number of accessways. This criterion is not met.

- (2) The proposed variance is determined to be both reasonable and appropriate, and it meets one or more of the following criteria:
- (a) The proposed variance avoids or minimizes impacts to surrounding properties.
 - (b) The proposed variance has desirable public benefits.
 - (c) The proposed variance responds to the existing built or natural environment in a creative and sensitive manner.

Building Height: *The proposed height increase to 3 stories reduces the building footprint, resulting in fewer impacts to the designated natural resource areas on the site. The additional one-half story provides additional living area with the proposed narrow building envelopes while still meeting the measured height standard of less than 35 ft. The proposed lower level of these homes is located below the height of 19th Ave, so there would be little visual impact from the additional half story.*

Side yard setback: *The proposed 20-ft setback rather than 25 ft will have no impact on surrounding properties because it matches the existing setback of #12225 SE 19th Ave.*

Front yard setback: *As designed, Building 11 does not have the required 25-ft setback from 19th Ave. The applicant has not submitted any materials to address the variance criteria, but has indicated that revised plans will show compliance with this standard.*

Garage door width: *The detached homes with garage door widths exceeding the maximum 50% of the width of the street-facing façade will not be visible from 19th Ave. The proposed design includes garage doors with a wood stained appearance and glazing to better fit into the surrounding environment.*

Number of Accessways or minimum spacing: *The proposal includes multiple accessways on a single lot on 19th Ave, which does not conform to city standards. The applicant has not submitted any materials to address the variance criteria.*

The Planning Commission finds that the requested variances are reasonable and appropriate and that each meets one or more of the criteria provided in MMC Subsection

19.911.B.1.b, except for front yard setback and number of accessways, which were not addressed.

- (3) Impacts from the proposed variance will be mitigated to the extent practicable.

Building Height: The increased building height would be mitigated by the location of the homes off 19th Ave where the site is lower than the street. The preserved open space of the natural resource area on the western half of the site, the fact that the homes still meet the measured height standard, and the proposed design all contribute to an aesthetically pleasing development.

Side yard setback: The proposed 20-ft setback in addition to the existing unimproved 40-ft Sparrow St right-of-way retains the goal of the setback by creating a buffer to the adjacent property.

Front yard setback: As designed, Building 11 does not have the required 25-ft setback from 19th Ave. The applicant has not submitted any materials to address the variance criteria, but has indicated that revised plans will show compliance with this standard.

Garage door width: The detached homes with garage door widths exceeding the maximum 50% of the width of the street-facing façade will not be visible from 19th Ave. The proposed design includes garage doors with a wood stained appearance and glazing to better fit into the surrounding environment.

Number of Accessways or minimum spacing: The proposal includes multiple accessways on a single lot on 19th Ave, which does not conform to city standards. The applicant has not submitted any materials to address the variance criteria.

The Planning Commission finds that the requested variances will not result in any impacts that require further mitigation, except for front yard setback and number of accessways, which were not addressed.

As proposed, the Planning Commission finds that the requested variances do not meet the approval criteria established in MMC 19.911.4.B.1 for Type III variances seeking discretionary relief.

The Planning Commission finds that the requested variances are allowable as per the applicable standards of MMC 19.911, except for front yard setback and number of accessways, which were not addressed. As per Findings 7, 9-a and 9-b, the overall project has been found deficient and is recommended for denial.

15. The application was referred to the following departments and agencies on February 28, 2019:
- Milwaukie Building Division
 - Milwaukie Engineering Department
 - Milwaukie Public Works Department
 - Clackamas County Fire District #1

- Island Station Neighborhood District Association Chairperson and Land Use Committee
- Oregon Marine Board
- Oregon Department of Fish and Wildlife
- Division of State Lands – Wetlands and Waterways
- Oregon Parks and Recreation Department
- North Clackamas Parks and Recreation District

In addition, notice of the public hearing was mailed to owners and residents of properties within 300 ft of the subject property on May 8, 2019.

The comments received are summarized as follows:

- **Chris Stevenson, Jurisdiction Coordinator, Oregon Department of State Lands:** The Department concurs with the wetland and waterway boundaries as mapped for the site. The letter included information regarding permitting for fill or removal of material from the site.
- **Sarah Hartung, Senior Biologist, ESA (City’s on-call Natural Resource consultant):** ESA has provided two memos serving as peer review of the applicant’s Natural Resource Review report.
- **Dalton Vodden, Associate Engineer, City of Milwaukie Engineering Department:** Comments related to the proposal’s compliance with MMC Title 12 Streets, Sidewalks, and Public Places; MMC Chapter 13.14 Stormwater Management; MMC Title 18 Flood Hazard Regulations; and MMC Chapter 19.700 Public Facility Improvements.
- **Izak Hamilton, Fire Inspector, CFD#1:** Standard comments related to fire access and water supply.
- **Steve Gerken, 12114 SE 19th Ave:** Comments related to the proposal’s compliance with Title 18 Flood Hazard Regulations; MMC Chapter 19.401 Willamette Greenway Overlay; MMC Chapter 19.402 Natural Resources; federal law regarding bald eagle nesting sites; and a comment that the originally submitted planting plan was based on a different site plan for the project.
- **Steve Gerken, 12114 SE 19th Ave:** Numerous concerns related to development in the floodplain, impacts on views of the Willamette River, impacts of the dock on a bald eagle nesting site, and development in the Willamette Greenway. The comments included photos and an overall objection to approval of the project.
- **Theresa Silver, 12114 SE 19th Ave:** Concerns regarding development in the floodplain and concerns that the flood elevation will increase over time.
- **Milo Denham, 12106 SE 19th Ave:** Comments related to the impact on parking in the neighborhood, provide additional on-street parking in the proposed development for guest vehicles.

- **Island Station NDA Land Use Committee:** comments related to the impacts on views, traffic on 19th Ave, provide additional on-street parking in the development, and concern that the proposed development not be gated.

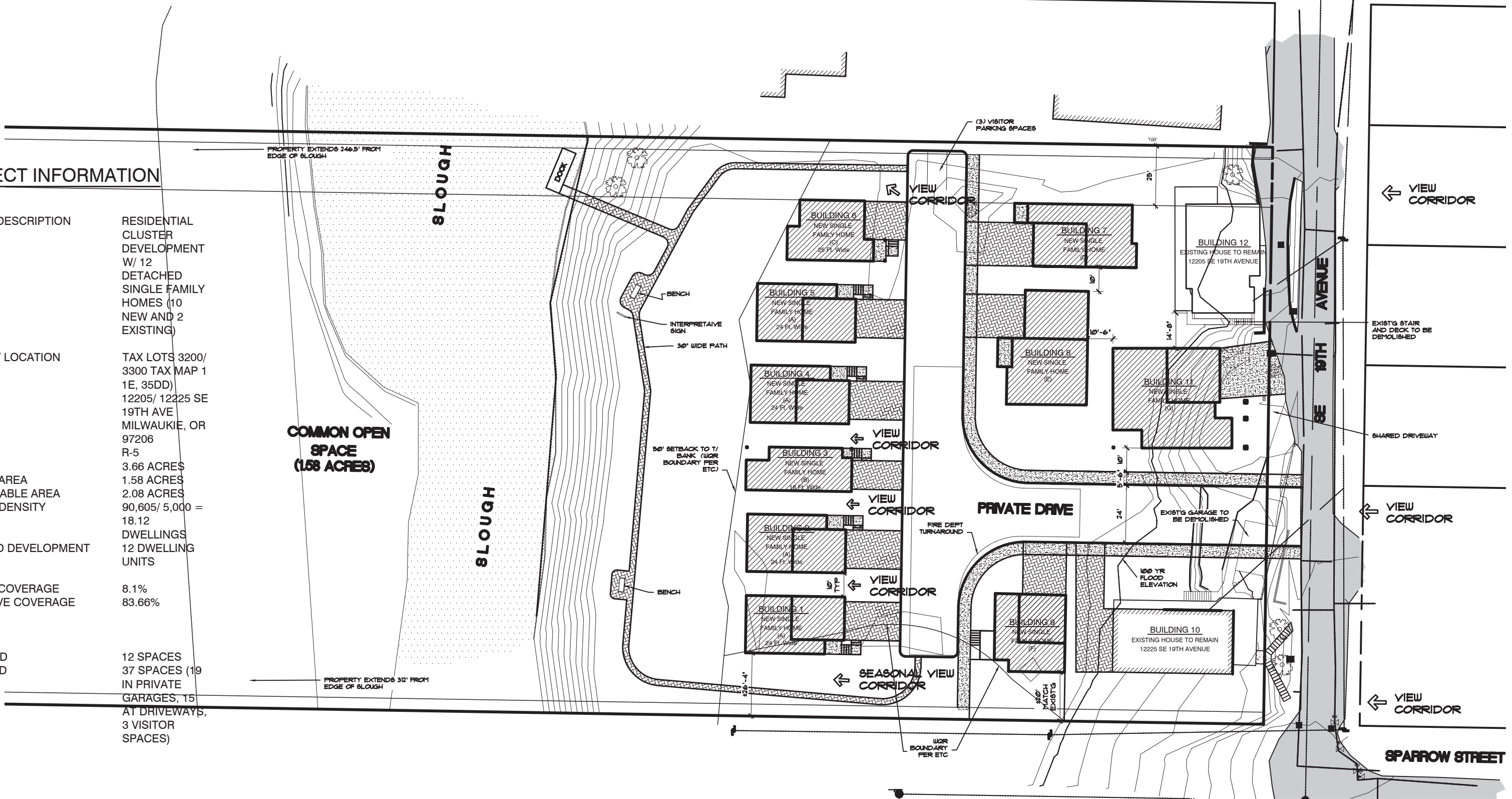
NEW INFORMATION RECEIVED BY
MILWAUKIE PLANNING DEPARTMENT
April 29, 2019

WREN STREET

PROJECT INFORMATION

PROJECT DESCRIPTION	RESIDENTIAL CLUSTER DEVELOPMENT W/ 12 DETACHED SINGLE FAMILY HOMES (10 NEW AND 2 EXISTING)
PROPERTY LOCATION	TAX LOTS 3200/ 3300 TAX MAP 1 1E, 35DD)
ADDRESS	12205/ 12225 SE 19TH AVE MILWAUKIE, OR 97206
ZONE	R-5
SITE AREA	3.66 ACRES
COMMON AREA	1.58 ACRES
NET BUILDABLE AREA	2.08 ACRES
MAXIMUM DENSITY	90,605/ 5,000 = 18.12
PROPOSED DEVELOPMENT	DWELLINGS 12 DWELLING UNITS
BUILDING COVERAGE	8.1%
VEGETATIVE COVERAGE	83.66%
PARKING REQUIRED	12 SPACES
PROVIDED	37 SPACES (19 IN PRIVATE GARAGES, 15 AT DRIVEWAYS, 3 VISITOR SPACES)

COMMON OPEN SPACE (158 ACRES)



PRELIMINARY SITE PLAN

1" = 40'-0"

Elk Rock Estates
1738 - Site Plan

ISELIN
ARCHITECTS, P.C.
1307 7th Street - Oregon City, Oregon 97045
503.656.1942 - f. 503.656.0658 - www.iselinarchitects.com

1" = 40'-0"
4/22/2019

A0

DETAILED DESIGN FEATURES PROPOSED:

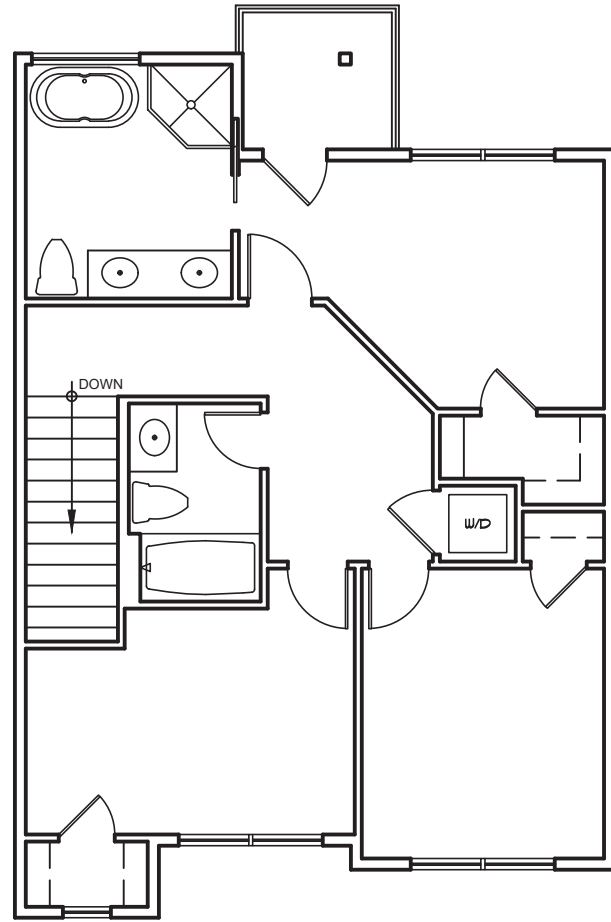
(Minimum of 5 features required)

- a. COVERED PORCH AT LEAST 5 Ft. DEEP AND AT LEAST 5 Ft. WIDE.
- c. OFFSET ON THE BUILDING FACE AT LEAST 16 In. FROM ONE EXTERIOR WALL SURFACE TO OTHER.
- e. ROOF EAVES WITH MIN. PROJECTION OF 12 Inches.
- f. ROOF LINE OFFSETS OF AT LEAST 2 Ft. FROM TOP OF SURFACE TO TOP OF OTHER SURFACE.
- h. HORIZONTAL LAP SIDING BETWEEN 3 TO 1 In. WIDE. WOOD OR FIBER-CEMENT MATERIAL.
- k. WINDOW TRIM AROUND ALL WINDOWS AT LEAST 3 In. WIDE AND 5/8 In. DEEP.

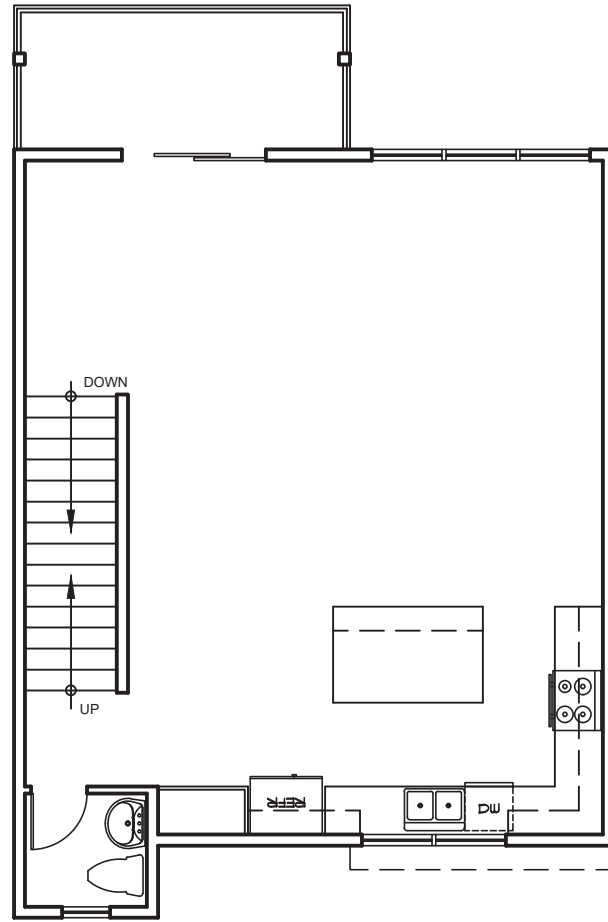


BUILDING 6 - TYPE 'C'

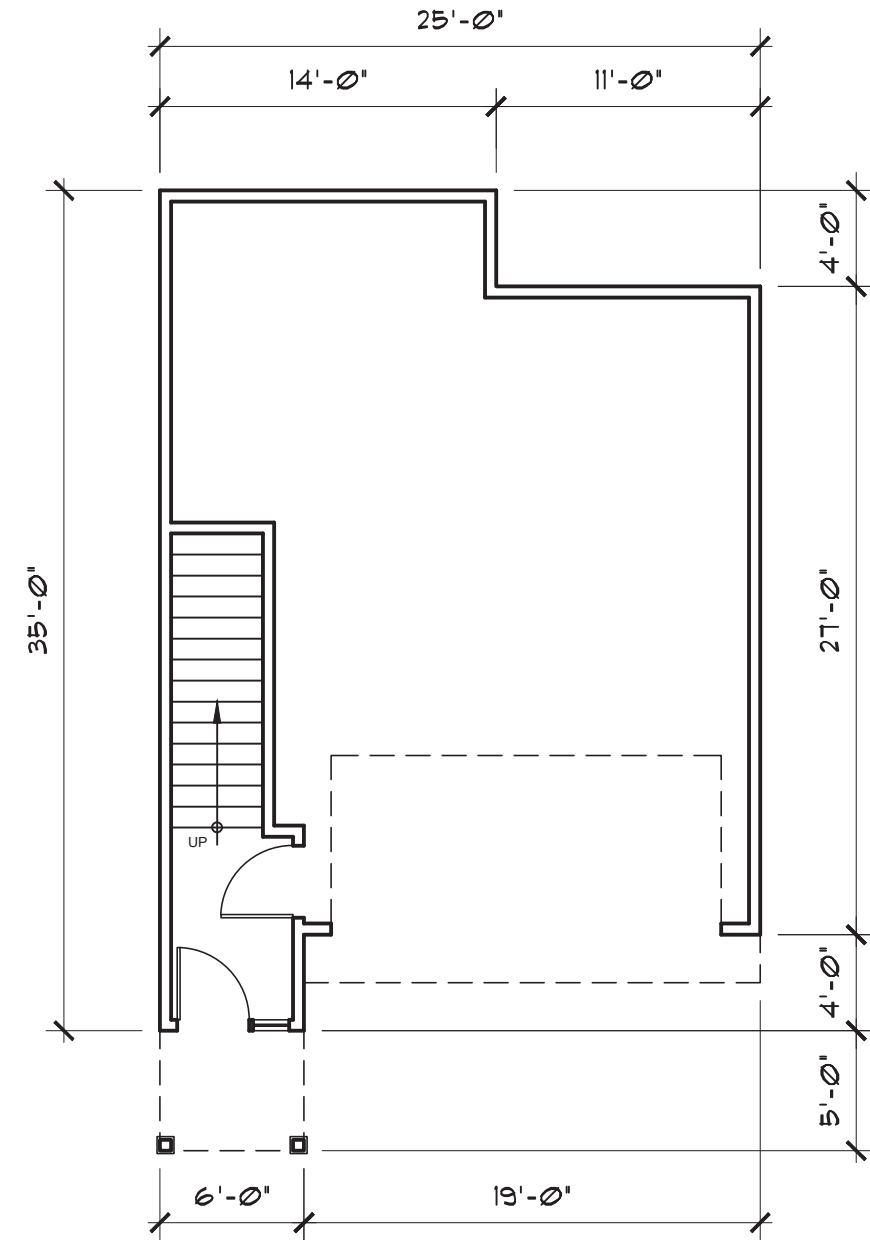
1/8" = 1'-0"



THIRD LEVEL FLOOR PLAN
716 Sq.Ft. 1/8" = 1'-0"



SECOND LEVEL FLOOR PLAN
766 Sq.Ft. 1/8" = 1'-0"



FIRST LEVEL FLOOR PLAN
781 Sq.Ft. (FOOTPRINT) 1/8" = 1'-0"



Memorandum

To: Vera Koliass, Associate Planner
Through: Kelly Brooks, Engineering Director
From: Dalton U. Vodden, Associate Engineer
RE: NR-2018-005 Engineering Comments
Date: March 25, 2019

Proposed natural resources cluster development at 12205 and 12225 SE 19th St.

The engineering department has been reviewing the application materials. A need for more information has been found. A significant revision will also be required to private drives 1 & 2 before approval of this application can be recommended.

Revision Required:

- The proposed development must be revised to meet requirements of Milwaukie Municipal Code 19.400. Policy number 3 of Chapter 3 Objective 1 of subsection 1.6, which requires streets to be at a minimum of 1.0 foot above the 100-year flood elevation. Portions of Private Drive 1 and the entirety of Private Drive 2 are below the 100-year flood elevation. Private Drive 1 and Private Drive 2 are proposed to serve as private streets open to public travel, providing public and emergency service access to the development. Plans indicate nine of twelve residences on this site are served by this network at elevations below the 100-year flood elevation. This must be revised prior to a recommendation for approval.

Response: See Michael Robinson letter dated April 29, 2019.

Missing Information:

- The applicant has identified the ordinary high water and the 100-year flood elevations on site plans. The applicant has not identified the designated regulatory floodway that exists on site. The floodway must be mapped on the grading and site plan for full review.

Response: The floodway has been identified based on the Flood Insurance Rate Map Number 41005C0017D.

- The applicant proposes a dock and walkway in the floodway. A more detailed

description of what is proposed is required, specifically related to the volume that will be introduced to the floodway, is needed for full review.

Response: The dock is intended to be a floating dock and would no impact on the floodway. The dock will be anchored with several round piles but would have no impact on the floodway.

- A remodeling of existing structures on site has been proposed. Details were not provided to determine the extent of remodel. The cost of improvements and the market value of each structure is needed for full review.

Response: The house remodels are minimal and only cosmetic in nature. The south house basement is above the floodplain the other improvements do meet the cost threshold to require FEMA upgrades to the northern home.

- Water quality planters or drywells were noted for each new home on the grading and site plan. Their proposed locations are necessary for full review.

Response: Drywells will be sized according to the published City of Milwaukie Drywells Requirments document. The planters will be designed using the City of Portland PAC calculator. The planter's will be placed between the proposed buildings. The average impervious surface for one of the buildings is approximately 2000-square feet. The PAC calculator indicates 150 square foot planter with 18" of growing medium is adequate for each. The planters and drywell locations have been shown on the site plan. Planter details

- Significant street slopes are proposed up hill of drive-down garages. Drive-down garages for buildings number 2, 3, and 4 are directly below the steepest street slope. Please provide more driveway drainage details for a full review.

Response: The preliminary grading was intended to show the road grading only. Detailed grading for the individual homes and driveways will be included in the construction documents and /or the individual building permits. Our intent is to provide gently slopes driveways and minimize flood plain disturbance.

- The proposed earthwork is to yield a 17 cubic yard cut for the site. Please provide more description of disturbance and general locations of cut with approximate volumes for a full review.

Response: The earthwork numbers are based on the roadway grading within the floodplain. The roadway cut/fill within the floodplain was calculated by overlaying the finish grade roadway over the existing grade surface in Autocad Civil 3d and calculating the net change.

The additional information and revision listed above is required for further review of the application.

Job No.: MSC-221
Date: April 26, 2019
To: Vera Koliass, AICP
City of Milwaukee
From: Ken Valentine, PE



Project/Subject: Elk Rock Estates – Floodplain Impacts

Vera,

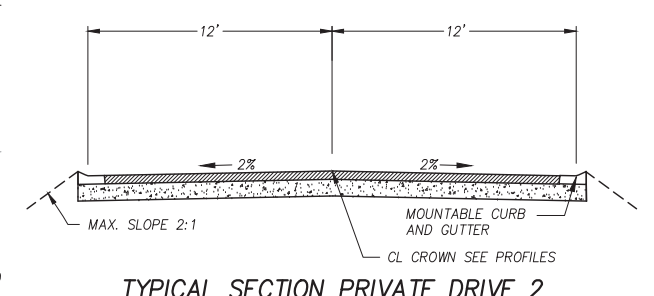
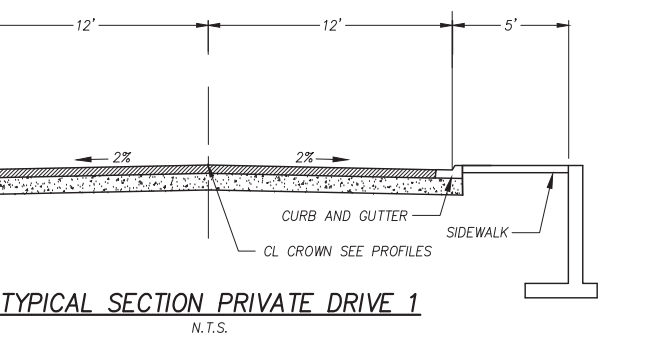
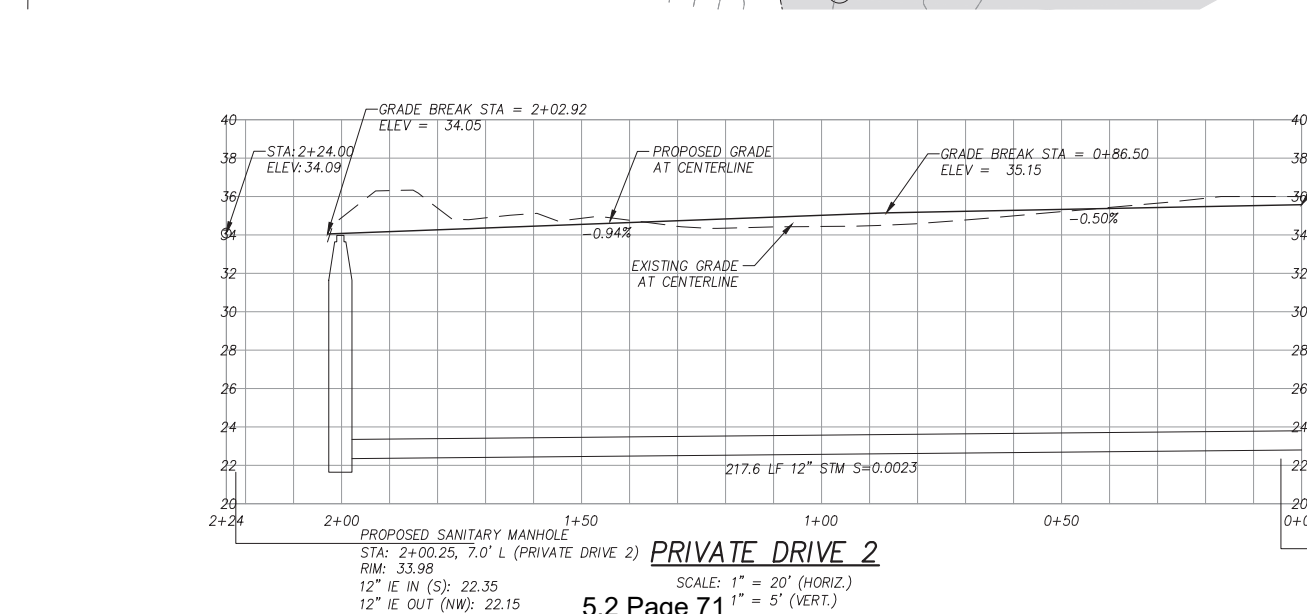
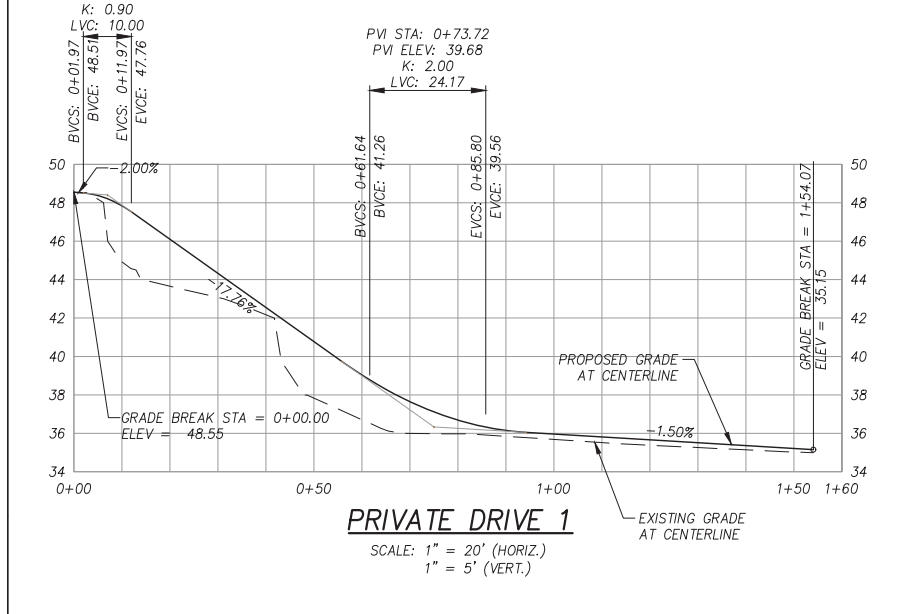
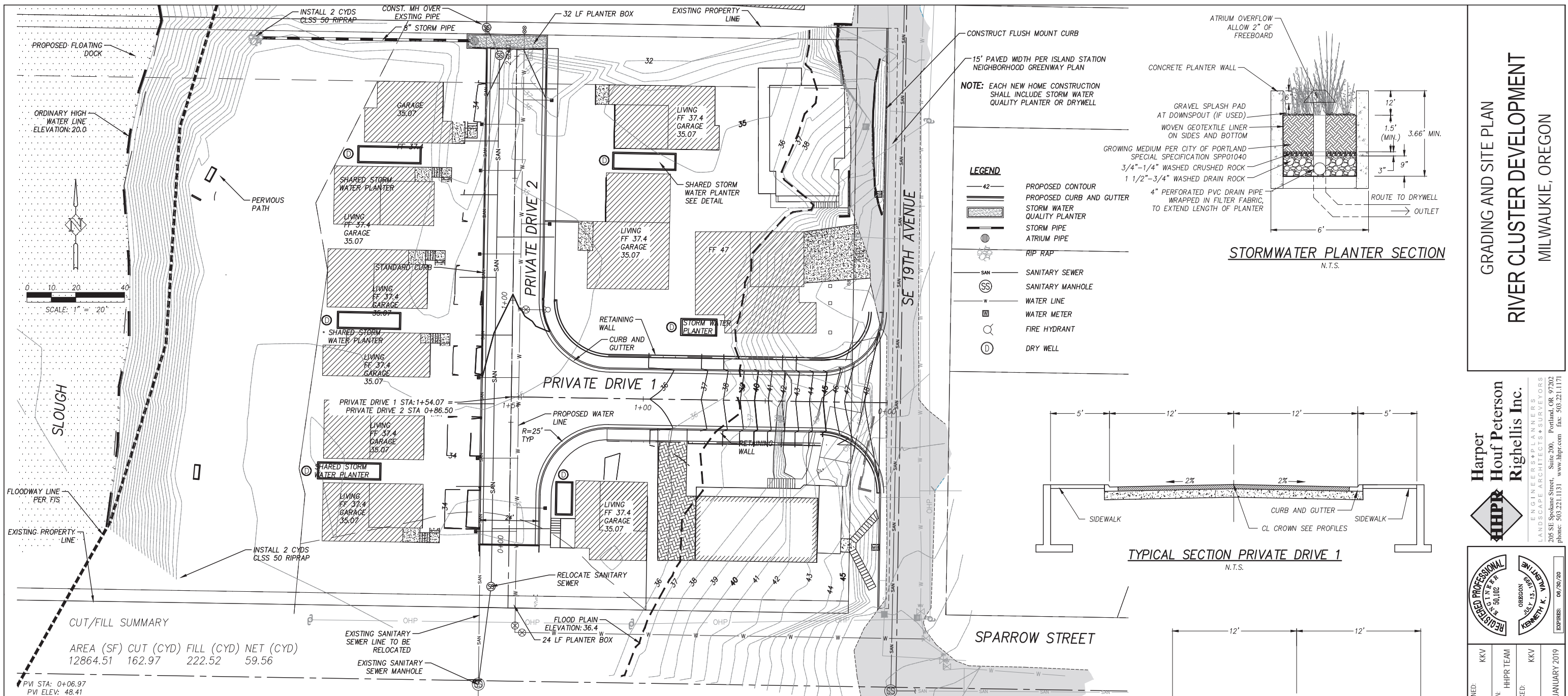
During our meeting on Thursday the question came up regarding the new building foundation impacts to the floodplain. I want to address that issue and how the project intends to deal with it. Generally the main issue with development in the floodplain is adding fill and thereby reducing the flood capacity of the site. Our goal in this project is to balance the cut and fill and to have no impact on the water surface elevation during the 100-year flood event. The proposed homes will play a key role in how the floodplain is managed on the site.

The typical process for a residential foundation is to excavate out a minimum of 18-inches for the entire lower floor and construct a stem wall foundation. The building code requires that the stem wall be constructed 18-inches below the finish/existing grade for frost heave. The entire area within the foundation walls is excavated and remains at the excavated grade. The typical first floor area for the proposed residences is approximately 800 square feet. If you multiply the area by the 18-inches of dig-out we get approximately 1,200 cubic feet of cut or 44 cubic yards per building. The foundation will also be designed to allow flood waters to flow through the foundation during peak events. So the foundations will not wall off flood waters creating a fill situation. Therefore, we anticipate that, on average, each new structure will provide about 40 cubic yards of cut within the floodplain. Some structures will provide more cut and some will provide less cut, but each structure will provide a net cut. Those cuts will be offset by fill somewhere else on the site to achieve the desired balanced cut/fill ratio.

Sincerely,

Ken Valentine
Ken Valentine, PE

205 SE Spokane Street
Suite 200
Portland, OR 97202
PHONE 503.221.1131
FAX 503.221.1171
www.hhpr.com



- LEGEND**
- 42 — PROPOSED CONTOUR
 - — PROPOSED CURB AND GUTTER
 - — STORM WATER QUALITY PLANTER
 - — STORM PIPE
 - — ATRIUM PIPE
 - — RIP RAP
 - — SANITARY SEWER
 - — SANITARY MANHOLE
 - — WATER LINE
 - — WATER METER
 - — FIRE HYDRANT
 - — DRY WELL

CONSTRUCT FLUSH MOUNT CURB

15' PAVED WIDTH PER ISLAND STATION NEIGHBORHOOD GREENWAY PLAN

NOTE: EACH NEW HOME CONSTRUCTION SHALL INCLUDE STORM WATER QUALITY PLANTER OR DRYWELL

CONCRETE PLANTER WALL

GRVEL SPLASH PAD AT DOWNSPOUT (IF USED)

WOVEN GEOTEXTILE LINER ON SIDES AND BOTTOM

GROWING MEDIUM PER CITY OF PORTLAND SPECIAL SPECIFICATION SPP01040

3/4"-1/4" WASHED CRUSHED ROCK

1 1/2"-3/4" WASHED DRAIN ROCK

4" PERFORATED PVC DRAIN PIPE WRAPPED IN FILTER FABRIC, TO EXTEND LENGTH OF PLANTER

ROUTE TO DRYWELL

OUTLET

GRADING AND SITE PLAN
RIVER CLUSTER DEVELOPMENT
MILWAUKIE, OREGON

Harper Houf Peterson
Righellis Inc.

REGISTERED PROFESSIONAL ENGINEER & ARCHITECT
LANDSCAPE ARCHITECTS & SURVEYORS

200 SE Spokane Street, Suite 200, Portland, OR 97202
phone: 503.221.1131 www.hhp.com fax: 503.221.1171

REGISTERED PROFESSIONAL ENGINEER & ARCHITECT
LANDSCAPE ARCHITECTS & SURVEYORS

OREGON
JULY 15, 2012
KENNETH K.

EXPIRES: 06/30/20

DESIGNED:	KKV							
DRAWN:	HHPR TEAM							
CHECKED:	KKV							
DATE:	JANUARY 2019							
APRIL 2019	1 REVISED GRADING							
DATE	NO.	DESCRIPTION						
R	E	V	I	S	I	O	N	S
SHEET NO. 1								
JOB NO. MSC-221								

MITIGATION PROPOSAL AND ALTERNATIVE ANALYSIS

MITIGATION PROPOSAL:

19.402.1.B. General Standards for Required Mitigation

Where mitigation is required by Section 19.402 for disturbance to WQRs and/or HCAs, the following general standards shall apply:

1. Disturbance
 - a. 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.

Response: Within the development area, (everything east of the Top-of-Bank), we are counting everything as either a “permanent disturbance” or as a mitigation area. The plan does not show any temporary disturbances as discussed below.

- b. 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.

Response: For the purposes of computing the disturbed area we included a 10' buffer on the west side of the buildings. It is anticipated that residents and their activities will create a permanent disturbance near the buildings. Vegetation in these areas will also need to be maintained for fire control, and so this 10' buffer is included as permanently disturbed and to be mitigated for by this plan. Landscape plants may or may not be planted and maintained in this area.

The 10' buffer is commonly considered a temporary disturbance in many plans, however we felt it was more appropriate to consider it a permanent disturbance.

2. 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..

Response: The 2011 Portland Plant List was used per the instructions found on Milwaukie's website.

3. Plant Size

Replacement trees shall average at least a 1/2-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. Shrubs shall be at least 1-gallon size and 12 in high.

Response: Landscape plans will include this instruction.

4. 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.

Response: Landscape plans will include this instruction.

5. 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.

Response: Landscape plans will include this instruction.

6. Location of Mitigation Area

a. 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.

Response: The site includes approximately 13,185 SQFT of HCA area between the permanently disturbed areas and the Top-of-Bank of the slough that will be part of the mitigation area. Additionally we estimate there is up to 41,935 SQFT

of area on the island west of the slough. The area has not been surveyed.

The permanently disturbed area will be mitigated as follows:

- 29,062 SQFT permanent disturbed HCA area
- 13,185 SQFT mitigation area between the buildings and Top of Bank.
- 15,877 SQFT mitigation area needed on the island.

b. Off-Site Mitigation

- (1) For disturbances allowed within WQRs, off-site mitigation shall not be used to meet the mitigation requirements of Section 19.402.
- (2) 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.

Response: No off-site mitigation should be required to meet requirements. However the undeveloped SE Sparrow between the site and the park has been mentioned as a possible mitigation area, and actually is a better place for a mitigation for several reasons.

7. 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.

Response: The HCA areas are currently vegetated with a high percentage of invasive plants, the dominant vegetation is Blackberry, Plantain, and Japanese knotweed. These will be removed except for the steep bank area which will be left alone to avoid erosion issues.

8. 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.

Response: A native grass seed mix will be used in some areas between the buildings and slough. Grasses in this area will need to be mowed periodically for fire control as they will be trafficked by tobacco using humans and close enough to buildings that fire prevention is an over-riding priority. A native wildflower seed is specified for the island areas used for mitigation.

The following standards are required and included here in this mitigation plan:

19.402.1.B. 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.

a. Required Practices

To enhance survival of the mitigation plantings, the following practices are required:

- (1) Mulch new plantings to a minimum of 3-in depth and 18-in diameter to retain moisture and discourage weed growth.
- (2) Remove or control nonnative or noxious vegetation throughout the maintenance period.

b. Recommended Practices

To enhance survival of tree replacement and vegetation plantings, the following practices are recommended:

- (1) Plant bare root trees between December 1 and April 15; plant potted plants between October 15 and April 30.
- (2) Use plant sleeves or fencing to protect trees and shrubs against wildlife browsing and the resulting damage to plants.
- (3) Water new plantings at a rate of 1 in per week between June 15 and October 15 for the first 2 years following planting.

c. 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 landscape 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.

10. 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.

C. Mitigation Requirements for Disturbance within WQRs

1. The requirements for mitigation vary depending on the existing condition of the WQR on the project site at the time of application. The existing condition of the WQR shall be assessed in accordance with the categories established in Table 19.402.11.C.

REVISIONS	
MILWAUKIE RIVERFRONT CUSTOM HOMES GILLIS PROPERTIES LLC 5965 WEST A STREET WEST LINN, OR 97068	
MITIGATION PLAN AND ALTERNATIVES ANALYSIS FOR HCA AND WQR IMPACTS PER TITLE 19, MILWAUKIE MUNICIPAL CODE	
environmental technology consultants	
PO Box 821185 Vancouver, WA 98682 360-696-4403	
DATE	Apr 30, 2019
SCALE	NOTED
DRAWN	JHM
JOB	94-02
SHEET	M1

2. When disturbance within a WQR is approved according to the standards of Section 19.402, the disturbance shall be mitigated according to the requirements outlined in Table 19.402.II.C and the standards established in Subsection 19.402.II.B.

Subsection 19.402.II.D.2 Mitigation Requirements for Disturbance in HCAs

To achieve the goal of reestablishing forested canopy that meets the ecological values and functions described in Subsection 19.402.I, when development intrudes into an HCA, tree replacement and vegetation planting are required according to the following standards, unless the planting is also subject to wetlands mitigation requirements imposed by state and federal law.

These mitigation options apply to tree removal and/or site disturbance in conjunction with development activities that are otherwise permitted by Section 19.402. They do not apply to situations in which tree removal is exempt per Subsection 19.402.4 or approvable through Type I review.

An applicant shall meet the requirement of Mitigation Option 1 or 2, whichever results in more tree plantings; except that where the disturbance area is 1 acre or more, the applicant shall comply with Mitigation Option 2.

a. 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.II.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.

INSERT Table 19.402.II.D.2.a HERE

Response: The proposed development removes no trees. There currently are few trees on the lot, and the existing trees are on the margins, or along the Slough, or on the island, and these areas are not impacted. The project will therefore use 19.402.II.D.2.b to compute the number of mitigation trees and shrubs required.

b. 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. This is calculated by dividing the number of square feet of disturbance area by 500, multiplying that result times 5 trees and 25 shrubs, and rounding all fractions to the nearest whole number of trees and shrubs. For example, if there will be 330 sq ft of disturbance area, then 330 divided by 500 equals 0.66, and 0.66 times 5 equals 3.3, so 3 trees must be planted, and 0.66 times 25 equals 16.5, so 17 shrubs must be planted. 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.

Response: The disturbed HCA area including a 10' offset from the buildings is 29,062 SQFT

29,062 / 500 X 5 Trees = 291 Trees
 29,062 / 500 X 25 Shrubs = 1,453 Shrubs

c. Adjustments to HCA Mitigation Requirements

Proposals to vary the number or size of trees and shrubs required as mitigation in Subsection 19.402.II.D.2 shall be subject to the Type II review process and the requirements of Subsection 19.402.II.C.2.

Response: No variance from subsection 19.402.II.D.2 is requested.

19.402.I2 General Discretionary Review

B. A mitigation plan for the designated natural resource that contains the following information:

a. A description of adverse impacts that will be caused as a result of development.

Response: The primary resource is the Willamette River. The proposed development will build roads, sidewalks and condominiums on approximately 21,907 SQFT of the HCA area. In order to minimize impacts the development is located as far away from the primary resource as possible, in a part of property that has been historically used for farming and then more recently as an equipment storage area and residential area.

b. An explanation of measures that will be taken to avoid, minimize, and/or mitigate adverse impacts to the designated natural resource; in accordance with, but not limited to, Table 19.402.II.C for WQRs and Subsection 19.402.II.D.2 for HCAs.

c. Sufficient description to demonstrate how the following standards will be achieved:

(1) Where existing vegetation has been removed, the site shall be revegetated as soon as practicable.

Response: The area identified as the "Mainland Mitigation Area" in the accompanying figures is presently almost entirely populated by plant species identified as invasive or non-native by the City of Milwaukie. The soils are also

largely fill material and a hard gritty compacted clay mix that is generally poorly suited for growing the type of plants detailed in the mitigation plan. We anticipate the entire area will need to be plowed up and a substantial amount of mulch and compost material be mixed in to prepare the soils. This will of course remove the existing vegetation. The area will need to be covered immediately seeded and covered with hay, and then trees and shrubs installed per section 19.402.I.B.9

(2) 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.

Response: Street lighting will not be installed in the mitigation area, and residents will not be allowed to install lights that shine toward the river.

(3) Areas of standing trees, shrubs, and natural vegetation will remain connected or contiguous; particularly along natural drainage courses, except where mitigation is approved; so as to provide a transition between the proposed development and the designated natural resource and to provide opportunity for food, water, and cover for animals located within the WQR.

Response: As described by the HCA Determination Report, the "Mainland" mitigation area is currently devoid of trees and shrubs except for blackberries and other invasive species. It is also flat, and without drainages.

d. A map showing where the specific mitigation activities will occur. Off-site mitigation related to WQRs shall not be used to meet the mitigation requirements of Section 19.402.

Response: Maps are included.

e. An implementation schedule; including a timeline for construction, mitigation, mitigation maintenance, monitoring, and reporting; as well as a contingency plan. All in-stream work in fish-bearing streams shall be done in accordance with the allowable windows for in-water work as designated by ODFW.

Response: Except for the construction of a small floating dock, there will be no in-water work as part of this project. The dock is not permitted as part of this first submittal, an application for the dock will be made at a later date.

19.402.I2.B. Approval Criteria

1. Unless specified elsewhere in Section 19.402, applications subject to the discretionary review process shall demonstrate how the proposed activity complies with the following criteria:

a. Avoid

The proposed activity avoids the intrusion of development into the WQR and/or HCA to the extent practicable. The proposed activity shall have less detrimental impact to the designated natural resource than other practicable alternatives, including significantly different practicable alternatives that propose less development within the resource area.

b. Minimize

If the applicant demonstrates that there is no practicable alternative that will avoid disturbance of the designated natural resource, then the proposed activity within the resource area shall minimize detrimental impacts to the extent practicable.

(1) The proposed activity shall minimize detrimental impacts to ecological functions and loss of habitat, consistent with uses allowed by right under the base zone, to the extent practicable.

(2) To the extent practicable within the designated natural resource, the proposed activity shall be designed, located, and constructed to:

(a) Minimize grading, removal of native vegetation, and disturbance and removal of native soils; by using the approaches described in Subsection 19.402.II.A, reducing building footprints, and using minimal excavation foundation systems (e.g., pier, post, or piling foundation).

(b) Minimize adverse hydrological impacts on water resources.

(c) Minimize impacts on wildlife corridors and fish passage.

(d) Allow for use of other techniques to further minimize the impacts of development in the resource area; such as using native plants throughout the site (not just in the resource area), locating other required landscaping adjacent to the resource area, reducing light spill-off into the resource area from development, preserving and maintaining existing trees and tree canopy coverage, and/or planting trees where appropriate to maximize future tree canopy coverage.

Response: The above criteria are included in this mitigation proposal.

[Continued Next Page].

REVISIONS	
MILWAUKIE RIVERFRONT CUSTOM HOMES GILLIS PROPERTIES LLC 5965 WEST A STREET WEST LINN, OR 97068	
MITIGATION PLAN AND ALTERNATIVES ANALYSIS FOR HCA AND WQR IMPACTS PER TITLE 19, MILWAUKIE MUNICIPAL CODE	
environmental technology consultants	
PO Box 821185 Vancouver, WA 98682 360-696-4403	
DATE	Apr 30, 2019
SCALE	NOTED
DRAWN	JHM
JOB	94-02
SHEET	M2

19.402.12.B. Approval Criteria

20. Unless specified elsewhere in Section 19.402, applications subject to the discretionary review process shall demonstrate how the proposed activity complies with the following criteria:

a. Avoid

The proposed activity avoids the intrusion of development into the WQR and/or HCA to the extent practicable. The proposed activity shall have less detrimental impact to the designated natural resource than other practicable alternatives, including significantly different practicable alternatives that propose less development within the resource area.

b. Minimize

If the applicant demonstrates that there is no practicable alternative that will avoid disturbance of the designated natural resource, then the proposed activity within the resource area shall minimize detrimental impacts to the extent practicable.

(1) The proposed activity shall minimize detrimental impacts to ecological functions and loss of habitat, consistent with uses allowed by right under the base zone, to the extent practicable.

(2) To the extent practicable within the designated natural resource, the proposed activity shall be designed, located, and constructed to:

(a) Minimize grading, removal of native vegetation, and disturbance and removal of native soils; by using the approaches described in Subsection 19.402.11.A, reducing building footprints, and using minimal excavation foundation systems (e.g., pier, post, or piling foundation).

(b) Minimize adverse hydrological impacts on water resources.

(c) Minimize impacts on wildlife corridors and fish passage.

(d) Allow for use of other techniques to further minimize the impacts of development in the resource area; such as using native plants throughout the site (not just in the resource area), locating other required landscaping adjacent to the resource area, reducing light spill-off into the resource area from development, preserving and maintaining existing trees and tree canopy coverage, and/or planting trees where appropriate to maximize future tree canopy coverage.

Response: The above criteria are included in this mitigation proposal.

c. Mitigate

If the applicant demonstrates that there is no practicable alternative that will avoid disturbance of the designated natural resource, then the proposed activity shall mitigate for adverse impacts to the resource area. All proposed mitigation plans shall meet the following standards:

Response: As shown in the Alternative's Analysis section, it is not possible to develop the site at densities allowed by the R-5 zoning without impacting the WQR and HCA areas.

(1) The mitigation plan shall demonstrate that it compensates for detrimental impacts to the ecological functions of resource areas, after taking into consideration the applicant's efforts to minimize such detrimental impacts.

Response: As shown in the Alternatives Analysis section, the proposed project minimizes impacts by reducing the development size and locating it as far as possible from the resources. The proposed mitigation plan is compliant with the guidelines listed in Title 19, and therefore assumed to be compensation for the detrimental impacts.

(2) Mitigation shall occur on the site of the disturbance, to the extent practicable. Off-site mitigation for disturbance of WQRs shall not be approved. Off-site mitigation for disturbance of HCAs shall be approved if the applicant has demonstrated that it is not practicable to complete the mitigation on-site and if the applicant has documented that they can carry out and ensure the success of the off-site mitigation as outlined in Subsection 19.402.11.B.5.

In addition, if the off-site mitigation area is not within the same subwatershed (6th Field Hydrologic Unit Code) as the related disturbed HCA, the applicant shall demonstrate that it is not practicable to complete the mitigation within the same subwatershed and that, considering the purpose of the mitigation, the mitigation will provide more ecological functional value if implemented outside of the subwatershed.

Response: The proposed mitigation is entirely on-site.

(3) All revegetation plantings shall use native plants listed on the Milwaukie Native Plant List.

Response: The Portland Plant List was used instead of the Milwaukie Native Plant List as per the instructions found on Milwaukie's website.

(4) All in-stream work in fish-bearing streams shall be done in accordance with the allowable windows for in-water work as designated by ODFW.

Response: No in-stream work is proposed.

(5) A mitigation maintenance plan shall be included and shall be sufficient to ensure the success of the planting. Compliance with the plan shall be a condition of development approval.

Response: A monitoring and maintenance plan is attached as "Section M Appendix 1".

C. Limitations and Mitigation for Disturbance of HCAs

1. Discretionary Review to Approve Additional Disturbance within an HCA

An applicant seeking discretionary approval to disturb more of an HCA than is allowed by Subsection 19.402.11.D.1 shall submit an Impact Evaluation and Alternatives Analysis, as outlined in Subsection 19.402.12.A, and shall be subject to the approval criteria provided in Subsection 19.402.12.B.

Response: The disturbed HCA is less than allowed by Subsection 19.402.11.D.1

2. Discretionary Review to Approve Mitigation that Varies the Number and Size of Trees and Shrubs within an HCA

An applicant seeking discretionary approval to proportionally vary the number and size of trees and shrubs required to be planted under Subsection 19.402.11.D.2 (e.g., to plant fewer larger trees and shrubs or to plant more smaller trees and shrubs), but who will comply with all other applicable provisions of Subsection 19.402.11, shall be subject to the following process:

a. The applicant shall submit the following information:

(1) A calculation of the number and size of trees and shrubs the applicant would be required to plant under Subsection 19.402.11.D.2.

(2) The number and size of trees and shrubs that the applicant proposes to plant.

(3) An explanation of how the proposed number and size of trees and shrubs will achieve, at the end of the third year after initial planting, comparable or better mitigation results than would be achieved if the applicant complied with all of the requirements of Subsection 19.402.11.D.2. Such explanation shall be prepared and signed by a knowledgeable and qualified natural resource professional or a certified landscape architect. It shall include discussion of site preparation including soil additives, removal of invasive and noxious vegetation, plant diversity, plant spacing, and planting season; and immediate post-planting care, including mulching, irrigation, wildlife protection, and weed control.

(4) A mitigation, site-monitoring, and site-reporting plan.

b. Approval of the request shall be based on consideration of the following:

(1) Whether the proposed planting will achieve, at the end of the third year after initial planting, comparable or better mitigation results than would be achieved if the applicant complied with all of the requirements of Subsection 19.402.11.D.2.

(2) Whether the proposed mitigation adequately addresses the plant diversity, plant survival, and monitoring practices established in Subsection 19.402.11.B.

Response: A variance from this subsection is not requested.

ALTERNATIVE ANALYSIS:

Much of the responses in this section have been previously submitted in the applicants narrative contained in the document " Application for Type III Design Review, Revised February 25, 2019", prepared by Iselin Architects and Harper Houf Peterson Righellis, Inc. ETC has expanded on some of that narrative in this section.

19.402.1 Intent

5. Allow and encourage habitat-friendly development while minimizing the impact on water quality and fish and wildlife habitat functions.

Response: The selected alternative promotes minimized impacts to the HCA by combining a cluster development approach with reducing the number of units in the development and keeping the development as far from the river and wetlands as possible.

Development of this site to the density of the underlying zone without modification to the mapped Habitat Conservation Area (HCA) is not possible. Based on the density of the underlying zone 23-29 units are required. After all final calculations were done omitting areas within the WQR and other sensitive areas a range of 12-18 dwelling units is possible. The proposed development seeks approval for a total of twelve units.

A map amendment was initially sought utilizing the Cluster Development allowed by the Milwaukie Municipal Code (MMC) with this application. The City's environmental consultant has determined that all land within the 100 year flood plain must be included within the HCA; contradicting the evidence presented by the Applicant's consultant that the land to the east of the island area has been compromised historically and no longer qualifies as a habitat area requiring conservation.

[Continued Next Page]

REVISIONS	
MILWAUKIE RIVERFRONT CUSTOM HOMES GILLIS PROPERTIES LLC 5965 WEST A STREET WEST LINN, OR 97068	
MITIGATION PLAN AND ALTERNATIVES ANALYSIS FOR HCA AND WQR IMPACTS PER TITLE 19, MILWAUKIE MUNICIPAL CODE	
	
PO Box 821185 Vancouver, WA 98682 360-696-4403	
DATE	Apr 30, 2019
SCALE	NOTED
DRAWN	JHM
JOB	94-02
SHEET	M3

The primary resource is the Willamette River and its habitat are considered the most important to preserve and protect. There is a small functionally isolated wetland in the Sparrow Street Row on the South side, and also a ditch that historically probably drained the wetland area, but is now disconnected but still retains wetland characteristics. These wetland areas are secondary resources.

The selected design, (Figure M5), shows a cluster development of providing only 12 housing units that are located away from the primary and secondary resources as much as possible. A number of other designs were considered up to the maximum 32 dwelling units allowed for an R-5 residential development. These designs included constructing units on the island, built on stilts and accessed by a cable suspension bridge. Ultimately these larger development scenarios had to be abandoned due to resource and view impacts.

Two alternative designs, (Figures M7 and M8) are presented here, both providing more housing units, but creating greater impacts to the resource. M8 shows a 16 unit design similar to the selected 12 unit design. By reducing or eliminating the units on the North and South property lines the remaining units can be located further from the resources and property lines, also the Private Drive can be reduced on the South end, reducing the WQR impact from Wetland "A".

Minimizing the impact with the proposed development still dictates disruption of the mapped HCA area. Mitigation per the attached document is therefore proposed on this site as part of the Project. We believe this mitigation plan meets all requirements of the Milwaukie Municipal Code or can be in compliance with Conditions of Approval.

6. Permit residential cluster development to encourage creative and flexible site design that is sensitive to the land's natural features and adapts to the natural topography.

Response: The cluster development standards allow this project to comply with Goal 5 while providing 12 housing units.

A reduced side yard setback from 25' to 20' on the south side of the property. This is proposed to allow for a logical driveway placement and to allow for a reasonable building footprint below the existing home on this side of the site. The 20' proposed setback will also allow the proposed new home to align with the existing home which is set back 20' from south property line. We believe this requested variance also meets the intent of the Code to provide an increased perimeter buffer since this property line abuts a 40' wide unimproved right of way which will likely never be improved due to the identified wetland within the right of way. The property on the opposite side of this right of way will also remain open space since it is a public park.

19.402.14 Adjustments and Variances

To encourage applicants to avoid or minimize impacts to WQRs and/or HCAs, several types of adjustments and variances are available for use on any property that includes a WQR or HCA. These include adjustments to specific base zone and lot design standards, discretionary variances, and allowances for residential cluster development.

A. Adjustments

The adjustments provided in Subsection 19.402.14.A shall not be used to avoid the requirement to submit a construction management plan, if deemed applicable per Subsection 19.402.3. The following adjustments are allowed by right as part of any Type I, II, or III application:

1. Adjustments to Base Zone Standards

a. Yard Setback (General)

Yard setback standards may be adjusted by up to 10%. This allowance applies only to the yard requirements established in base zones and does not apply to additional yard requirements for conditional uses or community service uses, yard exceptions established in Subsection 19.501.2, or transition area measures established in Subsection 19.504.6.

Response: Criteria do not apply. No adjustments to the base zone standards are proposed.

2. Rear Yard Setback (Limited)

For residential development, if the subject property is adjacent to a separate tract that was established according to the standards of Subsection 19.402.13.J, and the tract is adjacent to the rear yard of the subject property, the minimum rear yard requirement may be reduced to 10 ft.

2. Adjustments to Lot Design Standards

When property boundaries are changed and/or land divided per Title 17 Land Division, an applicant may utilize the following adjustments to avoid or minimize impacts to a WQR or HCA:

- a. The minimum base zone standards for lot width and lot depth may be reduced by up to 10%.
- b. The minimum lot frontage required on a public street may be reduced by up to 10%.

Response: Criteria do not apply. No adjustments to the lot design standards are proposed

B. Variances

1. Requests to vary any standards beyond the adjustments allowed in Subsections 19.402.14.A or B shall be subject to the review process and approval criteria for variances established in Section 19.911.

2. In granting any variance request related to Section 19.402, the Planning Commission may impose such conditions as are deemed necessary to minimize adverse impacts that may result from granting the variance. Examples of such conditions include, but are not limited to, maintaining a minimum width of the vegetated corridor alongside a primary protected water feature and limiting the amount of WQR for which the adjacent vegetated corridor width can be reduced.

Response: No variances to standards of Subsections 19.402.14.A or B.

C. Residential Cluster Development

For residential proposals, development may be clustered so that land can be developed at allowed densities while avoiding or minimizing impacts to WQRs or HCAs. The intent of this section is to encourage creative and flexible site design that enables the allowable density to be transferred elsewhere on a site to protect environmentally sensitive areas and preserve open space and natural features. A residential cluster development may be permitted in any residential or mixed use zoning district, subject to Type III review and approval by the Planning Commission. A cluster development proposal may be considered in conjunction with a proposal for land division or property line adjustment as provided in Subsection 19.402.13.

Response: A residential cluster development is being proposed to minimize impacts to the WQR and HCA.

1. Calculation of Permitted Number of Dwelling Units

a. The maximum number of dwelling units proposed for a residential cluster development shall not exceed the number of dwelling units otherwise permitted for the residential zoning district in which the parcel is located. The number of units allowed on a parent lot may be transferred to one or more newly created lots or parcels on the site. The cumulative density for all lots or parcels shall not exceed the density allowed for the parent lot.

Response: The density allowed for the gross property area would be 25-32 dwelling units based on the ratio of 7-8.7 dwelling units per the base R-5 zone. The proposed density of 12 dwellings is 3.28 dwellings per gross acre.

b. The number of permitted dwelling units on a site shall be calculated in the following manner:

(1) Measure the gross area of the proposed cluster development site in acres and tenths of an acre.

Response: Gross site area is 3.66 acres per assessor's records.

(2) From the gross area, subtract the area of public streets, other publicly dedicated improvements, and common open space (whether or not it is conveyed pursuant to Subsection 19.402.14.C.2.c), measured in acres and tenths of an acre. The remainder shall be the net buildable area.

Response: Common area consisting of HCA/ WQR and area to the west of the slough is 1.58 acres, leaving 2.08 acres of net buildable area.

(3) Convert the net buildable area from acres to square feet, using the equivalency of 43,560 sq ft = 1 acre.

Response: Net buildable area is 90,605 sq. ft.

(4) Divide the net buildable area by the smallest minimum lot size (in square feet) per unit for a dwelling unit permitted in the zoning district. This figure shall be rounded to the nearest lower number to establish the maximum number of dwelling units permitted in the cluster development.

Response: 90,605 / 5000 = 18.12 dwelling units maximum. 12 units are proposed.

2. Development Standards

a. All principal and accessory uses authorized in the underlying zoning district(s) shall be allowed in the cluster development. In addition, single-family attached dwellings, multifamily dwellings, and townhouses may be permitted for a cluster development located in a residential zoning district that does not otherwise allow attached dwelling units.

Response: Single family detached homes are proposed as allowed in the underlying R-5 zone.

b. Maximum lot coverage, building height, and off-street parking requirements for the applicable zoning district shall apply to the cluster development. Maximum lot coverage, floor area ratios, and off-street parking requirements shall be applied to the entire site rather than to any individual lot.

[Continued Next Page]

REVISIONS	
MILWAUKIE RIVERFRONT CUSTOM HOMES GILLIS PROPERTIES LLC 5965 WEST A STREET WEST LINN, OR 97068	
MITIGATION PLAN AND ALTERNATIVES ANALYSIS FOR HCA AND WQR IMPACTS PER TITLE 19, MILWAUKIE MUNICIPAL CODE	
environmental technology consultants	PO Box 821185 Vancouver, WA 98682 360-696-4403
DATE	Apr 30, 2019
SCALE	NOTED
DRAWN	JHM
JOB	94-02
SHEET	M4.1

Response: The maximum lot coverage and off street parking for the R-5 zone will be met with the proposed development. The height limit for the home on SE 19th will comply with the underlying zone. All other new homes proposed meet the more restrictive 35' requirement of the Willamette Greenway overlay.

- c. The following provisions shall apply to any residential cluster development, regardless of the general requirements of the applicable residential zoning district:
 - (1) The adjustments allowed by Subsection 19.402.14.A shall be available for cluster development proposals.

Response: No adjustments are being requested per Subsection 19.402.14.A.

- (2) Minimum lot width and lot depth standards shall not apply.

Response: No subdivision is proposed. The overall site exceeds the lot width and depth of the underlying zone.

- (3) A minimum separation of 10 ft shall be provided between all principal buildings and structures.

Response: A minimum of 10' separation is proposed between all buildings on the site.

- (4) A minimum yard or common open space shall be provided, with a minimum depth of 25 ft, as measured from all public streets and from the side and rear lot lines of the entire cluster development.

Response: A minimum 25' yard is proposed from the front, rear and north side yards. A variance is being sought to allow a minimum side setback to the south. This is being sought to match the existing home and since the unimproved right of way along this frontage will likely remain undeveloped due to the wetland area within it. This unimproved 60' right of way provides a buffer that meets the intent of this criteria.

- (5) Each lot shall provide at least 12 ft of frontage on a public street.

Response: The consolidated lot will have 240' of frontage on SE 19th St. Criteria is met.

- (6) More than 1 principal building or structure may be placed on a lot.

Response: Twelve detached single family homes are proposed on a common building site with this application.

- (7) No less than 25% of the site shall be conveyed as common open space.

Response: 1.58 acres (43% of gross site area) is proposed to be conveyed as common open space. The instrument of this conveyance will be as acceptable to the City.

- (8) No less than 50% of the designated natural resources on the site shall be included in calculating the common open space.

Response: 94% of the designated natural resource area on the site is being calculated as common open space. The 4,094 sq. ft. created by the delineated wetland to the south side of the property is not proposed as common open space.

3. Site Plan Requirements

The preliminary and final site plans for a residential cluster development shall include the following information, in addition to the items listed on the City's Site Plan Requirements:

- a. The maximum number and type of dwelling units proposed.
- b. The areas of the site on which the dwelling units are to be constructed or are currently located and their size. This may take the form of the footprint of the dwelling unit or a building envelope showing the general area in which the dwelling unit is to be located.
- c. The calculations for the permitted number of dwelling units, derived pursuant to Subsection 19.402.14.C.2.
- d. The areas of the site on which other principal and accessory uses are proposed to be located and their size.
- e. The areas of the site designated for common open space and their size.

Response: Information from this subsection has been included on the Site Plan.

4. Approval Criteria

- a. Proposals for residential cluster development shall demonstrate compliance with the following criteria:
 - (1) The site plan satisfies the requirements of Subsections 19.402.14.C.1 and 2.

Response: The proposed Site Plan satisfies the requirement of Subsections 19.402.14.C.1 and .2.

- (2) Buildings and structures are adequately grouped so that at least 25% of the total area of the site is set aside as common open space. To the greatest degree practicable, common open space shall be designated as a single tract and not divided into unconnected small parcels located in various parts of the development. Common open space shall be conveyed as allowed by Subsection 19.402.13.J.

Response: A single common space tract is proposed with instrument of conveyance acceptable to the City, ie. Deed restriction, public ownership, common tract or easement.

- (3) Individual lots, buildings, structures, streets, and parking areas are situated to minimize the alteration of natural features, natural vegetation, and topography.

Response: Buildings are proposed to be clustered to minimize impact and alteration of natural features and topography.

- (4) Impacts to WQRs and HCAs are avoided or minimized to the greatest degree practicable.

Response: The proposed cluster development is consistent with the purpose of Subsection 19.402.1. as explained above in that section.

- (5) The cluster development advances the purposes established in Subsection 19.402.1.
 - b. The Planning Commission may apply such conditions or stipulations to its approval as may be required to maintain harmony with neighboring uses and promote the objectives and purposes of the Comprehensive Plan and the Zoning and Land Division Ordinances.
 - c. If the Planning Commission finds that the criteria in Subsection 19.402.14.C.4.a are met, it shall approve the residential cluster development, subject to any conditions established pursuant to Subsection 19.402.14.C.4.b.

Maps and Tables following this page

- M5 Proposed development plan with HCA, WQR, and Wetlands shown
- M6 HCA mapping per City of Milwaukie
- M7 Rejected Alternative #2
- M8 Rejected Alternative #3
- M9 Recommended Mitigation Plant List

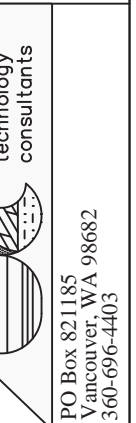
L1 This is a sheet prepared by Darrell Mulch. It describes the plants to be installed in the “Mainland” mitigation area.

Appendix 1 - Mitigation Monitoring and Maintenance Plan

REVISIONS	

MILWAUKIE RIVERFRONT CUSTOM HOMES
GILLIS PROPERTIES LLC
5965 WEST A STREET
WEST LINN, OR 97068

MITIGATION PLAN AND ALTERNATIVES ANALYSIS FOR HCA AND WQR IMPACTS PER TITLE 19, MILWAUKIE MUNICIPAL CODE



environmental technology consultants
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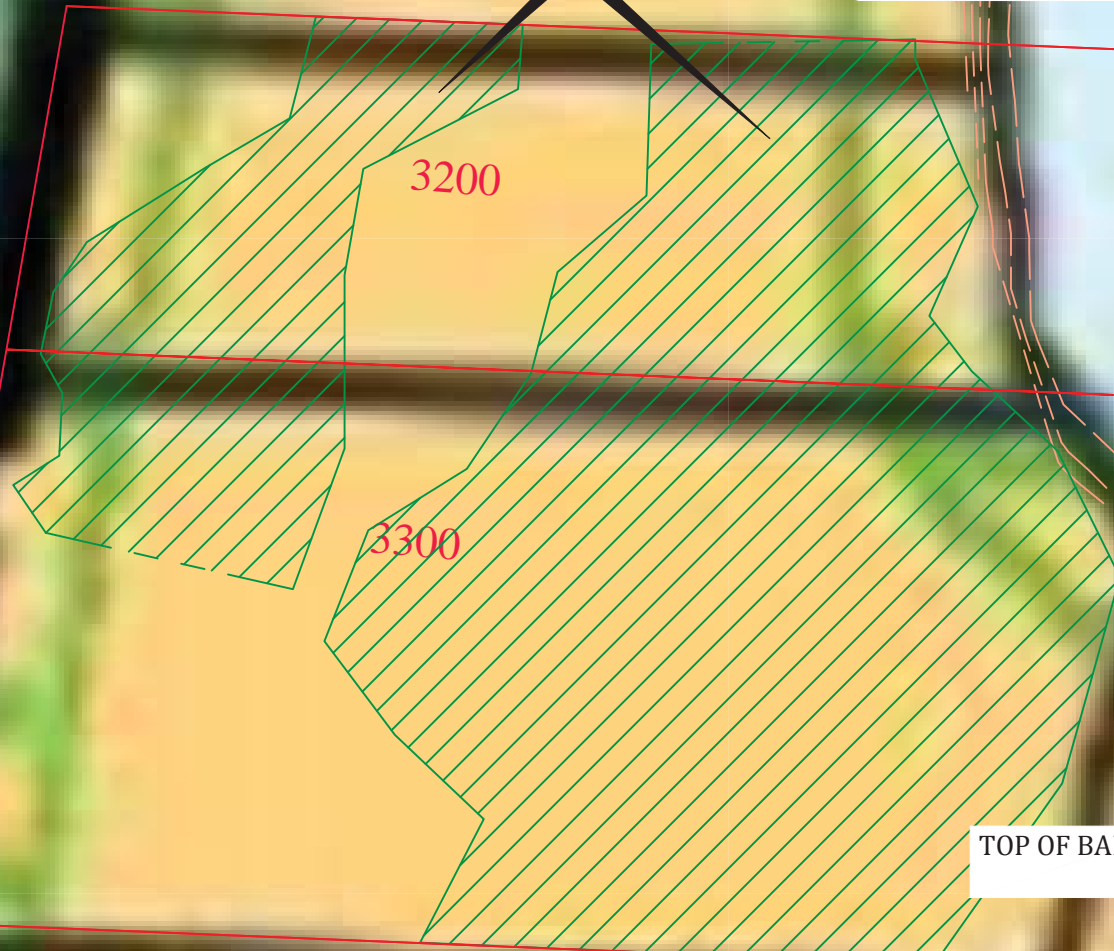
DATE	Apr 30, 2019
SCALE	NOTED
DRAWN	JHM
JOB	94-02
SHEET	M4.2



SUBJECT PROPERTY

ISLAND MITIGATION AREA

MAXIMUM AREAS ON ISLAND THAT MAY BE SUITABLE FOR HCA MITIGATION, AS ESTIMATED FROM AN AERIAL PHOTO. A SURVEY OF THESE AREAS IS NEEDED TO DETERMINE SUITABILITY. 41,935 SQFT. ONLY NON WETLAND AREAS ABOVE OHWM CAN BE USED FOR HCA MITIGATION.



HCA AND WQR PERMANENT IMPACTS 29,062 SQFT.

INCLUDES A 10' OFFSET FROM BUILDING FOOTPRINTS. HCA IMPACTS ENTIRELY OVERLAP WQR IMPACTS, AND SO THEY ARE COMBINED. 29,062 SQFT

MAINLAND MITIGATION AREA

HCA MITIGATION AREA TO BE MAINTAIN AS GRASS AREA WITH PERIMETER PLANTINGS OF TREES AND SHRUBS, 13,185 SQFT

SLOUGH

SLOUGH

TOP OF BANK

WILLAMETTE RIVER OHWM ELEVATION = 20FT

GREEN REPRESENTS VEGETATED CORRIDOR PER HCA MAPPING

MILWAUKIE HCA MAP

ORANGE REPRESENTS AREAS DEFINED AS HCA BY TITLE 19

100' COMPLIANCE LINE

HCA BUILDING & STREET IMPACT 21,907 SQFT

HCA 10' OFFSET FROM BUILDINGS 7,155 SQFT

WREN STREET

FEMA FLOOD ELEVATION, 36.4 FT
310

AVENUE

SE 19TH

SE SPARROW ST

WETLAND "B" 188 SQFT

WETLAND "A" 3,175 SQFT WITHIN STUDY AREA. CONTINUES SOUTH PAST STUDY AREA BOUNDARY

REVISIONS

MILWAUKIE RIVERFRONT CUSTOM HOMES
GILLIS PROPERTIES LLC
5965 WEST A STREET
WEST LINN, OR 97068

CITY OF MILWAUKIE HCA MAP WITH WETLANDS DETERMINED BY ETC AND HCA PROPOSED IMPACTS AND MITIGATIONS

environmental
technology
consultants



PO Box 821185
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360-696-4403

DATE	Apr 30, 2019
SCALE	NOTED
DRAWN	JHM
JOB	94-02
SHEET	M6

ISLAND MITIGATION AREA

MAXIMUM AREAS ON ISLAND THAT MAY BE SUITABLE FOR HCA MITIGATION, AS ESTIMATED FROM AN AERIAL PHOTO. A SURVEY OF THESE AREAS IS NEEDED TO DETERMINE SUITABILITY. 41,935 SQFT. ONLY NON WETLAND AREAS ABOVE OHWM CAN BE USED FOR HCA MITIGATION.

**REJECTED ALTERNATIVE #2
23 UNIT DESIGN**

ANNOTATED WITH IMPACT AND MITIGATION AREAS ADDED

HCA BOUNDARY PER TITLE 19 MAPPING

FEMA FLOOD ELEVATION, 36.4 FT
310'

SUBJECT PROPERTY

3200

3300

650'

SLOUGH

20'

240'

SE 19TH

HCA AND WQR PERMANENT IMPACTS, ABOUT 57,213 SQFT.

INCLUDES HCA & WQR IMPACTS OF:

44,029 SQFT ON THE SUBJECT LOTS

13,184 SQFT IN THE SPARROW STREET ROW

ALSO INCLUDES

3,363 SQFT FILL TO WETLANDS IN THE SPARROW STREET ROW

THIS SCENARIO ALSO MAY FILL A SMALL AREA TO THE OHWM OF THE WILLAMETTE RIVER. IT IS UNLIKELY THAT ENOUGH AREA ON THE ISLAND WILL BE ABLE TO SUPPORT THE MITIGATION REQUIREMENTS OF THIS SCENARIO.

THIS SCENARIO ALSO PRODUCES MORE IMPACTS TO VIEWS.

TOP OF BANK

WILLAMETTE RIVER OHWM ELEVATION = 20FT

WETLAND "B"
188 SQFT

WETLAND "A" 3,175 SQFT
WITHIN STUDY AREA.
CONTINUES SOUTH PAST
STUDY AREA BOUNDARY

SPARROW ST (AKA 5TH ST)

REVISIONS

MILWAUKIE RIVERFRONT CUSTOM HOMES
GILLIS PROPERTIES LLC
5965 WEST A STREET
WEST LINN, OR 97068

REJECTED ALTERNATIVE 2
SITE PLAN WITH WETLANDS DETERMINED BY ETC AND HCA PROPOSED IMPACTS AND MITIGATIONS

environmental
technology
consultants



PO Box 821185
Vancouver, WA 98682
360-696-4403

DATE Apr 30, 2019

SCALE NOTED

DRAWN JHM

JOB 94-02

SHEET

M7

ISLAND MITIGATION AREA

MAXIMUM AREAS ON ISLAND THAT MAY BE SUITABLE FOR HCA MITIGATION, AS ESTIMATED FROM AN AERIAL PHOTO. A SURVEY OF THESE AREAS IS NEEDED TO DETERMINE SUITABILITY. 41,935 SQFT. ONLY NON WETLAND AREAS ABOVE OHWM CAN BE USED FOR HCA MITIGATION.

**REJECTED ALTERNATIVE #3
16 UNIT DESIGN**

PROVIDES 12 SINGLE FAMILY, 2 DUPLEX UNITS, 2 EXISTING HOMES FOR A TOTAL OF 16 HOUSING UNITS ANNOTATED WITH IMPACT AND MITIGATION AREAS ADDED

HCA BOUNDARY PER TITLE 19 MAPPING

WREN STREET

FEMA FLOOD ELEVATION, 36.4 FT
310

SUBJECT PROPERTY

3200

3300

HCA AND WQR PERMANENT IMPACTS, ABOUT 31,053 SQFT.

INCLUDES HCA & WQR IMPACTS OF:

- 31,053 SQFT ON THE SUBJECT LOTS
- 0 SQFT IN THE SPARROW STREET ROW

ALSO INCLUDES

- 0 SQFT FILL TO WETLANDS IN THE SPARROW STREET ROW

THIS SCENARIO ALSO MAY FILL A SMALL AREA TO THE OHWM OF THE WILLAMETTE RIVER. IT IS UNLIKELY THAT ENOUGH AREA ON THE ISLAND WILL BE ABLE TO SUPPORT THE MITIGATION REQUIREMENTS OF THIS SCENARIO.

THIS SCENARIO ALSO PRODUCES MORE IMPACTS TO VIEWS.

TOP OF BANK

WILLAMETTE RIVER OHWM ELEVATION = 20FT

GREEN HATCH. 50FT WQR ZONE

WETLAND "B" 188 SQFT

WETLAND "A" 3,175 SQFT WITHIN STUDY AREA. CONTINUES SOUTH PAST STUDY AREA BOUNDARY

REVISIONS

MILWAUKIE RIVERFRONT CUSTOM HOMES
GILLIS PROPERTIES LLC
5965 WEST A STREET
WEST LINN, OR 97068

REJECTED ALTERNATIVE 3
SITE PLAN WITH WETLANDS DETERMINED BY ETC AND HCA PROPOSED IMPACTS AND MITIGATIONS

environmental technology consultants



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360-696-4403

DATE Apr 30, 2019

SCALE NOTED

DRAWN JHM

JOB 94-02

SHEET

M7

RECOMMENDED MITIGATION PLANT LIST.

SUBSTITUTIONS ALLOWED WITHIN THIS LIST DEPENDING ON AVAILABILITY PROVIDING THE SPECIES DIVERSITY REQUIREMENTS OF TITLE 19 CONTINUE TO BE MET.

Table 1: Native Tree List

Common Name	Botanical Name									Height (ft)	Number
		Deciduous	Evergreen	Dry	Moist	Wet	Sunny	Some Shade	Shady		
Vine Maple	Acer circinatum	X	X	X	X	X	X	X		25	25
Big Leaf Maple	Acer macrophyllum	X	X	X		X	X		3	100	
Red Alder	Alnus rubra	X	X	X	X	X	X		2	120	50
Apple Serviceberry	Amelanchier grandiflora	X	X	X		X	X			25	
Oregon Ash	Fraxinus latifolia	X		X	X	X	X			70	50
Western Larch	Larix occidentalis	X	X			X	X			135	
Pacific Crabapple	Malus fusca	X		X	X	X	X			40	
Quaking Aspen	Populus tremuloides	X		X	X	X	X		3	82	
Black Cottonwood	Populus trichocarpa	X		X	X	X	X		2	160	25
Bitter Cherry	Prunus emarginata	X	X	X		X	X			30	
Oregon White Oak	Quercus garryana	X	X	X		X	X		3	75	25
Cascara	Rhamnus purshiana	X	X	X	X	X	X	X		30	50
Pacific Willow	Salix lasiandra	X		X	X	X	X		0	40	25
Scouler's Willow	Salix scouleriana	X		X	X	X	X		0	30	25
Grand Fir	Abies grandis		X	X	X		X	X	2	250	
Noble Fir	Abies procera		X	X	X		X	X	0	230	
Alaska Yellow Cedar	Callitropis nootkatensis		X		X	X	X		0	120	
Incense cedar	Calocedrus decurrens		X	X	X		X	X	2	120	
Port Orford cedar	Chamaecyparis lawsoniana		X	X						200	
Sitka Spruce	Picea sitchensis		X		X	X	X	X	0	200	
Shore Pine	Pinus contorta		X	X	X	X	X	X		50	
Ponderosa pine	Pinus ponderosa		X	X			X	X		235	
Douglas Fir	Pseudotsuga menziesii		X	X	X		X	X	2	250	
Pacific Yew	Taxus brevifolia		X	X	X			X	X	25	
Western Red Cedar	Thuja plicata		X		X	X		X	X	1	200
Western Hemlock	Tsuga heterophylla		X		X			X	X	2	225
Myrtlewood Cal laurel	Umbellularia californica		X	X	X	X	X	X	2	135	
TOTAL TREES REQUIRED = 291											291

Custom "Native Pacific Northwest Mix"

This Sunmark mixture is native to the Pacific Northwest and is commonly found inland as far as Central Washington and Oregon. This mix is formulated for bloom period from spring to fall. The species that are lined-out are determined by Clackamas County to be non-native and should not be included in the mix.

Planting Rate = 8 oz./1000 sq.ft X 3,550 SQFT = 2 Pounds

Scientific Name	Common Name	Color
Cheiranthus allionii	Wallflower	Orange
Clarkia amoena	Dwarf Godetia	Pink/White
Clarkia unguiculata	Clarkia	Pink/Lavender
Eschscholzia californica	California Poppy	Yellow/Orange
Gilia capitata	Globe Gilia	Blue
Gilia tricolor	Bird's Eyes	Lavender/White
Layia platyglossa	Tidy-Tips	Yellow/White
Linanthus grandiflorus	Mountain Phlox	White/Lavender
Linum grandiflorum rubrum	Scarlet Flax	Scarlet
Linum perenne lewisii	Blue Flax	Blue
Lobularia maritime	Sweet Alyssum	White
Lupinus densiflorus aureus	Yellow Lupine	Yellow
Lupinus polyphyllis	Many Leaved Lupine	Mixed
Nemophila maculate	Five-Spot	White/Purple
Nemophila menziesii	Baby Blue-Eyes	Blue
Papaver rhoeas	Corn Poppy	White/Pink/Red
Sisyrinchium bellum	Blue-Eyed Grass	Purple

SEED MIX

ALL MITIGATION AREAS WHERE BARE GROUND IS EXPOSED FOLLOWING REMOVAL OF INVASIVE PLANTS SHALL BE SEEDED WITH THE NATIVE PACIFIC NW MIX, OR A NATIVE GRASS MIX DEPENDING ON THE INSTRUCTIONS OF SHEET L1.

Table 2: Native Shrub List

Common Name	Botanical Name									Height (ft)	Number
		Deciduous	Evergreen	Dry	Moist	Wet	Sunny	Some Shade	Shady		
Serviceberry	Amelanchier alnifolia	X	X	X		X	X	X		20	
Red Osier Dogwood	Cornus stolonifera	X		X	X	X	X	X		15	400
Beaked Hazelnut	Corylus cornuta	X		X		X	X	X	2	20	
Oceanspray	Holodiscus discolor	X	X	X		X	X		1	15	
Twinberry*	Lonicera involucrata	X		X	X	X	X		1	10	200
Sweetgale	Myrica gale	X			X	X				6	200
Indian Plum	Oemlaria cerasiformis	X	X	X		X	X	X	3	15	
Mock Orange	Philadelphica lewisii	X	X	X		X	X		3	9	
Pacific Ninebark	Physocarpus capitatus	X		X	X	X	X	X	0	13	200
Rosa species	R. nutkana, R. pisocarpa	X	X	X	X	X	X		1	6	
Rhododendron red or w	Rhododendron sp		X	X		X	X		0	20	200
Rhododendron columbi	Western Labrador-Tea		X			X	X	X		7	200
Golden currant	Ribes aureum	X	X			X	X			10	
Red-flowering Currant	Ribes sanguineum	X	X	X		X	X		0	6	
Thimbleberry	Rubus parviflorus	X	X	X		X	X	X	0	8	
Salmonberry	Rubus spectabilis	X		X	X	X	X	X	0	10	
Blue Elderberry	Sambucus cerulea	X	X	X			X	X	1	15	
Red Elderberry	Sambucus racemosa	X	X	X		X	X	X	1	15	
Spirea	Spirea douglasii	X		X	X	X	X		0	7	
Snowberry	Symphoricarpos albus	X	X	X	X	X	X		1	5	
Red Huckleberry	Vaccinium parvifolium	X	X	X			X	X	3	10	
Alaskan Blueberry	Vaccinium ovalifolium	X	X	X		X	X		3	10	
American cranberrybus	Viburnum opulus americana	X	X	X					2	10	53
Salal	Gaultheria shallon		X	X	X		X	X	X	0	5
Oregon Grape	Mahonia sp.		X	X	X		X	X	X	0	6
Pacific Wax Myrtle	Myrica californica		X	X	X		X	X	X	13	
Evergreen Huckleberry	Vaccinium ovatum		X	X	X			X	X	0	10
TOTAL SHRUBS REQUIRED = 1,453											1453

Key to Deer Herbivory Rating. Certain trees and shrubs may require fencing to reduce herbivory by deer.

3 = Yes, deer may browse heavily on this plant, protection probably required.

2 = Moderate deer browsing but plant will likely survive

1 = Browsing not likely to be a problems unless deer are really hungry

0 = Deer do not browse on this plant

Blank = not known

REVISIONS

MILWAULKIE RIVERFRONT CUSTOM HOMES
GILLIS PROPERTIES LLC
5965 WEST A STREET
WEST LINN, OR 97068

RECOMMENDED PLANTS TO BE INSTALLED IN MITIGATION AREAS TO MEET MITIGATION REQUIREMENTS OF TITLE 19

environmental
technology
consultants



PO Box 821185
Vancouver, WA 98682
360-696-4403

DATE Apr 30, 2019

SCALE NOTED

DRAWN JHM

JOB 94-02

SHEET

M9

APPENDIX 1

MITIGATION MONITORING AND MAINTENANCE PLAN

IRRIGATION: Success of the trees and shrubs planted from bare root and potted stock will be much greater if the plants are irrigated in their first three summers. ETC recommends using drip irrigation with one drip emitter supplied to each plant. We prefer the 1/2 gallon/hour emitter as they provide the greatest control and most plants that can be supported by a single zone. A ordinary garden hose should supply about 1,440 gallons/hour and so in theory could supply about 2,800 emitters. ETC recommends not putting more than 500 emitters on a single zone as leaks, line loss, and variations in the emitters will reduce the system's capacity. A timer should be used to supply water 2 to 6 times per day, with a total delivery of about 1 quart of water per plant per day initially, and increased if necessary. 1 quart is 30 minutes using 1/2 gallon/hour emitters. The actual amount of water delivered by drip emitters varies considerably with pressure and manufacturer, so some calibration will be necessary after the system is installed.

ETC does not recommend sprinklers for trees and shrubs, though seed may need some supplemental irrigation by sprinklers in the first year if the spring is abnormally dry.

Irrigation in normal years should be provided from mid June through September, and adjusted as necessary for abnormally dry or wet weather. Irrigation for the first three growing seasons is typically recommended for mitigation plantings.

The mitigation area described in Figures M5 and M9 will be monitored for a period of 5 years following the installation of the prescribed plants. Yearly monitoring reports will be authored and submitted to the City of Oregon City Planning Director on the forms provided in Appendix D.

WEED CONTROL: Control of invasive weeds, Blackberry in particular, is both required by the MMC and required to ensure the establishment and growth of the mitigation plantings. ETC recommends a minimum of two or more patrols per year to remove invasive vegetation. ETC recommends the careful application of herbicides if allowed by the City of Milwaukie. In our experience manual efforts to remove invasives is ineffective and prohibitively expensive.

MITIGATION MONITORING REPORT PAGE 2

6) Notes on Irrigation Provided, and Recommendations on Future Irrigation: _____

7) List deceased plants and replacements:

Species _____ Replaced? Y or N date _____

Species _____ Replaced? Y or N date _____

Species _____ Replaced? Y or N date _____

Species _____ Replaced? Y or N date _____

Species _____ Replaced? Y or N date _____

Species _____ Replaced? Y or N date _____

8) The minimum survival criteria for trees and shrubs is 80%. Did the mitigation meet the minimum survival criteria? Describe what measures will be taken to improve survival in the next monitoring period.

9) Attach photographs taken from the photo stations shown in Figure 4.

NOTE: Permittees may use these paper forms or electronic copies of the report and spreadsheets.

MITIGATION MONITORING REPORT PAGE 3

Record numbers of live plants for each monitoring year. Natural recruits of new native plants count toward the total survival. Compute % survival for totals trees and total shrubs only.						
Native Trees and Shrubs, recommended and alternates.	Number Planted	AS-BUILT 2019	2020	2021	2022	2023
Trees (291 required)						
Acer macrophyllum - Big-Leaf Maple						
Cornus nuttallii - Western Flowering Dogwood						
Populus tremuloides - Quaking Aspen						
Prunus emarginata - Bitter Cherry						
Quercus garryana - Oregon White Oak						
Rhamnus purshiana - Cascara						
Shrubs (1,453 required)						
Amelanchier alnifolia - Western Serviceberry						
Berberis aquifolium - Tall Oregon Grape						
Corylus corruta - Hazelnut						
Holodiscus discolor - Ocean Spray						
Rhododendron macrophyllum - Western Rhododendron						
Ribes sanguineum - Red Flowering Currant						
Symphoricarpos albus - Common Snowberry						
Viburnum ellipticum - Oval-Leafed Viburnum						
TOTAL NUMBER OF TREES + SHRUBS SURVIVING.						
PERCENT SURVIVING (DIVIDE TOTAL BY 1,744) May be more than 100%						



memorandum

date March 18, 2019

to Vera Kolias, AICP

from Sarah Hartung, Senior Biologist

subject Natural Resource Review for Elk Rock Estates

This memorandum summarizes ESA's technical review of land use application materials relating to site natural resources regulated by Milwaukie's Municipal Code, including Habitat Conservation Areas (HCAs) and Water Quality Resources (WQRs). Responses to specific technical review tasks are identified in *italics*.

1. Conduct a site visit to assess existing conditions and generally corroborate the figures and narrative provided in the application submittal.

Response: ESA personnel (Sarah Hartung) visited the project site on March 16, 2019 to confirm the description of existing site conditions in the application. Existing conditions are generally as described in the application. The site consists of an open field with two single-family residences along SE 19th Avenue. Several tire ruts and a few piles of firewood and debris were noted in the open field. The field consisted of newly emerged grasses and forbs with a few patches of nuisance weeds such as lesser celandine. Himalayan blackberry has formed a dense thicket on the steep slope (greater than 25%) adjacent to the slough. Mature black cottonwood trees are growing along the southern and western boundaries of the site, although it's not clear if these trees are rooted within the subject property boundaries. Canada geese were observed foraging in the field.

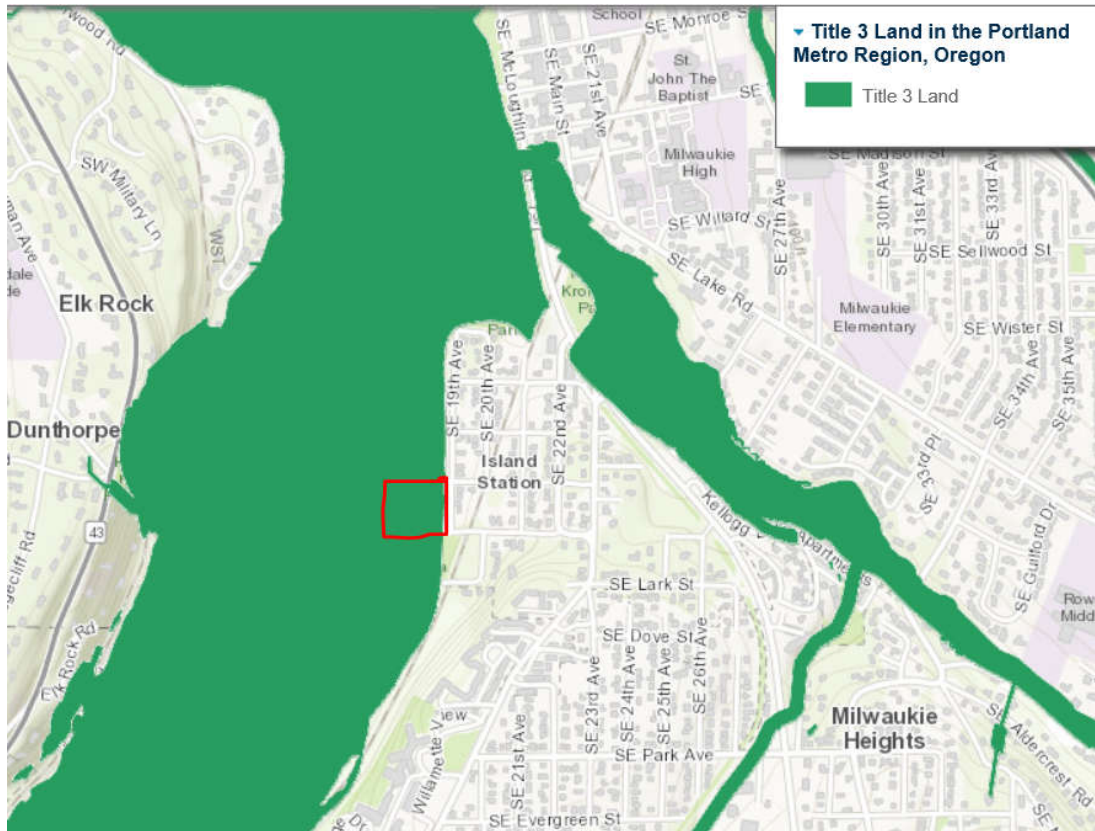


Photo 1: Looking west at the subject property which includes an open field with grasses and forbs as well as debris piles. A handful of black cottonwood trees are growing along the western boundary – although it’s not clear if these should be included on the site plans. March 16, 2019.

2. Review the Natural Resource materials prepared by ETC. Assess and comment on the applicant's responses to the following requirements:
 - a. WQR & HCA Boundaries:
 - Confirm the applicant’s assessment of the WQR, particularly with respect to steep slopes at the slough and the measurement of the vegetated corridor, as well as the WQR classification (i.e., Good, Marginal, or Poor).

Response: The WQR of the delineated slough appears accurate as shown in the figures. The 50-foot setback is established from top of bank. The preliminary site plan and other maps show top of bank as a relatively straight line that cuts across contours and appears incorrect; however, when measuring the 50-foot setback from the slough on the site plan, it does appear to be from the break in slope at the top of the steep (greater than 25-foot percent) slope.

The application states that Wetlands A and B are secondary protected features, but then correctly identifies a 50-foot buffer that overlaps with the study area. The off-site wetlands (A and B) are primary protected features with 50-foot buffers because they occur within Title 3 Land as mapped by Metro – see snippet below. The project site is approximated in red – west of SE 19th Ave and within Metro’s Title 3 Lands: <https://databasin.org/maps/new#datasets=88691cc47cbd4992838864c29dbb147f>



The natural resource documentation concludes that the WQR is “degraded” which appears accurate based on the lack of shrub and tree cover on-site; however, the applicant did not follow the methods provided in Chapter 19.402 in order to reach this conclusion.

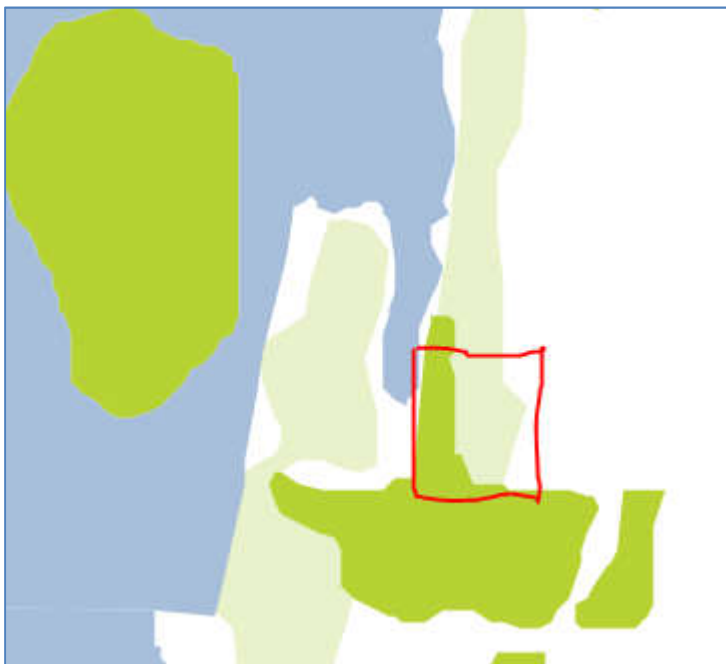
- Review the applicant’s detailed boundary verification for the HCA to confirm the accuracy of the proposed adjustments to the City’s Natural Resource Administrative Map (according to the procedures outlined in MMC Subsection 19.402.15.A.2.b).

Response: The applicant’s boundary verification is inaccurate and incomplete according to MMC Subsection 19.402.15.A.

The code (19.402.15.A.2.a.) allows map adjustments for a few reasons: errors in the original mapping; changes to boundaries of the WQR since the most recent NR administrative map; and due to legal filling, culverting or development prior to January 16, 2003, the effective date of Ordinance #1912. The applicant is contending that the site was developed and should not be subject to HCA requirements because fill was placed in the floodplain several decades ago (circa 1930s and 1940s). According to definitions in the code, “development” can include site modification such as placement of fill; however, the subject property is currently mapped as the 100-year floodplain of the Willamette River and is vegetated, therefore is providing floodplain functions despite the placement of historic fill.

The application is missing the following mapped data as part of the HCA verification: All flood areas within 100 feet of the property; and vegetative cover status as identified on Metro's Vegetative Cover Map (see <https://gis.oregonmetro.gov/metromap/> - or ESA can send the pdf version). The site qualifies as Class I Riparian Area. Class I Riparian Areas remain as mapped regardless of development value [Table 19.402.15.A.2.b(2)(c)].

Metro's vegetative cover map identifies shrub/scrub (light green shading) as well as forested cover (medium green shading) on the site which is approximated by the red polygon below. Even if the vegetative cover were to be downgraded to Class II, the HCA mapping would still hold up regardless of the development value.



Landcover Type

-  Tree Canopy
-  Shrub/Scrub Canopy
-  Exposed Soils/Grass Canopy

- b. Inventory of existing vegetation, identification of the ecological functions of riparian habitat, and categorization of the existing condition of the WQR on the subject property?

Response: The inventory of existing vegetation looks reasonably accurate, although it's not clear if more black cottonwood trees should be shown on the map within the subject properties. Only 2 trees are mapped at the northwest end on the landscaping plan Sheet L1. The application concludes that the study area is "degraded" based on the low cover of shrubs and trees and the high percentage of weeds in the groundcover. This characterization is assumed to meet the Class C "Poor" category per Table 19. 402.11.C. The application does not provide a detailed discussion of ecological functions of riparian habitat.

- c. Analysis of alternatives to the proposed development, including a critique of the rationale behind choosing the alternative selected

Response: An analysis of alternatives to the proposed development was not provided, presumably because the applicant is contending that the study area should not be mapped as HCA.

- d. Mitigation plan that is appropriate for the proposed disturbance and that ensures the disturbed portions of the WQR and HCA will be restored to an equal or better condition, including appropriateness of the proposed mitigation planting list. Review ETC's alternatives report to remediation of the banks of the slough.

Response: Before the mitigation plan can be assessed, the HCA mapping issue should be resolved and impacts should be recalculated. A few other issues with the application are noted: the development plan and proposed impacts shown on Sheet 8 do not match Sheet 1: Grading and Site Plan dated January 2019. The impacts on Sheet 8 do not account for the proposed dock construction, which should be accounted for as a WQR impact. The impact assessment also does not include a discussion of the proposed benches or walkway down to the dock.

If the HCA mapping is to be revised as the applicant requests, and Sheet L1 is the proposed planting plan, then deficiencies are noted as follows:

- *Sheet L1 states that "all the plants within the WQR boundary are native" but it's difficult to verify this based on the planting sheet. The planting list provided is a mix of native and non-native species for the entire site, and does not indicate which native plants will be planted within the WQRs. Please provide details on the native 50/50 mix - which species are included?*

The applicant provides a feasibility discussion of removing the Himalayan blackberry from the steep slope along the slough and concludes that the "do nothing" approach is the best option. Depending on how the HCA mapping resolves, this area may be needed for mitigation or the area across the slough that is in the same ownership. The steep slopes just south of the study area in the public park have been successfully cleared of Himalayan blackberry and replanted with native shrubs. This may be an example of how it is possible to remove nuisance plants from a steep slope while maintaining bank stability.



Photo 2: In Spring Park looking at restored, steep banks that are similar in slope to the subject property (visible in the upper left). March 16, 2019.

3. Evaluate the proposed activity with respect to the three approval criteria established in MMC Subsection 19.402.12.B:
 - a. Avoid = The proposed activity will have less detrimental impact to the WQR and HCA than other practicable alternatives.
 - b. Minimize = Where impacts cannot be avoided, the proposed activity shall minimize detrimental impacts to the extent practicable.
 - c. Mitigate = The proposed mitigation plan demonstrates appropriate and adequate mitigation for adverse impacts to the WQR and HCA.

Response: The application does not fully account for impacts to HCA and an assessment of whether the proposed activity avoids, minimizes or mitigates cannot be completed at this time.

4. Evaluate the proposed project with respect to standards and criteria for residential cluster development established in MMC 19.402.14.C.

Response: The responses provided by the applicant for 19.402.14.C appear reasonable and accurate with the following notes:

- *For 19.402.14.C.2.c.7, please clearly identify the common areas proposed east of the slough and calculate the acreage for each component of open space including the side yards etc.*

- *For 19.402.14.C.2.c.8, this value will change with the consideration of HCA mapping as shown on current city maps. Please clarify what is meant by the following statement, “The 4094 ft.² created by the delineated wetland to the south side of the property is not proposed as common open space.” Does this mean the area within the Sparrow Street right-of-way that is adjacent to the site? Identifying each component of open space east of the slough could help clarify.*
 - *For 19.402.14.C.3.b, please clarify if the northernmost units east and west of the proposed private drive will have set backs from any proposed common areas to the north.*
 - *For 19.402.14.C.3.e., see response to 19.402.14.C.2.c.8 above.*
 - *For 19.402.14.C.4.2, please clearly show the proposed single common space tract including the areas west of the slough.*
 - *For 19.402.14.C.4.4, this response will likely change based on a reassessment of HCA impacts.*
5. Prepare a written report that summarizes your assessment.

Response: The following deficiencies are recommended to be resolved with revised application materials prior to the issuance of a decision:

- *The HCA verification is missing the analysis of flood areas and vegetative cover status per Metro mapping. The HCA mapping as drawn appears warranted, therefore the applicant should reassess impacts and mitigation to HCA/WQRs.*
- *Include the walkway, benches and dock construction in the impact analysis.*
- *Provide an alternatives analysis that meets code requirements.*
- *For updated mitigation plans, please clearly identify the type, quantity and condition of native plants proposed in regulated WQRs and HCAs per city code. The development layout on Sheet L1 should match the site plan.*
- *Provide a more detailed assessment of water quality, flood storage, and habitat functions for the site, including the slough where a dock is proposed as part of the project, in order to assess impacts to ecological functions and whether mitigation addresses the loss or modification of these functions.*



memorandum

date May 7, 2019
to Vera Kolias, AICP
from Sarah Hartung, Senior Biologist
subject Natural Resource Review for Elk Rock Estates

This memorandum summarizes ESA's technical review of revised land use application materials for the proposed Milwaukie Riverfront Custom Homes, i.e. Elk Rock Estates. Responses to specific technical review tasks are identified in *italics*.

1. Conduct a site visit to assess existing conditions and generally corroborate the figures and narrative provided in the application submittal.

Response: No additional site visit was conducted to inform the review of revised land use application materials. Refer to the March 2019 memo for a description of the site visit. Generally, ESA found site conditions to be as described in the application materials.

2. Review the Natural Resource materials prepared by ETC. Assess and comment on the applicant's responses to the following requirements:
 - a. WQR & HCA Boundaries:
 - Confirm the applicant's assessment of the WQR, particularly with respect to steep slopes at the slough and the measurement of the vegetated corridor, as well as the WQR classification (i.e., Good, Marginal, or Poor).

Response: The WQR of the delineated slough appears accurate as shown in the figures. The 50-foot setback was established from top of bank. OHWM was flagged at 20 feet elevation just below mid-slope on the bank of the slough.

A 50-foot buffer is correctly identified for Wetlands A and B located in the Sparrow Street Right-Of-Way that overlaps with the study area.

The natural resource documentation concludes that the WQR of the slough is “degraded” which appears accurate based on the lack of shrub and tree cover on-site. An assessment of the condition of the natural resources west of the slough is not provided.

The condition of the area near Wetland A in the Sparrow Street ROW is described as follows, “The Sparrow Street ROW to the south of the property is densely vegetated with 65% canopy of Black Cottonwood, Beaked Hazelnut 5%, and Red Alder 10%. The shrub layer is Himalayan blackberry 70%, some Indian plum 5%, and Holly 10%. The herbaceous strata were Reed Canarygrass 50%, Willowherb 15%, high percentages in various spots of English Ivy and Cleavers on the upland areas and small percentages of Horsetail and grasses in the bottom of the ditch.”

Despite the presence of some non-native invasive plants, including a relatively high percentage of Himalayan blackberry in the understory, the WQR condition of Wetland A meets the definition of “good.”

- Review the applicant’s detailed boundary verification for the HCA to confirm the accuracy of the proposed adjustments to the City’s Natural Resource Administrative Map (according to the procedures outlined in MMC Subsection 19.402.15.A.2.b).

Response: N/A – boundary adjustment no longer requested, see previous memo provided by ESA.

- b. Inventory of existing vegetation, identification of the ecological functions of riparian habitat, and categorization of the existing condition of the WQR on the subject property?

Response: The inventory of existing vegetation from ESA’s March 2019 visit looked reasonably accurate, although it’s not clear if more black cottonwood trees should be shown on the map within the subject properties. Only 2 trees are mapped at the northwest end on the landscaping plan Sheet L1. The application concludes that the study area is “degraded” based on the low cover of shrubs and trees and the high percentage of weeds in the groundcover. This characterization is assumed to meet the Class C “Poor” category per Table 19. 402.11.C. The application does not provide a detailed discussion of ecological functions of riparian habitat.

An assessment is needed for the area west of the slough.

- c. Analysis of alternatives to the proposed development, including a critique of the rationale behind choosing the alternative selected

Response: An analysis of alternatives was provided in the revised materials and appears to meet minimum requirements; however, an option that emphasizes duplexes or multi-family units outside of

WQRs is still needed. The following table summarizes potential impacts of the design alternatives based on ESA’s review:

<i>Alternative</i>	<i>WQR/HCA impacts (combined)</i>	<i>Wetland Fill</i>	<i>Below OHWM of the Willamette River</i>
#2 - 23 units	57,213 ft. ² (44,029 ft. ² +13,184 ft. ²)	3,363 ft. ²	Proposed Dock, plus possible additional fill
#3 -16 units	31,053 ft. ²	0	Proposed Dock
Preferred: 12 units	29,062 ft. ²	0	Proposed Dock

The preferred plan is the least impacting to natural resources of the three development alternatives. A large part of the impacts from the preferred option are due to Private Drives 1 and 2 which are required for access. Retaining the two existing structures (buildings 10 and 12) at the east end of the project site also limits layout and roadway options.

The alternative access road – Sparrow Avenue – would result in greater impacts to WQRs and HCA because of wetlands conditions that have formed in that location. Wetland A in the Sparrow Avenue ROW is adjacent/connected to a larger off-site forested wetland which provides valuable wildlife habitat functions. The WQR of Wetland A meets the definition of a “good” corridor.

- d. Mitigation plan that is appropriate for the proposed disturbance and that ensures the disturbed portions of the WQR and HCA will be restored to an equal or better condition, including appropriateness of the proposed mitigation planting list. Review ETC’s alternatives report to remediation of the banks of the slough.

Response: The applicant proposes to mitigate for natural resource impacts adjacent to the proposed housing development as well as in the western portion of the parcels on Elk Rock Island (see polygons in red below). However, site-specific surveys are needed west of the slough to inform the mitigation plan. Revised application materials state that only non-wetland areas above OHWM (identified as 20 feet elevation) would be used as mitigation on the island. Based on a cursory Google Earth examination of the elevation profile (line shown in white below) of the possible mitigation areas (shown in red), it appears that the western-most polygon is below OHWM. Areas west of the yellow “X” in the image below are less than 20 feet in elevation according to Google Earth. A site-specific survey is recommended to verify the suitability of the proposed mitigation areas west of the slough.

Alternatively, the revised application materials mentioned that the Sparrow Street ROW might be more suitable for mitigation. The understory in this location has been disturbed and would benefit from native

plantings. Depending on additional analysis by the applicant, this area may be the preferred mitigation site in addition to the 13,185 ft.² that is proposed.

If a majority of the area west of the slough is below OHWM or not suitable, this would require a modification to the proposed mitigation plan and possibly an adjustment to the density of plantings proposed adjacent to the development. Currently, the plan calls for a “grass area with perimeter plantings of trees and shrubs, 13,185 ft.².” Based on this concept, it is not clear how the applicant will fit in 291 trees and 1,453 shrubs at the required densities in the proposed mitigation areas.



The applicant should develop the mitigation concept fully in order to deem the application complete. ESA also recommends that the applicant consider planting low shrubs and a native groundcover that does not require mowing in the proposed 13,185 ft.² mitigation area on-site. It's understood that this area is also supposed to satisfy open space standards; however, the planting plan could be modified to benefit residents, wildlife habitat, and maintain views by eliminating mowing and adding low-growing shrubs or short-statured trees in this area.

Review comments on M9 - Recommended Plants:

- The native tree list looks appropriate and includes all native trees found on the Portland Plant List.

- *There are a couple proposed shrubs that are not included in the most recent Portland Plant List dated June 2016, these include sweetgale (Myrica gale) and western Labrador-tea (Rhododendron columbianum). Consider replacing these with snowberry (Symphoricarpos albus) and elderberry (Sambucus cerulea and racemosa), or other native shrubs suitable to the area that appear on the Portland Plant List.*
 - *The botanical name for “Rhododendron red or white” should be Rhododendron macrophyllum or Western rhododendron.*
 - *There are several groundcover species propose that do not appear on the Portland Plant List, such as Clarkia unguiculata, Gilia tricolor, Layia platyglossa, and a few others. Please double-check the Portland Plant List and update the proposed seed mix.*
3. Evaluate the proposed activity with respect to the three approval criteria established in MMC Subsection 19.402.12.B:
- a. Avoid = The proposed activity will have less detrimental impact to the WQR and HCA than other practicable alternatives.
 - b. Minimize = Where impacts cannot be avoided, the proposed activity shall minimize detrimental impacts to the extent practicable.
 - c. Mitigate = The proposed mitigation plan demonstrates appropriate and adequate mitigation for adverse impacts to the WQR and HCA.

Response: The applicant provided two other development alternatives that would result in greater impacts to WQRs/HCA. The preferred alternative minimizes impacts to WQRs, but because of the extensive HCA mapping on-site and layout limitations due to the proposal to retain two existing structures and provide Private Drives 1 and 2, the project would result in 29,062 ft.² of HCA impacts. No native trees or shrubs would require removal for the project. Because of past land practices, the HCA on-site had been cleared of native shrubs and trees, although it still provides water quality and wildlife habitat functions because of its size and location in the 100-year floodplain of the Willamette River.

The mitigation plan has improved, but is still deficient because it does not clearly demonstrate how 291 trees and 1,453 shrubs would fit in the proposed mitigation areas, especially under existing shrub and tree cover (i.e. west of the slough). It’s not clear if the area west of the slough is suitable for mitigation based on elevation or soil condition. An alternative is for the applicant to propose a lower density of trees and shrubs adjacent to the development (likely in addition to mitigation areas west of the slough and/or in the Sparrow Street ROW), but then the planting plan should emphasize a native Oregon white oak plant community. Oaks are typically grown at 16 or 20 feet on-center. Other suitable trees/shrubs to plant with oaks include Willamette Valley Ponderosa pine (Pinus ponderosa var. benthamiana), Pacific madrone (Arbutus menziesii), mockorange (Philadelphica lewisii), western serviceberry (Amelanchier alnifolia), Oceanspray (Holodiscus discolor), and tall Oregon grape (Berberis aquifolium). Suitable groundcover species for an oak community include

yarrow, blue wildrye, and common clarkia as well as several other species (refer to the Portland Plant List, June 2016).

4. Evaluate the proposed project with respect to standards and criteria for residential cluster development established in MMC 19.402.14.C.

Response: Twelve separate single-family homes are proposed and the proposal appears to meet minimum standards, although the preferred design does not take advantage of the intent of cluster development, which is to allow single-family attached dwellings, multifamily dwellings and townhouses.

5. Prepare a written report that summarizes your assessment.

Response: The following deficiencies are recommended to be resolved with revised application materials prior to the issuance of a decision:

- *A fully developed mitigation plan that evaluates areas west of the slough and/or in the Sparrow Street ROW as mitigation sites. Provide details on soil conditions and existing invasive plants that would need to be cleared in order to establish native plantings. Provide a 40 x 40 typical planting schematic that shows how proposed plantings would fit with existing vegetation on the island or the ROW.*
- *For updated mitigation plans, please clearly identify the type, quantity and condition of native plants proposed in regulated WQRs and HCAs per city code. The development layout on Sheet L1 should match the site plan.*
- *Provide a more detailed assessment of water quality, flood storage, and habitat functions for the site, including the slough where a dock is proposed as part of the project, in order to assess impacts to ecological functions and whether mitigation addresses the loss or modification of these functions.*

**Island Station Neighborhood District Association Land Use Committee**

Pam Denham, Chair

Gary Michael

Mike Gonholm

Paul Rasmussen, Vice Chair

Ellen Chiamov

*Motto: Celebrating nature in an urban environment*Land Use review of Application for Type III Design Review of Elk Rock Estates located at 12205/12225 SE 19th Ave, Milwaukie

The Land Use Committee has discussed the application; these are our views.

Island Station Neighborhood District Association and the neighbors on SE 19th Ave have worked with the City for years to achieve a hard won new street design for Milwaukie – that of a woonerf or low volume street where people can safely walk and cycle in the street, sharing it with motorized vehicles and having a 15mph speed limit.

Any large development like this challenges our street with a 30% increase in housing and the cars and other vehicles associated with it. This appears to be a well thought out development and we appreciate the builder communicating with the NDA and neighbors about any impacts that will affect our lifestyle in our neighborhood.

The materials sent for the Type III Design Review our major concerns are:

- River views being blocked - **19.401.6 Criteria, item C. “Protection of views both toward and away from the river;”** states that “the proposed development of this site will have no impact on the views toward the river since the main channel of the river can’t currently be viewed from the public right of way...”. This is **not correct** as it **DOES** impact the views of the river from the homes across the street from the proposed development.
- Traffic – this development will increase traffic on 19th Ave. As previously mentioned, SE 19th Ave is designated as a woonerf or low volume street in the City. We have a ‘skinny street’ that can only tolerate a 15mph speed limit and no sidewalks. People are encouraged to walk & bike in the street – the traffic from the new development could adversely affect pedestrians and the neighbors that currently live here.
- Stop signs are needed at these intersections to help slow the increased traffic in the neighborhood at the new development to help mitigate increased traffic:
 1. On SE 19th Ave at the intersection of SE Sparrow St. heading south
 2. On SE Sparrow St at the intersection of SE 19th Ave heading west
 3. On SE Bluebird at the intersection of SE 19th as this is a primary main arterial into the Island Station.
 4. On SE 22nd at the intersection of SE Sparrow as this is another primary arterial into the neighborhood.
- Regarding sidewalks in the development, **section 19.708.3 paragraph B, 3.** - We think the sidewalks should be eliminated in the development to add on street parking to one side of the private drive for guests of new homeowners – possibly permit parking for the new neighborhood?
- Section **19.911.4 paragraph B subsection b, 2 Variance #2**, the developer notes the neighbors’ concerns for adequate parking within the new development, thus we believe on street parking in Elk Rock Estates is required.
- Island Station NDA was told by the developer at our December NDA meeting this proposed project would **NOT** be a gated community. The Land Use Committee would like to see *in writing* that this development will not turn into a gated community which would ruin the character of our neighborhood.

Thank you,

Pam Denham
ISNDA Land Use Chair
12106 SE 19th Ave, Milwaukie

Vera Kolias

From: Steve Gerken <argentpickle@yahoo.com>
Sent: Tuesday, March 12, 2019 11:42 PM
To: Vera Kolias
Cc: Mike@iplexcorp.com
Subject: Comment On NR-2018-005 , Part 1

Dear Ms Kolias:

With respect to file number NR-2018-005, concerning a Natural Resources Cluster Development, I have several comments.

1.

I have lived in this neighborhood at my present address since 1998. When I moved in, my new neighbors told me the Flood of 1996 came up to the camber of the road on 19th. This is significantly higher than the flood height recognized by the city as a matter of code; but I have no reason to think my neighbors misled me. Even at the height recognized by the City, I am concerned that the preliminary plans submitted with NR-2018-005 place living spaces below the 100 year flood line, in contravention of city code and in contravention of claims made in the narrative document submitted with NR-2018-005.

In looking at the narrative submitted with NR-2018-005, on pg 7 the claim is made:

"The proposed development will allow safe residential development within the flood plain by elevating living spaces of new homes above the 100 year flood elevation..."

However, in the preliminary plan submitted with NR-2018-005, the building labelled as #11 on page 1, which fronts on 19th Ave, has another living level below street level on the side of the house facing the river. The floor plan for this building is detailed as type G on pages 15 and 16 of the preliminary plan. Note on page 15 in the area labeled Lower Level Floor Plan the presence of a bathroom, a bedroom with walk-in closet, egress window, and door, and a bonus room with exterior sliding door, crawlspace access, and access to stairs leading up to the street level. This building is annotated on page 17 of the preliminary plan as having Finished Floor at elevation 47 feet. This may be accurate of the street level, but it cannot be true of the lower level. No annotation is present for the elevation of the finished floor of the lowest level of building 11. The submitted preliminary plan does not include sufficient detail to conclude that the finished floor of the lowest habitable level of building 11 is above the 100 year flood line.

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The preliminary plan indicates an intent to construct private drives with parking spaces below the 100 year flood line. The preliminary plan also indicates intent to construct driveways below the 100 year flood line, and specifically categorizes such driveways as available parking spaces for purposes of calculating total vehicular parking spaces included in the development plan. The intended presence of vehicles in multiple open-air locations in the flood plain creates the danger that, in the event of flood, such vehicles may be swept downstream, potentially causing injury or death and/or significant damage to fixed structures. Cf MMC 18.04.130(D)(1).

3.

The preliminary plan includes a private drive which lies completely below the 100 year flood line, and includes multiple residences for which all access on foot is via this road and the surrounding land. In the event of flood, such residences will be completely inaccessible on foot and completely inaccessible to road traffic. Residences which are completely in the flood plain would, during flood, be accessible only by boat or by air (helicopter, float plane), and then only when water currents and weather conditions allow. There is significant hazard to occupants of such residences of being completely cut off from ordinary and emergency services, and of being unable to escape their residences, during flood conditions. Cf MMC 18.04.130(D)(9).

4.

In the preliminary plan, the planting plan on page 18 indicates a different private drive location and a different layout of buildings than the rest of the preliminary plan. If the buildings are constructed per the rest of the plan, the plants will

necessarily be elsewhere than submitted on page 18 of the preliminary plan. Accordingly, it is not possible to evaluate the effect on sightlines of plantings made in connection with construction. The preliminary plan should not be considered complete without a planting plan on which the hardscaping (private drives, buildings, etc) matches the rest of the plan.

5.

The preliminary plan includes a dock which appears to be located in the vicinity of an existing tree which contains a large nest, which has been used for several years by a nesting pair of bald eagles. I am concerned that the construction of the path and dock would affect the health of the tree containing the bald eagle nest. I am further concerned that the general noise and chaos of construction would disturb the nesting pair by causing nest abandonment.

Per federal law 16 U.S.C. 668–668d, the taking of bald eagles is prohibited, and the definition of "take" is expansive, including "disturb". See for reference:

<https://www.fws.gov/pacific/ecoservices/documents/proposedtake.pdf>

<https://www.law.cornell.edu/uscode/text/16/668>

<https://www.law.cornell.edu/uscode/text/16/668c>

A proposed construction plan which would foreseeably violate Federal law via the disturbance of bald eagles ought not be approved.

6.

The preliminary plan indicates on pg 17 that some amount of fill would need to be brought into the site, in areas below the flood line, to fill the terrain up to the proposed private drive. The plan does not indicate the total volume of fill needed to accomplish this portion of the development. The plan does not indicate any areas in which cut could be made to balance the fill. By implication there will be a net fill within the flood plain to accomplish the road grading. Cf. MMC 18.04.150(F).

7.

In my home, from the upstairs window facing the river, I have a substantially unobstructed view of the Willamette River in its shallow channel on the near side (eastern side) of Elk Rock Island. This is the channel which is frequently dry in the summer. If the proposed development takes place, the constructed buildings will obstruct this line of sight view of the Willamette River from my bedroom window. I object to any height variance for any construction on the subject property because it would disrupt existing and longstanding views from my property. I further object to construction within the Willamette Greenway Zone on the same basis. Cf MMC 19.401.6(C).

8.

Existing and longstanding views of the Willamette River and of Elk Rock Island, from SE 19th Avenue in the block between SE Sparrow and SE Wren, would be completely blocked by the proposed construction. Cf. MMC 19.401.6(C).

9.

The preliminary plan calls for road grading (for the private drive) in apparent violation of MMC 19.401.3(E).

On the basis of all the above, I strongly object to the development proposed in file NR-2018-005.

On the basis of comment 4, regards the planting plan having materially different hardscaping from the rest of the plan, file NR-2018-005 ought

to be rejected as incomplete in that no planting plan that actually matches the hardscaping is present in the submitted materials.

Regards,

Steve Gerken
12114 SE 19th Ave
Milwaukie, OR

Vera Kolias

From: Milo Denham <milo.denham@gmail.com>
Sent: Wednesday, March 13, 2019 9:02 PM
To: Vera Kolias; Patty Stewart
Subject: Elk Rock Estates

Hello,

I would like to comment on the new development proposed for 12205 & 12225 SE 19th Avenue in the Island Station neighborhood.

I believe the biggest issue this development (or any additional housing in the Island Station neighborhood) will create is the impact on parking.

During the summer, when visitors come to Spring Park Nature Area, and to Elk Rock Natural Area (which includes Elk Rock Island), they inundate the area, with cars parking on neighborhood streets as far as three blocks away.

The Spring Park Nature Area master plan addresses the issue of parking, and I believe that the Elk Rock Estates development should be the catalyst for the City to take up this issue with input from the ISNDA.

To that end I propose the following.

- The private drive in the Elk Rock Estates development should NOT have sidewalks.
 - Instead, one side of the driveway should be set aside for parking to give the homeowner's guests a place to park.
 - This should still allow a fire truck access to the homes.
- Off-street parking for park visitors should be enhanced and expanded along 20th Avenue, between Sparrow Street and Lark Street.
- We should examine how the current parking spots at the entrance to Spring Park Nature Area could be reconfigured to create more vehicle spaces.
 - The 3 current spaces could easily become 6 by moving street markings on Sparrow, and creating head-in parking on 19th Avenue.
- It is time we had a frank discussion about using a small portion of the park for parking.
 - We should use the development fees for parks and streets from the Elk Rock Estates development to build a parking lot in the southeast corner of Spring Park and build a new trail.
 - There are remnants of a driveway and parking in the SE corner of the park from when there was a private home on this lot.
 - Signs at the park's entrance and at the intersection of 20th & Sparrow could direct people to this new parking lot.
 - We could consider \$5/day permit parking for this new lot.
 - A new trail could be built from from the new parking lot, towards the west to connect with the current trail that runs down to the Willamette River and over to Elk Rock Island. (There is already a social trail in this area)
 - Yes, we will have to work with Clackamas County as they own a portion of that corner of the park (the Lark Street right-of-way). But I think they would be happy to help enhance a park within the County.

Thank you,
Milo Denham
12106 SE 19th Avenue, Milwaukie

Site of potential new parking lot for Spring Park



Vera Kalias

From: Theresa Silver <tsilver2@spiretech.com>
Sent: Wednesday, March 13, 2019 7:40 PM
To: Vera Kalias
Subject: Fwd: Comment On NR-2018-005
Attachments: View from 12114 SE 19th Ave over the proposed building site.JPG

Dear Ms Kalias,

I am writing to add a few thoughts to my husband's comments about file number NR-2018-005, concerning a Natural Resources Cluster Development. I also strenuously object to the proposed development plan. Please see my comments interspersed in red below.

Sincerely,
Theresa Silver
12114 SE 19th Ave.
Milwaukie, OR 97222

----- Forwarded Message -----

Dear Ms Kalias:

With respect to file number NR-2018-005, concerning a Natural Resources Cluster Development, I have several comments.

1.

I have lived in this neighborhood at my present address since 1998. When I moved in, my new neighbors told me the Flood of 1996 came up to the camber of the road on 19th. This is significantly higher than the flood height recognized by the city as a matter of code; but I have no reason to think my neighbors misled me. Even at the height recognized by the City, I am concerned that the preliminary plans submitted with NR-2018-005 place living spaces below the 100 year flood line, in contravention of city code and in contravention of claims made in the narrative document submitted with NR-2018-005.

In looking at the narrative submitted with NR-2018-005, on pg 7 the claim is made:

"The proposed development will allow safe residential development within the flood plain by elevating living spaces of new homes above the 100 year flood elevation..."

However, in the preliminary plan submitted with NR-2018-005, the building labelled as #11 on page 1, which fronts on 19th Ave, has another living level below street level on the side of the house facing the river. The floor plan for this building is detailed as type G on pages 15 and 16 of the preliminary plan. Note on page 15 in the area labeled Lower Level Floor Plan the presence of a bathroom, a bedroom with walk-in closet, egress window, and door, and a bonus room with exterior sliding door, crawlspace access, and access to stairs leading up to the street level. This building is annotated on page 17 of the preliminary plan as having Finished Floor at elevation 47 feet. This may be accurate of the street level, but it cannot be true of the lower level. No annotation is present for the elevation of the finished floor of the lowest level of building 11. The submitted preliminary plan does not include sufficient detail to conclude that the finished floor of the lowest habitable level of building 11 is above the 100 year flood line.

With climate change, flooding is getting worse and more frequent. The 100 year mark is likely to be adjusted higher in the coming years. It's time to start planning ahead instead of waiting for problems to occur and then having to scramble to solve them.

2.

The preliminary plan indicates an intent to construct private drives with parking spaces below the 100 year flood line. The

preliminary plan also indicates intent to construct driveways below the 100 year flood line, and specifically categorizes such driveways as available parking spaces for purposes of calculating total vehicular parking spaces included in the development plan. The intended presence of vehicles in multiple open-air locations in the flood plain creates the danger that, in the event of flood, such vehicles may be swept downstream, potentially causing injury or death and/or significant damage to fixed structures. Cf MMC 18.04.130(D)(1).

3.

The preliminary plan includes a private drive which lies completely below the 100 year flood line, and includes multiple residences for which all access on foot is via this road and the surrounding land. In the event of flood, such residences will be completely inaccessible on foot and completely inaccessible to road traffic. Residences which are completely in the flood plain would, during flood, be accessible only by boat or by air (helicopter, float plane), and then only when water currents and weather conditions allow. There is significant hazard to occupants of such residences of being completely cut off from ordinary and emergency services, and of being unable to escape their residences, during flood conditions. Cf MMC 18.04.130(D)(9).

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In the preliminary plan, the planting plan on page 18 indicates a different private drive location and a different layout of buildings than the rest of the preliminary plan. If the buildings are constructed per the rest of the plan, the plants will necessarily be elsewhere than submitted on page 18 of the preliminary plan. Accordingly, it is not possible to evaluate the effect on sightlines of plantings made in connection with construction. The preliminary plan should not be considered complete without a planting plan on which the hardscaping (private drives, buildings, etc) matches the rest of the plan.

5.

The preliminary plan includes a dock which appears to be located in the vicinity of an existing tree which contains a large nest, which has been used for several years by a nesting pair of bald eagles. I am concerned that the construction of the path and dock would affect the health of the tree containing the bald eagle nest. I am further concerned that the general noise and chaos of construction would disturb the nesting pair by causing nest abandonment.

Per federal law 16 U.S.C. 668–668d, the taking of bald eagles is prohibited, and the definition of "take" is expansive, including "disturb". See for reference:

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<https://www.law.cornell.edu/uscode/text/16/668c>

A proposed construction plan which would foreseeably violate Federal law via the disturbance of bald eagles ought not be approved.

This open space provides habitat to a wide array of wildlife and enhances the character of the neighborhood.

6.

The preliminary plan indicates on pg 17 that some amount of fill would need to be brought into the site, in areas below the flood line, to fill the terrain up to the proposed private drive. The plan does not indicate the total volume of fill needed to accomplish this portion of the development. The plan does not indicate any areas in which cut could be made to balance the fill. By implication there will be a net fill within the flood plain to accomplish the road grading. Cf. MMC 18.04.150(F).

7.

In my home, from the upstairs window facing the river, I have a substantially unobstructed view of the Willamette River in its shallow channel on the near side (eastern side) of Elk Rock Island. This is the channel which is frequently dry in the summer. If the proposed development takes place, the constructed buildings will obstruct this line of sight view of the Willamette River from my bedroom window. I object to any height variance for any construction on the subject property because it would disrupt existing and longstanding views from my property. I further object to construction within the Willamette Greenway Zone on the same basis. Cf MMC 19.401.6(C).

8.

Existing and longstanding views of the Willamette River and of Elk Rock Island, from SE 19th Avenue in the block between SE Sparrow and SE Wren, would be completely blocked by the proposed construction. Cf. MMC 19.401.6(C).

We bought our home because of the views and the open space between us and the river. As you can see in the attached photo taken from our front porch, we can see straight over the roofs of the existing houses to Elk Rock Island. Filling in the open land on the river bank with tall building will significantly change our views, and the overall character of the neighborhood.

9.

The preliminary plan calls for road grading (for the private drive) in apparent violation of MMC 19.401.3(E).

On the basis of all the above, I strongly object to the development proposed in file NR-2018-005.

On the basis of comment 4, regards the planting plan having materially different hardscaping from the rest of the plan, file NR-2018-005 ought to be rejected as incomplete in that no planting plan that actually matches the hardscaping is present in the submitted materials.

Regards,

Steve Gerken
12114 SE 19th Ave
Milwaukie, OR



Vera Kolias

From: Samantha Vandagriff
Sent: Wednesday, March 13, 2019 9:12 AM
To: Vera Kolias
Subject: RE: Comment On NR-2018-005 , Part 1

Follow Up Flag: Follow up
Flag Status: Flagged

Comments from building:

All one or two family dwellings shall meet the requirements of the Oregon Residential Specialty Code (ORSC).

All livable space shall be located a minimum of 1 foot above the flood plain as determined by the City flood plain manager. Any space located within the flood plain shall show adequate measures for floor plain compliance for flow through of flood waters.

Let me know if you have any questions.

Samantha Vandagriff
Building Official
503.786.7611
City of Milwaukie
6101 SE Johnson Creek Blvd • Milwaukie, OR 97206

-----Original Message-----

From: Vera Kolias
Sent: Wednesday, March 13, 2019 7:28 AM
To: Dalton Vodden <VoddenD@milwaukieoregon.gov>; Alex Roller <RollerA@milwaukieoregon.gov>; Samantha Vandagriff <VandagriffS@milwaukieoregon.gov>
Cc: Dennis Egner <EgnerD@milwaukieoregon.gov>
Subject: FW: Comment On NR-2018-005 , Part 1

Please see comments below from a resident of 19th Ave. The bulk of them relate to floodplain, so I would appreciate it if you would review them as you complete your review as part of the referral.

Thanks very much!

Vera

VERA KOLIAS, AICP
Associate Planner
503.786.7653
City of Milwaukie
6101 SE Johnson Creek Blvd • Milwaukie, OR 97206

-----Original Message-----

From: Steve Gerken [mailto:argentpickle@yahoo.com]
Sent: Tuesday, March 12, 2019 11:42 PM
To: Vera Kolias <KoliasV@milwaukieoregon.gov>
Cc: Mike@iplexcorp.com <Mike@iplexcorp.com>
Subject: Comment On NR-2018-005 , Part 1

Dear Ms Kolias:

With respect to file number NR-2018-005, concerning a Natural Resources Cluster Development, I have several comments.

1.

I have lived in this neighborhood at my present address since 1998. When I moved in, my new neighbors told me the Flood of 1996 came up to the camber of the road on 19th. This is significantly higher than the flood height recognized by the city as a matter of code; but I have no reason to think my neighbors misled me. Even at the height recognized by the City, I am concerned that the preliminary plans submitted with NR-2018-005 place living spaces below the 100 year flood line, in contravention of city code and in contravention of claims made in the narrative document submitted with NR-2018-005.

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<https://www.law.cornell.edu/uscode/text/16/668>

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The preliminary plan calls for road grading (for the private drive) in apparent violation of MMC 19.401.3(E).

On the basis of all the above, I strongly object to the development proposed in file NR-2018-005.

On the basis of comment 4, regards the planting plan having materially different hardscaping from the rest of the plan, file NR-2018-005 ought to be rejected as incomplete in that no planting plan that actually matches the hardscaping is present in the submitted materials.

Regards,

Steve Gerken
12114 SE 19th Ave
Milwaukie, OR

Vera Kolas

From: Steve Gerken <argentpickle@yahoo.com>
Sent: Thursday, March 14, 2019 4:03 AM
To: Vera Kolas
Cc: SilverGirl
Subject: Comment on NR-2018-005, Part 2

Hello Ms Kolas--

I have further comments I would like to submit for file number NR-2018-005.

10.

In the preliminary plans, on page 4, there is a front view of proposed building type 'A', which would be for buildings 1 and 5. The dashed horizontal lines and the written text annotating those lines indicate a three-and-a-half story house, having an Upper Level, a Main Level, a Bonus Room Level, and then another half-story down, a Garage Level. These three-and-a-half story proposed buildings are in violation of MMC 19.301.4(B)(2), which caps total residential structure height at the lesser of two-and-a-half stories or 35 feet.

11.

In the preliminary plans, on page 6, there is a front view of proposed building type 'B', which would be for buildings 2, 3, and 4. The dashed horizontal lines indicate a three-story house, with an additional two feet between the lowest labeled floor and ground level. These three-and-a-fraction story proposed buildings are in violation of MMC 19.301.4(B)(2).

12.

In the preliminary plans, on page 8, there is a front view of proposed building type 'C', which would be for building 6. This drawing has dashed horizontal lines indicating the stories, but in this figure the dashed horizontal lines are unlabeled. The lines indicate an upper story, a middle story, a lower story, and an additional half-story down to the ground level for the garage entrance. Again, the front view drawing is for a three-and-a-half story house, in violation of MMC 19.301.4(B)(2).

13.

In the preliminary plans, on page 10, there is a front view of proposed building type 'D', which would be for building 7. This drawing has dashed horizontal lines indicating the stories, but in this figure the dashed horizontal lines are unlabeled. The lines indicate an upper story, a middle story, a lower story, and an additional half-story down to the ground level for the garage entrance. Again, the front view drawing is for a three-and-a-half story house, in violation of MMC 19.301.4(B)(2).

14.

In the preliminary plans, on page 12, there is a front view of proposed building type 'E', which would be for building 8. This drawing has dashed horizontal lines indicating the stories, but in this figure the dashed horizontal lines are unlabeled. The lines indicate an upper story, a middle story, a lower story, and an additional half-story down to the ground level for the garage entrance. Again, the front view drawing is for a three-and-a-half story house, in violation of MMC 19.301.4(B)(2).

15.

In the preliminary plans, on page 14, there is a front view of proposed building type 'F', which would be for building 9. This drawing has dashed horizontal lines indicating the stories, but in this figure the dashed horizontal lines are unlabeled. The lines indicate an upper story, a middle story, a lower story, and an additional half-story down to the ground level for the garage entrance. Again, the front view drawing is for a three-and-a-half story house, in violation of MMC 19.301.4(B)(2).

16.

In the preliminary plans, on page 16, there is a front view of proposed building type 'G', which would be for building 11. The dashed horizontal lines indicate a three-story house. This three story proposed building is in violation of MMC 19.301.4(B)(2).

The proposed height of these buildings must be considered in connection with MMC 19.401.6, which reads:

"The following shall be taken into account in the consideration of a conditional use:...

C. Protection of views both toward and away from the river;"

Note that the phrasing does not require that the river itself be visible in a view in order for the protection of that view to be taken into consideration. Current views toward the river from the public right-of-way in 19th Avenue feature extensive view of the natural beauty, vegetation, and wildlife of Elk Rock Island, which is a natural feature within the waterway of the Willamette River. When the proposed height of these buildings is considered in connection with the impingement on views toward the river, any variance of MMC 19.301.4(B)(2) should be denied. Approval of such variance would materially worsen the violation of MMC 19.401.6 by materially worsening many views "toward the river".

In addition, all the above plans with the exception of building 11 have at least one side wall with height greatly in excess of 20 feet, in violation of MMC 19.301.4(B)(3), and none of the exceptions of MMC 19.501.3 apply. The proposed structures are basically tall boxy towers that are very much outside the height requirements of Milwaukie Municipal Code, and would very significantly degrade existing views toward the river.

17.

In the preliminary plans, on page 16, there is a front view of a proposed building type 'G', which would be for building 11. This drawing has garage doors facing the street. The width of the garage doors exceeds 40% of the width of the front facade of the building, in violation of MMC 19.505.2(C)(2). MMC 19.505.2(C)(2) allows for width up to 50% if at least seven out of a list of many design elements are included in the street-facing facade; the plan calls out six.

The prominent-garage design, emphasizing the bulk of a double set of garage doors in a relatively small front facade, is quite rare in this neighborhood. We'd like to keep it that way, and deny variance to MMC 19.505.2(C)(2).

18.

The narrative accompanying the application describes the intended legal ownership of the developed property to be (pg. 4) **"with the land held in common ownership."** Further, **"[a] consolidation of the two parcels, with no additional partition of sub-division is proposed."** Under this approach, the developed property approximates cottage cluster on a single lot. Therefore, MMC 19.505.3 "Multifamily Housing" applies to the development. To quote MMC 19.505.3(B) "Applicability":

"The design elements in Table 19.505.3.D in this subsection apply, as described below, to all multifamily and congregate housing developments with 3 or more dwelling units on a single lot. Cottage cluster housing and rowhouses on their own lots are subject to separate standards and are therefore exempt from Subsection 19.505.3. Housing development that is on a single lot and emulates the style of cottage cluster housing or rowhouses is subject to the standards of this subsection."

Since the applicant intends to consolidate the subject properties into a single lot and put substantially more than 3 dwelling units on the lot, the section applies.

MMC 19.505.3(D)(8) requires that for every 2,000 square feet of site area, one existing tree shall be preserved, or one new tree shall be planted, with additional restrictions on species and projected canopy coverage. In light of the planting plan not having the same hardscaping as the rest of the preliminary plan (see earlier comment in part 1), compliance with MMC 19.505.3(D)(8) cannot be ascertained.

MMC 19.505.3(D)(11), sustainability requirements, requires window orientation, natural shading, and/or sunshades to limit summer sun and allow for winter sun penetration. Preliminary plans have a great deal of west-facing glazing without evident design consideration to limit the summer sun. The preliminary plans appear to be in violation of MMC 19.505.3(D)(11).

For all the above reasons, we strongly oppose the development proposed in file NR-2018-005.

Regards,
Steve Gerken and Theresa Silver
12114 SE 19th Avenue
Milwaukie, OR

Vera Kolias

From: Vera Kolias
Sent: Thursday, March 14, 2019 8:42 AM
To: 'Steve Gerken'
Cc: SilverGirl; Dennis Egner
Subject: RE: Comment on NR-2018-005, Part 2

Hello Mr. Gerken,

Your comments will be made part of the official record. Please note that the applicant has requested a variance to allow 3-story structures. Building 11 will need to be included in that variance request.

Regarding the half-story issue, I asked the Building Official to review your comments and the drawings to be sure we had the correct answer. Here is her response:

Good Morning,

The dash line indicated in the comments below on the elevation pages is only indicating the finish floor level of the first story as required by code. The underfloor space denoted by this mark is considered crawl space not a story. This type of construction is prevalent throughout Oregon where the garage is concrete slab on grade and sits at a lower elevation than the floor space surrounding it.

Let me know if you have any questions.

Samantha Vandagriff

Building Official
503.786.7611
City of Milwaukie
6101 SE Johnson Creek Blvd • Milwaukie, OR 97206

Given Samantha's comments, we would consider the proposed homes to be 3 stories, not 3 ½ stories, and they require a variance to building height which has been requested.

Please let me know if you have any questions about this.

-Vera

VERA KOLIAS, AICP

Associate Planner
503.786.7653
City of Milwaukie
6101 SE Johnson Creek Blvd • Milwaukie, OR 97206

From: Steve Gerken [mailto:argentpickle@yahoo.com]
Sent: Thursday, March 14, 2019 4:03 AM
To: Vera Kolias <KoliasV@milwaukieoregon.gov>
Cc: SilverGirl <tsilver@alumni.reed.edu>
Subject: Comment on NR-2018-005, Part 2

I have further comments I would like to submit for file number NR-2018-005.

10.

In the preliminary plans, on page 4, there is a front view of proposed building type 'A', which would be for buildings 1 and 5. The dashed horizontal lines and the written text annotating those lines indicate a three-and-a-half story house, having an Upper Level, a Main Level, a Bonus Room Level, and then another half-story down, a Garage Level. These three-and-a-half story proposed buildings are in violation of MMC 19.301.4(B)(2), which caps total residential structure height at the lesser of two-and-a-half stories or 35 feet.

11.

In the preliminary plans, on page 6, there is a front view of proposed building type 'B', which would be for buildings 2, 3, and 4. The dashed horizontal lines indicate a three-story house, with an additional two feet between the lowest labeled floor and ground level. These three-and-a-fraction story proposed buildings are in violation of MMC 19.301.4(B)(2).

12.

In the preliminary plans, on page 8, there is a front view of proposed building type 'C', which would be for building 6. This drawing has dashed horizontal lines indicating the stories, but in this figure the dashed horizontal lines are unlabeled. The lines indicate an upper story, a middle story, a lower story, and an additional half-story down to the ground level for the garage entrance. Again, the front view drawing is for a three-and-a-half story house, in violation of MMC 19.301.4(B)(2).

13.

In the preliminary plans, on page 10, there is a front view of proposed building type 'D', which would be for building 7. This drawing has dashed horizontal lines indicating the stories, but in this figure the dashed horizontal lines are unlabeled. The lines indicate an upper story, a middle story, a lower story, and an additional half-story down to the ground level for the garage entrance. Again, the front view drawing is for a three-and-a-half story house, in violation of MMC 19.301.4(B)(2).

14.

In the preliminary plans, on page 12, there is a front view of proposed building type 'E', which would be for building 8. This drawing has dashed horizontal lines indicating the stories, but in this figure the dashed horizontal lines are unlabeled. The lines indicate an upper story, a middle story, a lower story, and an additional half-story down to the ground level for the garage entrance. Again, the front view drawing is for a three-and-a-half story house, in violation of MMC 19.301.4(B)(2).

15.

In the preliminary plans, on page 14, there is a front view of proposed building type 'F', which would be for building 9. This drawing has dashed horizontal lines indicating the stories, but in this figure the dashed horizontal lines are unlabeled. The lines indicate an upper story, a middle story, a lower story, and an additional half-story down to the ground level for the garage entrance. Again, the front view drawing is for a three-and-a-half story house, in violation of MMC 19.301.4(B)(2).

16.

In the preliminary plans, on page 16, there is a front view of proposed building type 'G', which would be for building 11. The dashed horizontal lines indicate a three-story house. This three story proposed building is in violation of MMC 19.301.4(B)(2).

The proposed height of these buildings must be considered in connection with MMC 19.401.6, which reads:

"The following shall be taken into account in the consideration of a conditional use:...

C. Protection of views both toward and away from the river;"

Note that the phrasing does not require that the river itself be visible in a view in order for the protection of that view to be taken into consideration. Current views toward the river from the public right-of-way in 19th Avenue feature extensive view of the natural beauty, vegetation, and wildlife of Elk Rock Island, which is a natural feature within the waterway of the Willamette River. When the proposed height of these buildings is considered in connection with the impingement on views toward the river, any variance of MMC 19.301.4(B)(2) should be denied. Approval of such variance would materially worsen the violation of MMC 19.401.6 by materially worsening many views "toward the river".

In addition, all the above plans with the exception of building 11 have at least one side wall with height greatly in excess of 20

feet, in violation of MMC 19.301.4(B)(3), and none of the exceptions of MMC 19.501.3 apply. The proposed structures are basically tall boxy towers that are very much outside the height requirements of Milwaukie Municipal Code, and would very significantly degrade existing views toward the river.

17.

In the preliminary plans, on page 16, there is a front view of a proposed building type 'G', which would be for building 11. This drawing has garage doors facing the street. The width of the garage doors exceeds 40% of the width of the front facade of the building, in violation of MMC 19.505.2(C)(2). MMC 19.505.2(C)(2) allows for width up to 50% if at least seven out of a list of many design elements are included in the street-facing facade; the plan calls out six.

The prominent-garage design, emphasizing the bulk of a double set of garage doors in a relatively small front facade, is quite rare in this neighborhood. We'd like to keep it that way, and deny variance to MMC 19.505.2(C)(2).

18.

The narrative accompanying the application describes the intended legal ownership of the developed property to be (pg. 4) **"with the land held in common ownership."** Further, **"[a] consolidation of the two parcels, with no additional partition of sub-division is proposed."** Under this approach, the developed property approximates cottage cluster on a single lot. Therefore, MMC 19.505.3 "Multifamily Housing" applies to the development. To quote MMC 19.505.3(B) "Applicability":

"The design elements in Table 19.505.3.D in this subsection apply, as described below, to all multifamily and congregate housing developments with 3 or more dwelling units on a single lot. Cottage cluster housing and rowhouses on their own lots are subject to separate standards and are therefore exempt from Subsection 19.505.3. Housing development that is on a single lot and emulates the style of cottage cluster housing or rowhouses is subject to the standards of this subsection."

Since the applicant intends to consolidate the subject properties into a single lot and put substantially more than 3 dwelling units on the lot, the section applies.

MMC 19.505.3(D)(8) requires that for every 2,000 square feet of site area, one existing tree shall be preserved, or one new tree shall be planted, with additional restrictions on species and projected canopy coverage. In light of the planting plan not having the same hardscaping as the rest of the preliminary plan (see earlier comment in part 1), compliance with MMC 19.505.3(D)(8) cannot be ascertained.

MMC 19.505.3(D)(11), sustainability requirements, requires window orientation, natural shading, and/or sunshades to limit summer sun and allow for winter sun penetration. Preliminary plans have a great deal of west-facing glazing without evident design consideration to limit the summer sun. The preliminary plans appear to be in violation of MMC 19.505.3(D)(11).

For all the above reasons, we strongly oppose the development proposed in file NR-2018-005.

Regards,
Steve Gerken and Theresa Silver
12114 SE 19th Avenue
Milwaukie, OR

Vera Kolias

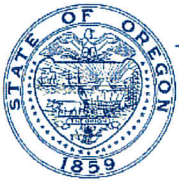
From: Steve Gerken <argentpickle@yahoo.com>
Sent: Thursday, March 14, 2019 8:00 AM
To: Vera Kolias
Subject: Supplemental material for comments on NR-2018-005
Attachments: IMG_20190314_074047227.jpg

Good morning Ms Kolias--

Please include the attached photo, taken this morning from a window of the dwelling at 12114 SE 19th Ave, in comment regards NR-2018-005. Note view towards river, across the property which is the subject of that NR. New construction substantially taller than the existing flat-roofed structure on the subject property would materially degrade the view towards the river.

Regards,
Steve Gerken
12114 SE 19th
Milwaukie, OR 97222





Oregon

Kate Brown, Governor

Department of State Lands

775 Summer Street NE, Suite 100

Salem, OR 97301-1279

(503) 986-5200

FAX (503) 378-4844

www.oregon.gov/dsl

State Land Board

March 14, 2019

Matthew Gillis
11650 SW 67th Avenue Suite 210
Tigard, OR 97223

Kate Brown
Governor

Re: WD #2019-0055 Wetland Delineation Report for Matthew Gillis
Property, Milwaukie, Clackamas County;
T 1S R 1E S 35DD TL 3200, 3300 and portions of SE Sparrow
Street and SE 19th Avenue Rights-of-Way;

Dennis Richardson
Secretary of State

Tobias Read
State Treasurer

Dear Mr. Gillis:

The Department of State Lands has reviewed the wetland delineation report prepared by Environmental Technology Consultants for the site referenced above. Please note that the study area includes only a portion of the tax lots described above (see the attached maps). Based upon the information presented in the report, and additional information submitted upon request, we concur with the wetland and waterway boundaries as mapped in revised Figure 6A of the report. Please replace all copies of the preliminary wetland map with this final Department-approved map.

Within the study area, two wetlands (Wetlands A and B), totaling approximately 0.08 acres, and the Willamette River were identified. The wetlands and the Willamette River are subject to the permit requirements of the state Removal-Fill Law. Under current regulations, a state permit is required for cumulative fill or annual excavation of 50 cubic yards or more in wetlands or below the ordinary high-water line (OHWL) of the waterway (or the 2-year recurrence interval flood elevation if OHWL cannot be determined).

However, the Willamette River is an essential salmonid stream. Therefore, fill or removal of any amount of material within the OHWL (21.4 NGVD88, DSL 1977) and hydrologically-connected wetlands may require a state permit. This would include any docks, dock access, or access to other portions of the property outside of the study area below the OHWL.

This concurrence is for purposes of the state Removal-Fill Law only. Federal or local permit requirements may apply as well. The Army Corps of Engineers will determine jurisdiction for purposes of the Clean Water Act. We recommend that you attach a copy of this concurrence letter to both copies of any subsequent joint permit application to speed application review.

Please be advised that state law establishes a preference for avoidance of wetland impacts. Because measures to avoid and minimize wetland impacts may include reconfiguring parcel layout and size or development design, we recommend that you work with Department staff on appropriate site design before completing the city or county land use approval process.

This concurrence is based on information provided to the agency. The jurisdictional determination is valid for five years from the date of this letter unless new information necessitates a revision. Circumstances under which the Department may change a determination are found in OAR 141-090-0045 (available on our web site or upon request). In addition, laws enacted by the legislature and/or rules adopted by the Department may result in a change in jurisdiction; individuals and applicants are subject to the regulations that are in effect at the time of the removal-fill activity or complete permit application. The applicant, landowner, or agent may submit a request for reconsideration of this determination in writing within six months of the date of this letter.

This area of the Willamette is a state-owned waterway. Any activity encroaching within the submerged and submersible land may require a lease, registration, or easement to occupy state-owned land. This would include any docks, dock access, or access to other portions of the property outside of the study area below the OHWL. Please contact Justin Russell at 503-986-5219 for more information.

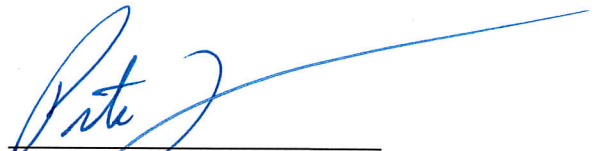
Thank you for having the site evaluated. Please phone me at 503-986-5246 if you have any questions.

Sincerely,



Chris Stevenson
Jurisdiction Coordinator

Approved by



Peter Ryan, PWS
Aquatic Resource Specialist

Enclosures

ec: John McConnaughey, PWS Environmental Technology Consultants
Vera Koliass, City of Milwaukie Planning Department
Jessica Menichino, Corps of Engineers
Justin Russell, DSL
Anita Huffman, DSL
Joy Vaughan, ODFW

WETLAND DELINEATION / DETERMINATION REPORT COVER FORM

This form must be included with any wetland delineation report submitted to the Department of State Lands for review and approval. A wetland delineation report submittal is not "complete" unless the fully completed and signed report cover form and the required fee are submitted. Attach this form to the front of an unbound report or include a hard copy of the completed form with a CD/DVD that includes a single PDF file of the report cover form and report (minimum 300 dpi resolution) and submit to: **Oregon Department of State Lands, 775 Summer Street NE, Suite 100, Salem, OR 97301-1279**. A single PDF attachment of the completed cover form and report may be e-mailed to Wetland_Delineation@dsl.state.or.us. For submittal of PDF files larger than 10 MB, e-mail instructions on how to access the file from your ftp or other file sharing website. Fees can be paid by check or credit card. Make the check payable to the Oregon Department of State Lands. To pay the fee by credit card, call 503-986-5200.

<input checked="" type="checkbox"/> Applicant <input checked="" type="checkbox"/> Owner Name, Firm and Address: Matthew Gillis 4776 Carolina Avenue, NE Salem, OR 97305	11650 SW 67th Ave #210 Tigard OR 97223	Business phone # 661-810-2344 Mobile phone # E-mail: matthew.gillis@me.com
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------

<input checked="" type="checkbox"/> Authorized Legal Agent, Name and Address: Environmental Technology Consultants 375 Portland Ave, Gladstone, OR 97027	Business phone # 360-696-4403 Mobile phone # 503-580-2465 E-mail: JohnM@etcEnvironmental.net AnnakateM@etcEnvironmental.net
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

I either own the property described below or I have legal authority to allow access to the property. I authorize the Department to access the property for the purpose of confirming the information in the report, after prior notification to the primary contact.
 Typed/Printed Name: Matthew Gillis Signature: *Matthew Gillis*
 Date: **May 29, 2018** Special instructions regarding site access: **Contact owner or agent**

Project and Site Information (using decimal degree format for lat/long of site or start & end points of linear project)

Project Name: Matthew Gillis Milwaukie	Latitude: N 45.43470	Longitude: W -121.64527
Proposed Use: Single Family Homes	Tax Map # 031s1e35dd	-122
Project Street Address (or other descriptive location): 12225 SE 19th Avenue	Township 1S Range 1E Section 35 QQ DD Tax Lot(s) 03300 and 03200 and portions of adjacent ROWs	
City: Milwaukie County: Clackamas	Waterway: Willamette River River Mile: NWI Quad(s):	

Wetland Delineation Information

Wetland Consultant Name, Firm and Address: John McConnaughey, PWS Environmental Technology Consultants 375 Portland Ave, Gladstone, OR 97027 360-696-4403 desk 503-580-2465 cell	Phone # 360-696-4403 Mobile phone # 503-580-2465 E-mail: JohnM@etcEnvironmental.net
The information and conclusions on this form and in the attached report are true and correct to the best of my knowledge. Consultant Signature: <u><i>John McConnaughey</i></u>	Date: May 29, 2018

Primary Contact for report review and site access is Consultant Applicant/Owner Authorized Agent
 Wetland/Waters Present? Yes No Study Area size **2.26 acres** Total Wetland Acreage: **0.08 acres**

Check Box Below if Applicable: Fees: \$437 (2018) \$454.00 (2019)

<input type="checkbox"/> R-F permit application submitted	<input checked="" type="checkbox"/> Fee payment submitted \$437 \$454.00
<input type="checkbox"/> Mitigation bank site	<input type="checkbox"/> Fee (\$100) for resubmittal of rejected report
<input type="checkbox"/> Wetland restoration/enhancement project (not mitigation)	<input type="checkbox"/> No fee for request for reissuance of an expired report
<input type="checkbox"/> Industrial Land Certification Program Site	
<input type="checkbox"/> Reissuance of a recently expired delineation	
Previous DSL # _____ Expiration date _____	

RECEIVED
JAN 24 2019
 RECEIVED \$ 454.00
 DEPARTMENT OF STATE LANDS
 ✓ # 2441

Other Information:

	Y	N
Has previous delineation/application been made on parcel?	<input type="checkbox"/>	<input type="checkbox"/>
Does LWI, if any, show wetland or waters on parcel?	<input checked="" type="checkbox"/>	<input type="checkbox"/>

For Office Use Only

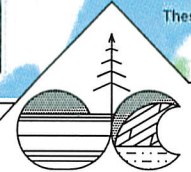
DSL Reviewer: <u>CS</u>	Fee Paid Date: <u>1 / 24 / 19</u>	DSL WD # <u>2019-0055</u>
Date Delineation Received: <u>1 / 24 / 19</u>	DSL Project # _____	DSL Site # _____
Scanned: <input checked="" type="checkbox"/> Final Scan: <input type="checkbox"/>	DSL WN # _____	DSL App. # _____

77636



12225 AND 12205 SE 19TH AVENUE,
MILWAUKIE, OREGON 97222

STUDY BOUNDARY INCLUDES ONLY
THOSE AREAS EAST OF THE OHWM OF
THE WILLAMETTE RIVER, AND
PORTIONS OF THE SPARROW STREET
UNDEVELOPED ROW, AND ADJOINING
PARTS OF SE 19TH AVENUE ROW.

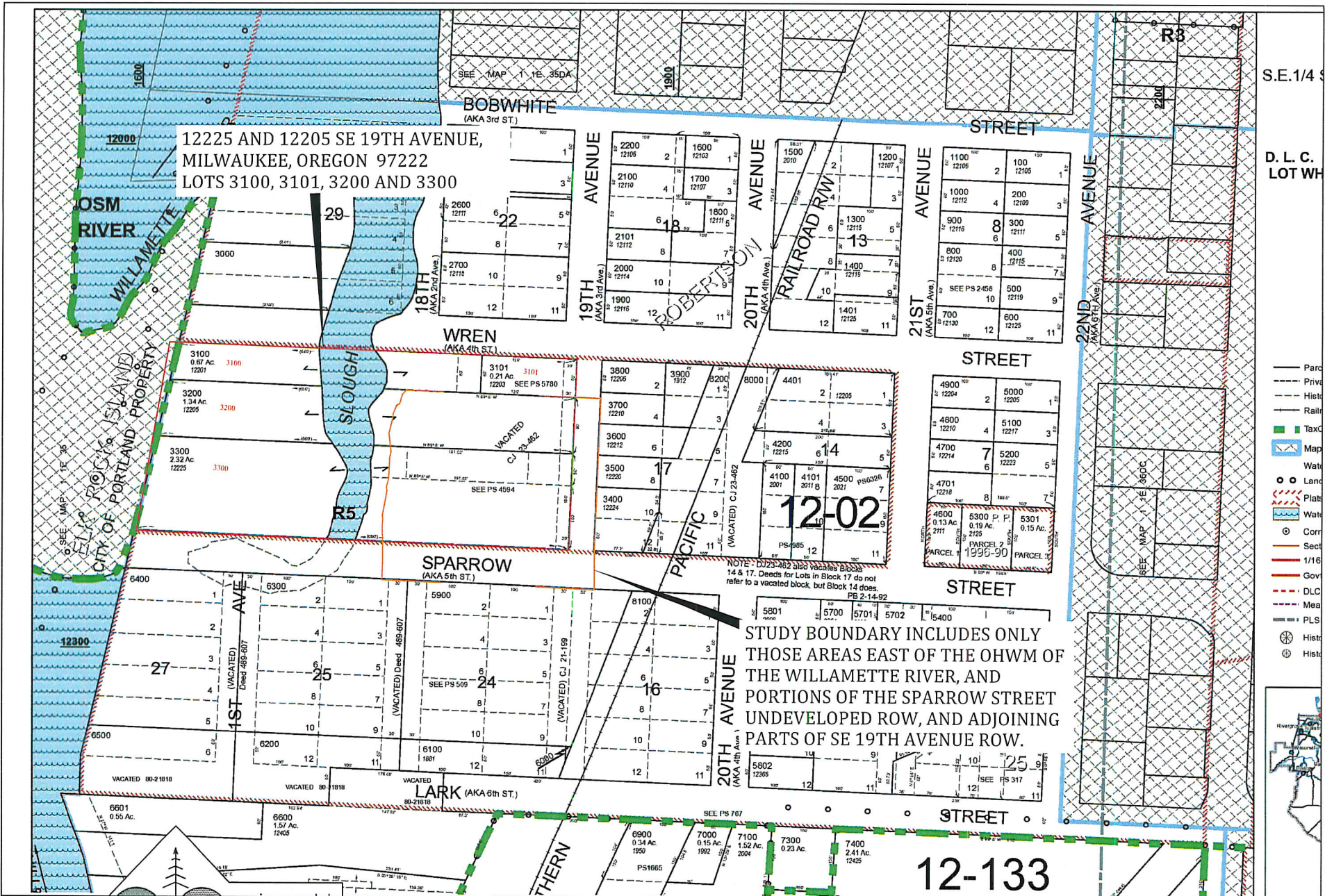


environmental
technology
consultants

PO Box 821185
Vancouver, WA 98682
360-696-4403

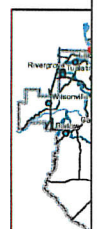
LOCATION MAP
GOOGLE MAPS

MILWAUKIE RIVERFRONT CUSTOM HOMES
GILLIS PROPERTIES LLC
5965 WEST A STREET
WEST LINN, OR 97068



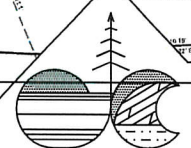
S.E. 1/4 S
D. L. C.
LOT WH

- Parc
- - - Priv
- - - Hist
- - - Rail
- TaxC
- Map
- Water
- Land
- Plat
- Water
- Corr
- Sect
- 1/16
- Gov
- - - DLC
- - - Mea
- - - PLS
- ⊙ Hist
- ⊙ Hist



NOTE: D123-462 also vacates Blocks 14 & 17. Deeds for Lots in Block 17 do not refer to a vacated block, but Block 14 does.

STUDY BOUNDARY INCLUDES ONLY THOSE AREAS EAST OF THE OHWM OF THE WILLAMETTE RIVER, AND PORTIONS OF THE SPARROW STREET UNDEVELOPED ROW, AND ADJOINING PARTS OF SE 19TH AVENUE ROW.



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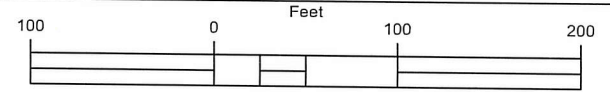
PO Box 821185
Vancouver, WA 98682
360-696-4403

TAX MAP
11E35DD MILWAUKIE
SE 1/4 SE 1/4 SEC 35 T1S R1E WM
CLACKAMAS COUNTY
5.2 Page 123

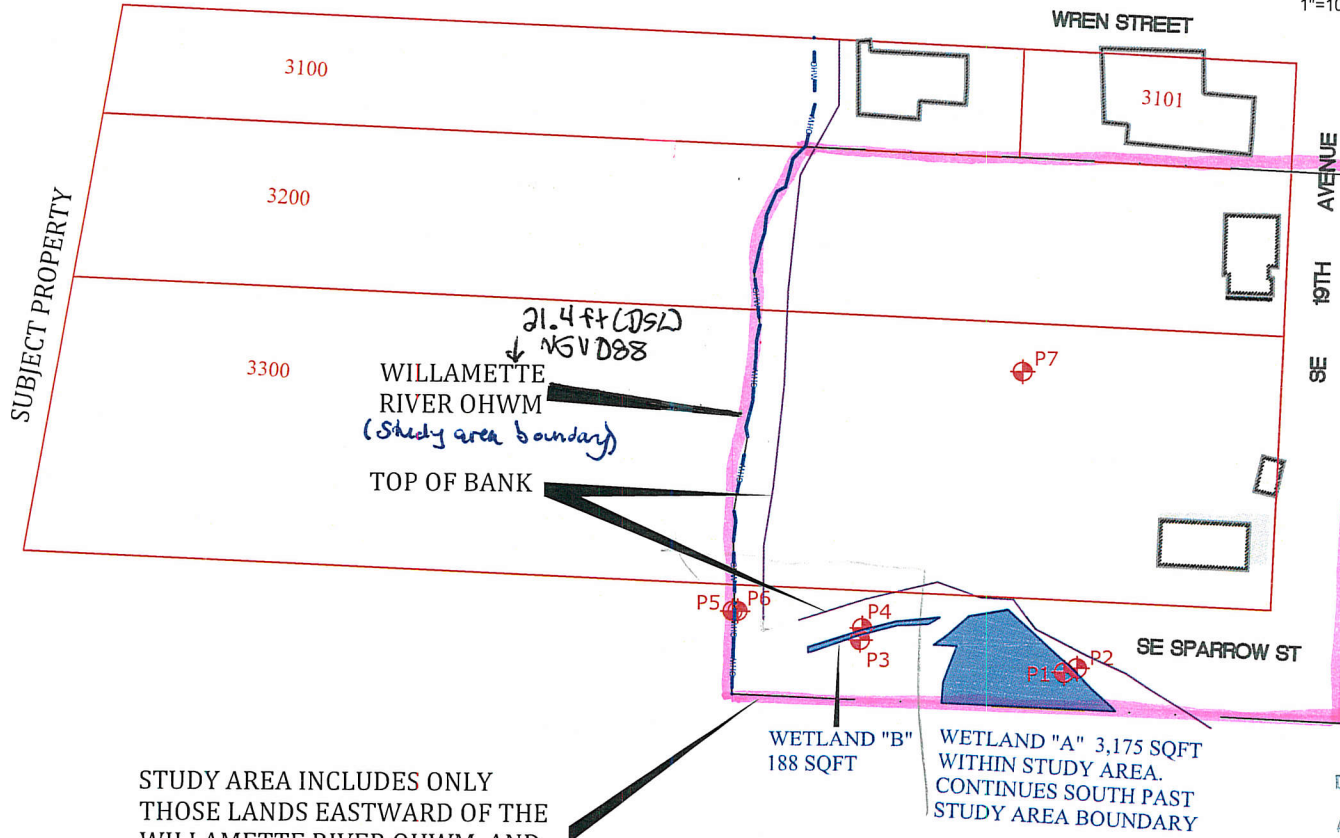
MILWAUKIE RIVERFRONT CUSTOM HOMES
GILLIS PROPERTIES LLC
5965 WEST A STREET
WEST LINN, OR 97068

JUL 30, 2018

2



1"=100FT FORMATTED FOR 8.5X11



study area

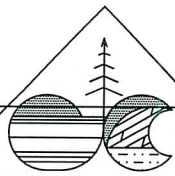
MAPPING: BASE DRAWING BY HAROLD SALO PLS 2264. WETLAND, OHW AND TOP OF BANK ADDED BY ETC USING GPS ACCURATE TO ± 3FT

STUDY AREA INCLUDES ONLY THOSE LANDS EASTWARD OF THE WILLAMETTE RIVER OHWM, AND ALSO INCLUDE PORTIONS OF THE SE SPARROW STREET ROW AND SE 19TH AVENUE ROW.

DSL WD # 2019-0055
Approval Issued 3-14-19
Approval Expires 3-14-24

Disclaimer per OAR 141-090-0035 (7)(k)

This report documents the investigation, best professional judgment and conclusions of the investigator. It is correct and complete to the best of my knowledge. It should be considered a Preliminary Jurisdictional Determination of wetlands and other waters and used at your own risk unless it has been reviewed and approved in writing by the Oregon Department of State Lands in accordance with OAR 141-090-0005 through 141-090-0055.



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technology
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PO Box 821185
Vancouver, WA 98682
360-696-4403

DELINEATED WETLAND BOUNDARIES AND OHWM FOR
STUDY AREA, TAX LOTS 3100, 3102, 3200, AND 3300 IN
SE 1/4 SE 1/4 SEC 35 T1S R1E WM
CLACKAMAS COUNTY

MILWAULKIE RIVERFRONT CUSTOM HOMES
GILLIS PROPERTIES LLC
5965 WEST A STREET
WEST LINN, OR 97068

National Flood Hazard Layer FIRMette

ATTACHMENT 6



Legend

SEE FIS REPORT FOR DETAILED LEGEND AND INDEX MAP FOR FIRM PANEL LAYOUT

SPECIAL FLOOD HAZARD AREAS		Without Base Flood Elevation (BFE) Zone A, V, A99
		With BFE or Depth Zone AE, AO, AH, VE, AR
		Regulatory Floodway
OTHER AREAS OF FLOOD HAZARD		0.2% Annual Chance Flood Hazard, Areas of 1% annual chance flood with average depth less than one foot or with drainage areas of less than one square mile Zone X
		Future Conditions 1% Annual Chance Flood Hazard Zone X
		Area with Reduced Flood Risk due to Levee. See Notes. Zone X
		Area with Flood Risk due to Levee Zone D
OTHER AREAS		NO SCREEN Area of Minimal Flood Hazard Zone X
		Effective LOMRs
GENERAL STRUCTURES		Area of Undetermined Flood Hazard Zone D
		Channel, Culvert, or Storm Sewer
		Levee, Dike, or Floodwall
OTHER FEATURES		20.2 Cross Sections with 1% Annual Chance
		17.5 Water Surface Elevation
		Coastal Transect
		Base Flood Elevation Line (BFE)
		Limit of Study
MAP PANELS		Jurisdiction Boundary
		Coastal Transect Baseline
		Profile Baseline
		Hydrographic Feature
		Digital Data Available
		No Digital Data Available
		Unmapped



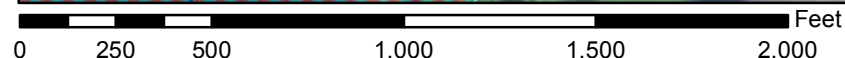
The pin displayed on the map is an approximate point selected by the user and does not represent an authoritative property location.

This map complies with FEMA's standards for the use of digital flood maps if it is not void as described below. The basemap shown complies with FEMA's basemap accuracy standards

The flood hazard information is derived directly from the authoritative NFHL web services provided by FEMA. This map was exported on 5/17/2019 at 1:43:32 PM and does not reflect changes or amendments subsequent to this date and time. The NFHL and effective information may change or become superseded by new data over time.

This map image is void if the one or more of the following map elements do not appear: basemap imagery, flood zone labels, legend, scale bar, map creation date, community identifiers, FIRM panel number, and FIRM effective date. Map images for unmapped and unmodernized areas cannot be used for regulatory purposes.

45°26'16.74"N




45°25'51.49"N

122°38'20.43"W

USGS The National Map: Orthoimagery. Data refreshed April, 2019.

Legend

**February 1996 Flood with
h Metro Goal 5 Updates,
Portland Metro Region,
Oregon**

 February 1996 Flood



Map Details

Datasets



February 1996 Flood with Metro Goal 5 Updates, Portland Metro Region, Oregon

<https://databasin.org/datasets/98d3ee76aed442249e31a0150496a5e7>

- Credits:** US Army Corps/Metro Data Resource Center
© Oregon Metro [www.oregonmetro.gov/rlis](http://www.oregonmetro.gov/)
- Layers:**
- February 1996 Flood with Metro Goal 5 Updates, Portland Metro Region, Oregon

April 24, 2019

Michael C. Robinson
Admitted in Oregon
T: 503-796-3756
C: 503-407-2578
mrobinson@schwabe.com

VIA E-MAIL

Ms. Vera Koliass
Associate Planner
City of Milwaukie
10722 SE Main Street
Milwaukie, OR 97222

RE: Greenway and Flood Hazard Application Requirements for Elk Rock Estates

Dear Ms. Koliass:

This office represents Gillis Properties in its “Elk Rock Estates” development application (the “Application”). The subject property is located at 12205/12225 SE 19th Street. The Property is zoned R-5, which allows residential uses. We understand that City staff has imposed two requirements which are difficult for the Project to satisfy. The first is a requirement to preserve views within the Willamette Greenway Overlay Zone and the second is a requirement to elevate the proposed driveway serving the cluster development at least one (1) foot above the 100-year flood elevation. This letter is respectfully submitted to explain why neither requirement is applicable under the provisions of the Milwaukie Municipal Code (“MMC”).

1. The Willamette Greenway view protection requirement is not applicable to the Application.

The Application is for the development of housing in a residential zone. ORS 197.307(4), the “Needed Housing Statute,” prohibits the City from applying any criteria to the development of housing that are not “clear and objective”:

“Except as provided in subsection (6) of this section, a local government may adopt and apply only clear and objective standards, conditions and procedures regulating the development of housing, including needed housing. The standards, conditions and procedures:

- (a) May include, but are not limited to, one or more provisions regulating the density or height of a development.**

- (b) **May not have the effect, either in themselves or cumulatively, of discouraging needed housing through unreasonable cost or delay.”**

The only two exceptions to this statute are development within Portland’s central city and residential development in historic areas. ORS 197.307(5). The Application is for neither of these; therefore, no exception to the Needed Housing Statute applies. ORS 197.307(6) is inapplicable because the applicant has not been directed to a clear and objective path for residential development.

The Application is presumptively subject to the Willamette River Greenway Overlay (“WG”) Zone because it proposes residential development within that zone. The WG zone criteria are set forth in MMC 19.401.6 (enclosed). That section includes a number of considerations that are relevant to granting a WG zone conditional use permit. Factor C provides for “[p]rotection of views both toward and away from the river.” This standard is not clear and objective because the “protection of views” requires discretion to identify views requiring protection and to determine what methods are appropriate for their protection. There are no clear and objective standards protecting views in the WG zone.

There are similarly no clear and objective standards applicable to the Application in the Natural Resources Overlay (“NR”) Zone. The NR zone does provide for a non-discretionary review pathway. However, it is permissible only for proposals that are “subject to a Type I review.” MMC 19.402.11.D. As explained in the Application narrative, the Application is subject to concurrent Type II and Type III reviews. MMC 19.402.8.B Therefore, discretionary WQR and/or HCA regulations and development standards do not apply to the Application.

2. There is no requirement to elevate a private street or driveway 1 foot above the 100-year floodplain.

MMC Title 18 regulates Flood Hazards. There are several related requirements that residential structures (i.e. houses) are elevated above flood stage. MMC 18.04.160.A provides that “new construction and substantial improvement of any residential structure shall have the lowest floor, including basement, elevated one (1) foot above base flood elevation.” That same applies to “nonresidential construction,” which includes “any commercial, industrial, or non-residential structure.” There is no definition of “structure” in MMC Title 18, however, the definition of “structure” in the zoning code expressly excludes “streets and utilities.” MMC 19.201.

There is no similar requirement applicable to streets, driveways, or other access ways. The City’s Street Design Standards, set forth in MMC 19.708, explain that “[s]treets shall be designed and improved in accordance with the standards of this chapter and the Public Works Standards.” Neither the City’s Land Division Code, nor its Public Works Standards, nor its Street Design Standards, expressly require streets or other access ways to be elevated above the 100-year flood plain.

Vera Kolas
April 24, 2019
Page 3

Very truly yours,



Michael C. Robinson

MCR/jmhi
Enclosure

Cc Mr. Matthew Gillis (*via email*) (*w/enclosure*)
Mr. Garrett H. Stephenson (*via email*) (*w/enclosure*)
PDX\134393\246818\MCR\25296430.1

Milwaukie Municipal Code

TITLE 19 ZONING

CHAPTER 19.400 OVERLAY ZONES AND SPECIAL AREAS

19.401 WILLAMETTE GREENWAY ZONE WG

19.401.6 Criteria

The following shall be taken into account in the consideration of a conditional use:

- A. Whether the land to be developed has been committed to an urban use, as defined under the State Willamette River Greenway Plan;
- B. Compatibility with the scenic, natural, historic, economic, and recreational character of the river;
- C. Protection of views both toward and away from the river;
- D. Landscaping, aesthetic enhancement, open space, and vegetation between the activity and the river, to the maximum extent practicable;
- E. Public access to and along the river, to the greatest possible degree, by appropriate legal means;
- F. Emphasis on water-oriented and recreational uses;
- G. Maintain or increase views between the Willamette River and downtown;
- H. Protection of the natural environment according to regulations in Section 19.402;
- I. Advice and recommendations of the Design and Landmark Committee, as appropriate;
- J. Conformance to applicable Comprehensive Plan policies;
- K. The request is consistent with applicable plans and programs of the Division of State Lands;
- L. A vegetation buffer plan meeting the conditions of Subsections 19.401.8.A through C.

April 29, 2019

Michael C. Robinson

Admitted in Oregon

T: 503-796-3756

C: 503-407-2578

mrobinson@schwabe.com

VIA E-MAIL

Ms. Vera Kolias
Associate Planner
City of Milwaukie Planning Department
6101 SE Johnson Creek Boulevard
Milwaukie, OR 97206

RE: City of Milwaukie File No. NR-2018-005; Elk Rock Estates

Dear Ms. Kolias:

This office represents the Applicant, Gillis Properties, LLC. This letter addresses the evidence satisfying Milwaukie Municipal Code (the “MMC”) 19.401.6(C). This standard provides:

“The following shall be taken into account in the consideration of a conditional use;

* * *

C. Protection of views both toward and away from the river;”

The Applicant responds to this standard in two ways. First, pursuant to my April 24, 2019 letter, the Applicant reserves its right to argue that MCC 19.401.6(C) is not a clear and objective standard and, therefore, may not be applied by the City to this Application pursuant to ORS 197.307(4) because it is a residential development within an Urban Growth Boundary (“UGB”) under ORS 197.303(1).

Alternatively, the Milwaukie Planning Commission can find that this standard is satisfied for the following reasons. First, the Planning Director has explained that the views addressed in MCC 19.401.6(C) are from the public right-of-way. In this case, such views are from 19th Avenue. Second, the views to and from the Willamette River are in the context of the existing development. Substantial evidence in the whole record demonstrates that the view of the river from 19th Street is already impeded by existing trees between 19th Street and the Willamette River. Third, the Planning Director indicated that the views to be protected are some views and not all views.

Ms. Vera Kolas
April 29, 2019
Page 2

Exhibit 1 to this letter is a revised site plan. The site plan contains an arrow labeled "View" pointing west from 19th Street along the private drive and showing a gap between Units 1 and 2, 2 and 3 and 3 and 4 to the Willamette River. Second, **Exhibit 2** to this letter are photographs showing the existing trees to the west of Units 2 and 3. The gap between Units 2 and 3 as identified on the site plan in **Exhibit 1** and as shown in **Exhibit 2** provides for the protection of the existing view toward the river. The Planning Commission can also find that the same substantial evidence demonstrates that views away from the river are protected in the context explained in this letter.

Please place this letter in the official Planning Department file for this Application and before the Milwaukie Planning Commission at the initial evidentiary hearing on May 28, 2019.

Very truly yours,



Michael C. Robinson

MCR/jmhi
Enclosures

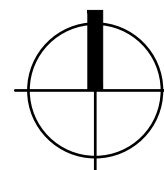
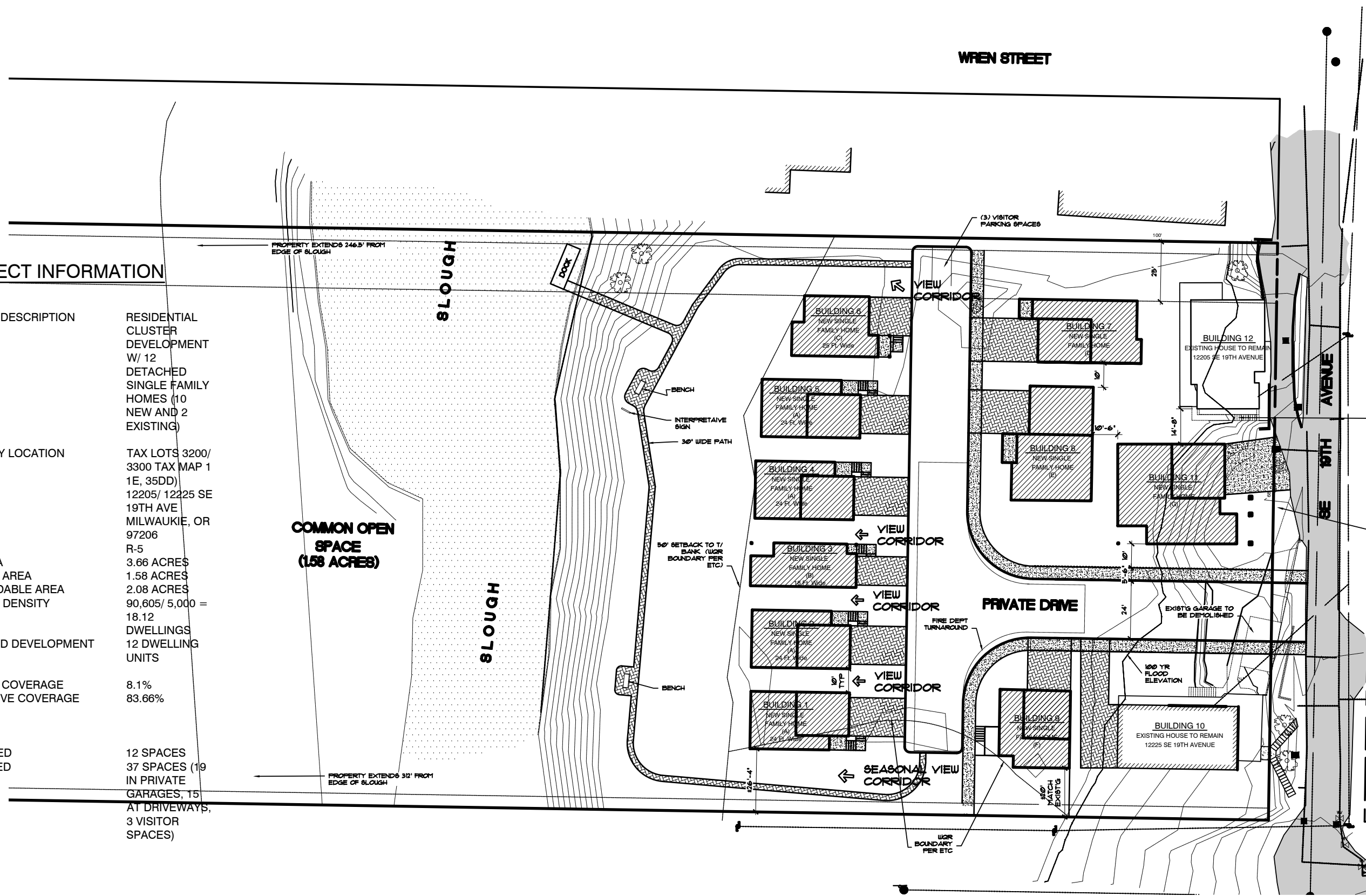
Cc Mr. Matt Gillis *(via email) (w/enclosures)*
Mr. Ken Valentine *(via email) (w/enclosures)*
Mr. John McConnaughey *(via email) (w/enclosures)*
Mr. Garrett Stephenson *(via email) (w/enclosures)*

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PROJECT INFORMATION

PROJECT DESCRIPTION	RESIDENTIAL CLUSTER DEVELOPMENT W/ 12 DETACHED SINGLE FAMILY HOMES (10 NEW AND 2 EXISTING)
PROPERTY LOCATION	TAX LOTS 3200/ 3300 TAX MAP 1 1E, 35DD)
ADDRESS	12205/ 12225 SE 19TH AVE MILWAUKIE, OR 97206
ZONE	R-5
SITE AREA	3.66 ACRES
COMMON AREA	1.58 ACRES
NET BUILDABLE AREA	2.08 ACRES
MAXIMUM DENSITY	90,605/ 5,000 = 18.12 DWELLINGS
PROPOSED DEVELOPMENT	12 DWELLING UNITS
BUILDING COVERAGE	8.1%
VEGETATIVE COVERAGE	83.66%
PARKING REQUIRED	12 SPACES
PROVIDED	37 SPACES (19 IN PRIVATE GARAGES, 15 AT DRIVEWAYS, 3 VISITOR SPACES)

COMMON OPEN SPACE (1.58 ACRES)



PRELIMINARY SITE PLAN

1" = 40.0'

Elk Rock Estates
1738 - Site Plan

ISELIN
ARCHITECTS, P.C.
1307 7th Street - Oregon City, Oregon 97045
503.656.1942 - f. 503.656.0658 - www.iselinarchitects.com

1" = 40'-0"
4/22/2019



April 29, 2019

Michael C. Robinson
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mrobinson@schwabe.com

VIA E-MAIL

Ms. Vera Kolas
Associate Planner
City of Milwaukie Planning Department
6101 SE Johnson Creek Boulevard
Milwaukie, OR 97206

RE: City of Milwaukie File No. NR-2018-005; Elk Rock Estates; Response to
Milwaukie Comprehensive Plan (“MCP”) Chapter 3, Natural Hazards Element,
Objective 1, Policy 3

Dear Ms. Kolas:

This office represents Gillis Properties, LLC, the Applicant for the above-referenced Application. This letter addresses whether the Willamette River Greenway (“WRG”) Conditional Use Permit application, required pursuant to Milwaukie Municipal Code (“MMC”) 19.905, must satisfy MCP Chapter 3, “Environmental and Natural Resources”, Natural Hazards Element, Objective #1, “Flood Plain”, Policy 3. Objective #1, Policy 3 provides as follows:

“Objective #1. To manage and identify 100 year flood plains in order to protect their natural function as waterways, and to protect the lives and property of those individuals and concerns currently located within and along on the flood plain boundary.

* * *

“Policy 3. The finished elevations of the lowest floor of buildings and streets will be a minimum of 1.0 foot above the 100 year flood elevation.” (Exhibit 1)

The City identified this MCP policy as a relevant approval standard required to be satisfied before the City can recommend approval of the Application.

The purpose of this letter is to determine whether MCP Chapter 3, Natural Resources Element, Objective #1, Policy 3 is a relevant approval criterion for this Application as required by MMC 19.401.5(A) (“In the WG Zone, all uses and their accessory uses are permitted subject to the provisions of Section 19.905, except as noted in Subsection 19.401.5.B and Subsection 19.401.5.D.”) MMC Section 19.905 is entitled “Conditional Uses.” MMC 19.905.4.A.6 provides that “the proposed use is consistent with applicable Comprehensive Plan policies

related to the proposed use.” MMC Section 19.401.6.J provides for “conformance to applicable Comprehensive Plan policies;” (**Exhibit 2**).

The issue before the Milwaukie Planning Commission is whether the identified Comprehensive Plan policy is an “applicable” policy. The answer to that question turns on whether the proposed private drives in the Application are “streets” or “driveways”. The answer is that the private drives are not streets, so MCP Policy 3 is not applicable to this Application.

MCP Chapter 3, Natural Hazards Element, Objective #1, Policy 3 applies, as is relevant here, to “streets”. The MCP contains no definition of street.

MMC 19.201 defines “street” as “the entire width between the right-of-way lines for vehicle, bicycle, and pedestrian traffic. It includes the words ‘road’, ‘highway’, ‘lane’, ‘place’, ‘avenue’, ‘alley’, and other similar designations” (**Exhibit 3**).

The term “right-of-way” (**Exhibit 4**) is defined as “an area that allows for the passage of people or goods. Right-of-way includes passageways such as freeways, pedestrian connections, alleys, and all streets. A right-of-way may be dedicated or deeded to the public for public use and under the control of a public agency, or it may be privately owned. A right-of-way that is not dedicated or deeded to the public is usually in a tract or easement.” See also “street.”

“Driveway” (**Exhibit 5**) is defined as “the portion of the accessway located on private property or public lands outside of the public right-of-way.”

“Accessway” (**Exhibit 6**) is defined as “the place, means, or way by which vehicles have safe, adequate and usable ingress and egress to a property. The accessway consists of the driveway and driveway approach.”

This Application consists of improvements on private property. The Application provides for a condominium form of ownership, so a land division application is not proposed. The private drives serving the existing and proposed dwellings are not located in tracts or easements within the private property. The private drives access 19th Street.

The Planning Commission can find that the private drives are driveways and not streets for the following reasons. The driveways are not within a right-of-way because they are not located within an area dedicated to the public, nor are they in a privately-owned tract or easement. Pursuant to the definition in MMC 12.16.010 of “Driveway”, and the other above definitions, the private drives are driveways because they are a portion of an accessway on private property outside of the public right-of-way.

Because the private drives are not streets and instead are driveways, the plain language of MCP Policy 3 means it is not applicable to this Application because the Applicant has not proposed the creation of streets. To the extent there is any ambiguity in MCP Policy 3, because this Application is subject to ORS 197.303(1) and 197.307(4), the word “street” is not clear and objective and may not be applied to this Application.

Ms. Vera Kolas
April 29, 2019
Page 3

This analysis is consistent with Statewide Planning Goal (“Goal”) 15, “Willamette River Greenway”. Goal 15, Section K, is entitled “Definitions for Willamette River Greenway Goal”. Subsection 1 defines “Change of Use” and “Intensification of Use” and both exclude driveways (**Exhibit 7**). Thus, MMC Chapter 19.401 and MCP Chapter 3, Natural Hazards Element, Objective #1, Policy 3, are consistent with the definition in Goal 15, Section K, Chapter 4.

Further, MMC 19.401.5.B.11 provides that the Willamette Greenway Review is not required for certain activities, including “Construction of Driveways” (**Exhibit 8**). This is consistent with MMC 19.401.4, “Definitions”, which defines “Change of Use”, “Intensification” to expressly exclude the “construction of driveways” (**Exhibit 9**). For this reason also, the Planning Commission can find that driveways are expressly excluded from the regulations of MMC 19.401, consistent with its implementation of Goal 15 and the definitions provided above.

For these reasons, the Planning Commission can find that the proposed private drives are driveways and are not subject to MCP Policy 3.

Please place this letter in the official Planning Department file for this Application and before the Milwaukie Planning Commission at the initial evidentiary hearing on May 28, 2019.

Very truly yours,



Michael C. Robinson

MCR/jmhi
Enclosures

Cc Mr. Matt Gillis (*via email*) (*w/enclosures*)
Mr. Ken Valentine (*via email*) (*w/enclosures*)
Mr. John McConnaughey (*via email*) (*w/enclosures*)
Mr. Garrett Stephenson (*via email*) (*w/enclosures*)

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CHAPTER 3 — ENVIRONMENTAL AND NATURAL RESOURCES

Milwaukie's future role will primarily be as a residential community with considerable employment opportunities. This future, however, is not incompatible with the conservation of the City's remaining natural resources of land, air, water, and the natural environment. The wise use and management of these resources is particularly important in Milwaukie because the City is almost completely developed and few areas remain in a natural state. The protection of these natural resources is essential if residents are to experience the pleasures and amenities which can only be enjoyed when nature is close at hand. The Plan elements which address these issues include:

- Natural Hazards Element
- Historic Resources Element
- Open Spaces, Scenic Areas, and Natural Resources Element
- Agricultural and Forest Lands Element
- Air, Water and Land Resources Quality Element

Policies in each of these elements, as well as the technical studies and inventories documented in the Resources and Environment, Parks and Open Space, Land Use and Transportation working papers, and the Neighborhood Blockwalk, comply with Statewide Planning Goals 3, 4, 5, 6, and 7 (reference Oregon Administrative Rules 660, Division 15).

NATURAL HAZARDS ELEMENT

GOAL STATEMENT: To prohibit development that would be subject to damage or loss of life from occurring in known areas of natural disasters and hazards without appropriate safeguards.

Background and Planning Concepts

Four types of potential natural hazard conditions occur within the Milwaukie area: floodplains, earthquake fault lines, landslide prone areas, and areas with weak foundation soils. The floodplains of Johnson Creek, Mt. Scott Creek and Willamette River, as identified by the U.S. Army Corps of Engineers are shown on Map 3. Identified fault lines are also shown. It is possible that Milwaukie can experience an earthquake of 4.2 magnitude (Richter Scale) on any given year, and a 6.1 earthquake every 100 years from which medium to severe damage could be expected.

The only area which has significant potential for landslides is the steep terrain south of Kellogg Creek. Clay soils underlain with basalt are characteristic of the area. High potential for erosion may also exist on these steep areas. Several areas are identified on Map 3 which have weak foundation soils unsuitable for urban development. The largest area is just west of the Omark Industrial Park. The soils along Kellogg Creek also have severe ratings for urban construction.

The existence of these hazards can cause unsafe conditions for residents of the Milwaukie area. The safeguards which will be taken to limit the potential hazards and to protect life and property are explained below.

OBJECTIVE #1 — FLOODPLAIN

To manage identified 100 year floodplains in order to protect their natural function as waterways, and to protect the lives and property of those individuals and concerns currently located within and along the floodplain boundary.

Policies

- 1. New construction and development will be regulated so that water flow will not be increased. The capacity of the floodplain shall not be reduced by development activities.
- 2. Construction materials which may be inundated will be of such strength and quality that they will not deteriorate, and they must be able to withstand the pressure and velocity of flowing water.

→ 3. The finished elevations of the lowest floor of buildings and streets will be a minimum of 1.0 foot ←
 above the 100 year flood elevation.

4. Whenever possible, the floodplain will be retained as open space and used for recreation, wildlife areas, or trails. Dedication of lands or public easements within the floodplain is encouraged when indicated by the Recreational Needs Element, and may be required as a condition of development along creeks

and rivers or other water bodies or wetlands.

5. The City will continue to participate in the FEMA Flood Insurance Program and will update its current flood hazard ordinance as necessary to comply with future revisions to that program.

OBJECTIVE #2 — SEISMIC CONDITIONS

Regulate the structural integrity of all developments within the City consistent with the provisions of the Uniform Building Code, Earthquake Regulations.

Milwaukie Municipal Code

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The following shall be taken into account in the consideration of a conditional use:

- A. Whether the land to be developed has been committed to an urban use, as defined under the State Willamette River Greenway Plan;
- B. Compatibility with the scenic, natural, historic, economic, and recreational character of the river;
- C. Protection of views both toward and away from the river;
- D. Landscaping, aesthetic enhancement, open space, and vegetation between the activity and the river, to the maximum extent practicable;
- E. Public access to and along the river, to the greatest possible degree, by appropriate legal means;
- F. Emphasis on water-oriented and recreational uses;
- G. Maintain or increase views between the Willamette River and downtown;
- H. Protection of the natural environment according to regulations in Section 19.402;
- I. Advice and recommendations of the Design and Landmark Committee, as appropriate;
- J. Conformance to applicable Comprehensive Plan policies;
- K. The request is consistent with applicable plans and programs of the Division of State Lands;
- L. A vegetation buffer plan meeting the conditions of Subsections 19.401.8.A through C.

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- Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy.
- Masturbation, actual or simulated.
- Excretory functions as part of or in connection with any of the activities set forth in the first three bullet points of this definition.

"Stealth design" means a wireless communication facility that is designed or located in a such a way that the facility is not readily recognizable as wireless communication equipment and is compatible with surrounding uses.

"Steep slopes" means slopes that are equal to or greater than 25%.

"Stormwater facility" or "stormwater pretreatment facility" means any structure or drainageway that is designed, constructed, and maintained to collect, filter, and retain or detain surface water runoff during and after a storm event for the purpose of water quality improvement. It may also include, but is not limited to, existing features such as wetlands, swales, and ponds that are maintained as stormwater facilities.

"Story" means portion of a building between any floor and the next floor above. If the floor level directly above a basement or unused under-floor space is more than 6 ft above grade for more than 50% of the total perimeter or is more than 10 ft above grade at any point, such basement or unused under-floor space shall be considered as a story.

"Half-story" means a story under a gable, gambrel, or hip roof, the wall plates of which on at least 2 opposite exterior walls are not more than 2 ft above the floor of such story. If the floor level directly above a basement or unused under-floor space is less than 6 ft above grade, for more than 50% of the total perimeter and is not more than 10 ft above grade at any point, such basement or unused under-floor space shall be considered as a half-story.

"Stream" means a body of running water moving over the earth's surface in a channel or bed, such as a creek, rivulet, or river, that flows at least part of the year, including perennial and intermittent streams.

"Street" means the entire width between right-of-way lines for vehicular, bicycle, and pedestrian traffic and includes the terms "road," "highway," "lane," "place," "avenue," "alley," and other similar designations.

"Street classification" or "functional street classification" means the classification given to a street that encompasses both its design characteristics and the level and type of service it is intended to provide. These classifications guide design standards, levels of access, traffic control, law enforcement, and the provision for federal, State, and regional transportation funding. The City's functional street classification system includes regional routes, arterials, collectors, neighborhood streets, and local streets. These classifications are described in more detail in the City's Transportation System Plan.

"Street-facing façade" means the wall planes of a structure that are visible from, and at an angle of 45 degrees or less to, a front lot line or street side lot line. Angle measurements for curved front or street side lot lines shall be based on a straight line connecting the opposing lot corners of the front or street side lot line.

**Figure 19.201-5
Street-Facing Façade**

may include structures that are similar in form to rowhouses, cottage clusters, duplexes, or single-family dwellings.

"Residential home" means a dwelling unit operated as a single housekeeping unit for the purpose of providing a permanent residence—which includes food, shelter, personal services, and care—for the elderly, disabled, handicapped, or others requiring such a residence, as defined by the Federal Fair Housing Amendments Acts of 1988.

"Residential trailer" means a manufactured dwelling that was constructed prior to January 1, 1962.

"Rowhouse" means a residential structure on its own lot that shares 1 or more common or abutting walls with at least 1 or more dwelling units on adjoining lots. The common or abutting wall must be shared for at least 25% of the length of the side of the building. The shared or abutting wall may be the wall of an attached garage. A rowhouse does not share common floors/ceilings with other dwelling units.

"Short-term rental" means a housing unit, an accessory dwelling unit, or a room (or rooms) within a housing unit that is rented out for lodging for a period of less than 30 days in length. A short-term rental is an accessory use to a primary residence and allowed as a home occupation where the residence must be occupied by the owner or operator for no less than 270 days per year. A short-term rental may be hosted (where the primary occupants are present on-site during the rental) or unhosted (where the primary occupants vacate the unit or site during the rental period). For hosted rentals, occupancy is limited to no more than 2 different parties per site at a time (see "bed and breakfast" for rentals to more than 2 parties). For unhosted rentals, occupancy is limited to 1 rental party per site at a time. Short-term rental operators may offer meals to lodgers.

"Single-family detached dwelling" means a structure, or manufactured home, containing 1 dwelling unit with no structural connection to adjacent units.

"Yurt" means a 1-story building with a circular footprint and a roof that is domed or conical, with the highest point at the center of the circle. The walls and roof of a yurt are typically canvas or other flexible fabric material.

"Restoration" means the process of returning a disturbed or altered area or feature to a previously existing natural condition. Restoration activities reestablish the structure, function, and/or diversity to that which occurred prior to impacts caused by human activity.

"Retail trade" means the sale, lease, or rental of new or used products to the general public. Typical uses include, but are not limited to, grocery stores, specialty stores, drugstores, bookstores, jewelry stores, and video stores.

"Right-of-way" means an area that allows for the passage of people or goods. Right-of-way includes passageways such as freeways, pedestrian connections, alleys, and all streets. A right-of-way may be dedicated or deeded to the public for public use and under the control of a public agency, or it may be privately owned. A right-of-way that is not dedicated or deeded to the public is usually in a tract or easement. See also "street."

"Riparian" means those areas associated with streams, lakes, and wetlands where vegetation communities are predominately influenced by their association with water.

"Roadway" means the portion of the street consisting of the paved area between curbs or shoulders. The roadway includes vehicle travel lanes, parking strips, and bike lanes.

"Rooming house." See "Boarding house."

"Routine repair and maintenance" means activities directed at preserving an existing allowed use or facility including replacement of materials, but excluding any increases in the existing dimensions of the structure. See also "alteration."

School:

"Commercial school" means a place where instruction is given to pupils in arts, crafts, trades, or other occupational skills, and operated as a commercial enterprise as distinguished from schools endowed or supported by taxation.

"Downed tree" means any tree that is no longer standing upright, as the result of natural forces, and that has come to rest, whether leaning or completely down, within a protected water feature, a water quality resource, or a habitat conservation area.

"Downtown zones" means the 2 zones that implement the Milwaukie Downtown and Riverfront Land Use Framework Plan—Downtown Mixed Use (DMU) and Open Space (OS).

"Drinking establishment" means a tavern, bar, cocktail lounge, or other similar business establishment with the primary function of preparing and serving alcoholic beverages to the public for consumption on the premises. This establishment may or may not be in conjunction with an eating establishment.

"Drive-through facility" means a business activity involving buying or selling of goods, or the provision of services, where one of the parties conducts the activity from within a motor vehicle. Facilities usually associated with a drive-through are queuing lanes, service windows, service islands, and service bays for vehicular use.

"Driveway" means the portion of the accessway located on private property or public lands outside of the public right-of-way.

"Driveway approach" means the portion of the accessway located within the public right-of-way. The driveway approach consists of the driveway apron, wings, and sidewalk section. See Chapter 12.16 Access Management for definitions of these terms.

"Eating establishment" means a restaurant or other similar business establishment with the primary function of serving food, prepared to order, to the public, and may serve alcoholic beverages at the dining table. This establishment may or may not have an attached drinking establishment.

"Eave" means a projecting overhang at the lower border of a roof, extending from the primary wall or support. Eaves are architectural features that aide in protecting buildings from precipitation and solar radiation; they are distinct from overhangs that provide shelter for persons or property.

"Emergency" means any man-made or natural event or circumstance causing or threatening loss of life, injury to person or property and includes, but is not limited to, fire, explosion, flood, severe weather, drought, earthquake, volcanic activity, spills or releases of oil or hazardous material, contamination, utility or transportation disruptions, and disease.

"Enhancement" means the process of improving upon the natural functions and/or values of an area or feature which has been degraded by human activity. Enhancement activities may or may not return the site to a predisturbance condition but create/recreate processes and features that occur naturally.

"Equipment cabinets" means an enclosed box or structure used to house equipment for the operation, maintenance, or repair of a wireless communication antenna.

"FAA approval" means demonstration of compliance with all applicable rules and regulations under the FAA's jurisdiction.

"Façade" means all the wall planes of a structure as seen from one side or view. For example, the front façade of a building would include all of the wall area that would be shown on the front elevation of the building plans.

"Family" means any person or group of persons living within a single housekeeping unit as defined in this chapter.

"Family day care" means a private residence occupied by the family day care provider in all areas zoned for residential or commercial purposes and used as a home occupation by the provider for the care of fewer than 13 children, including children of the provider, regardless of full-time or part-time care status.

"Fence" means any artificially constructed barrier of any material or combination of materials erected for purpose of enclosing, protecting, or screening areas of land and uses thereon.

"Sight-obscuring fence" means a fence consisting of wood, metal, masonry, or similar materials, or an evergreen hedge or other evergreen planting, arranged in such a way as to obscure vision at least 80%.

"Flag lot" means a lot that has a narrow frontage on a public street with access provided via a narrow accessway or "pole" to the main part of the lot used for building, which is located behind another lot that has

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TITLE 19 ZONINGCHAPTER 19.200 DEFINITIONS AND MEASUREMENTS**19.201 DEFINITIONS***

* CodeAlert: This topic has been affected by Ordinance No. 2168. To view amendments and newly added provisions, please refer to the CodeAlert Amendment List.

Refer to individual chapters of this title for chapter-specific definitions.

Refer to Title 18 for definitions related to flood hazard areas.

As used in this title:

"Abandonment" means wireless communication facility is abandoned when it has not been used by a licensed carrier for a period of 6 months.

"Abutting" means to reach or touch, to touch at the end or be contiguous with, to join at a border or boundary, and/or to terminate on. Abutting properties include properties across a street or alley.

"Access" means the way or means by which pedestrians, bicycles, and vehicles enter and leave property.

"Accessory parking" means off-street parking that serves the parking demand of a specific use(s). Accessory parking is distinct from a "parking facility," as defined in this chapter.

"Accessory structure or accessory use" means a structure or use incidental and subordinate to the main use of property and located on the same lot as the main use, including accessory parking.

"Accessway" means the place, means, or way by which vehicles have safe, adequate, and usable ingress and egress to a property. The accessway consists of the driveway and driveway approach.

"Accidental destruction" means damage or destruction caused by accident or natural hazard, including, but not limited to, fire, flood, or wind.

"Adult entertainment business" means an establishment which, for any form of consideration, provides or exhibits primarily products or performances characterized by an emphasis on the depiction or description of specified anatomical areas or specified sexual activities. "Adult entertainment business" includes, but is not limited to, adult arcades, adult bookstores, adult clubs, adult bars, adult motels or hotels, and adult theaters.

"Agriculture" means the tilling of the soil, the raising of crops, dairying, or animal husbandry; but not including the keeping or raising of fowl, pigs, or furbearing animals unless the keeping of animals is clearly incidental to the principal use of the property for the raising of crops.

"Airport" or "aircraft landing facility" means any landing area, runway, or other facility designed, used, or intended to be used by aircraft and including all necessary taxiways, hangars, and other necessary buildings and open spaces.

"Alley" means a right-of-way that provides access to the back or side of properties otherwise abutting on a street. Generally, alleys provide secondary vehicle access. Where vehicle access from the street is not allowed, not possible, or not desirable, an alley may provide primary vehicle access.

"Alteration" means any change, addition, or modification to any existing structure or improvement on the site, including changes to site access, when such changes result in any one of the following: (1) intensification of the use(s) on the site, (2) intensification of the improvements on the site, (3) changes to the exterior appearance of significant historic resources or buildings in the downtown zones, or (4) changes that may have a detrimental effect on surrounding properties or a natural resource area. Alteration may or may not involve an increase in gross floor area. Alteration does not include "routine maintenance and repair." See also "improvements."

"Antenna" means electrical conductor or group of electrical conductors in the form of a metal rod, wire panel, or dish that transmit or receive radio waves or microwaves for wireless communications.

any individual or groups requesting notice; and

e. Provision is made to allow the imposing of conditions on the permit to carry out the purpose and intent of the Willamette River Greenway Statutes.

f. As an alternative to the review procedures in subparagraphs 3(a) to 3(e), a city or county governing body may prepare and adopt, after public hearing and notice thereof to DOT, a design plan and administrative review procedure for a portion of the Greenway. Such design plan must provide for findings equivalent to those required in subparagraphs 3(b)(1) and (2) of paragraph F so as to insure compatibility with the Greenway of proposed intensification, changes of use or developments. If this alternative procedure is adopted and approved by DOT and LCDC, a hearing will not be required on each individual application.

G. NOTICE OF PROPOSED INTENSIFICATION, CHANGE OF USE OR DEVELOPMENT

Government agencies, including cities, counties, state agencies, federal agencies, special districts, etc., shall not authorize or allow intensification, change of use or development on lands within the boundaries of the Willamette River Greenway compatibility review area established by cities and counties as required by paragraph F 3.a. without first giving written notice to the DOT by immediately forwarding a copy of any application by certified mail--return receipt requested. Notice of the action taken by federal, state, city, county, and special districts on an application shall be furnished to DOT.

H. AGENCY JURISDICTION

Nothing in this order is intended to interfere with the duties, powers and responsibilities vested by statute in agencies to control or regulate activities on lands or waters within the boundaries of the Greenway so long as the exercise of the authority is consistent with the legislative policy set forth in ORS 390.310 to 390.368 and the applicable statewide planning goal for the Willamette River Greenway, as the case may be. An agency receiving an application for a permit to conduct an activity on lands or waters within the Greenway shall immediately forward a copy of such request to the Department of Transportation.

I. DOT SCENIC EASEMENTS

Nothing in this Goal is intended to alter the authority of DOT to acquire property or a scenic easement therein as set forth in ORS 390.310 to 390.368.

J. TRESPASS BY PUBLIC

Nothing in this Goal is intended to authorize public use of private property. Public use of private property is a trespass unless appropriate easements and access have been acquired in allowance with law to authorize such use.

K. DEFINITIONS FOR WILLAMETTE RIVER GREENWAY GOAL

1. **Change of Use** means making a different use of the land or water than that which existed on December 6, 1975. It includes a change which requires construction, alterations of the land, water or other areas outside of existing buildings or structures and which substantially alters or affects the land or water. It does not include a change of use of a building or other structure which does not substantially

alter or affect the land or water upon which it is situated. Change of use shall not include the completion of a structure for which a valid permit had been issued as of December 6, 1975 and under which permit substantial construction has been undertaken by July 1, 1976. The sale of property is not in itself considered to be a change of use. An existing open storage area shall be considered to be the same as a building.

→ Landscaping, construction of driveways, modifications of existing structures, or the construction or placement of such subsidiary structures or facilities as are usual and necessary to the use and enjoyment of existing improvements shall not be considered a change of use for the purposes of this Goal. ←

2. Lands Committed to Urban Use means 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.

3. Intensification means any additions which increase or expand the area or amount of an existing use, or the level of activity. Remodeling of the exterior of a structure not excluded below is an intensification when it will substantially alter the appearance of the structure. Intensification shall not include the

completion of a structure for which a valid permit was issued as of December 6, 1975 and under which permit substantial construction has been undertaken by July 1, 1976.

Maintenance and repair usual and necessary for the continuance of an existing use is not an intensification of use. Reasonable emergency procedures necessary for the safety or the protection of property are not an intensification of use. Residential use of lands within the Greenway includes the practices and activities customarily related to the use and enjoyment of one's home. Landscaping, construction of driveways, modification of existing structures or construction or placement of such subsidiary structures or facilities adjacent to the residence as are usual and necessary to such use and enjoyment shall not be considered an intensification for the purposes of this Goal. ← Seasonal increases in gravel operations shall not be considered an intensification of use.

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TITLE 19 ZONING
CHAPTER 19.400 OVERLAY ZONES AND SPECIAL AREAS
19.401 WILLAMETTE GREENWAY ZONE WG

19.401.5 Procedures

The following procedures shall govern the application of WG zones:

A. In the WG Zone, all uses and their accessory uses are permitted subject to the provisions of Section 19.905, except as noted in Subsection 19.401.5.B and Subsection 19.401.5.D.

→ B. Willamette Greenway review is not required for any of the activities listed below:

1. Changes to the interior of a building or alterations of buildings or accessory structures that do not increase the size or alter the configuration of the building or accessory structure footprint;
2. Normal maintenance and repair as necessary for an existing development;
3. Removal of plants listed as nuisance species on the Milwaukie Native Plant List;
4. Addition or modification of existing utility lines, wires, fixtures, equipment, circuits, appliances, and conductors by public or municipal utilities;
5. Flood emergency procedures, and maintenance and repair of existing flood control facilities;
6. Placement of signs, markers, aids, etc., by a public agency to serve the public;
7. Establishment of residential accessory uses, such as lawns, gardens, and play areas, subject to the vegetation buffer requirements of Subsection 19.401.8;
8. Ordinary maintenance and repair of existing buildings, structures, parking lots, or other site improvements;
9. Minor repairs or alterations to existing structures for which no building permit is required;
10. A change of use of a building or other structure that does not substantially alter or affect the land or water upon which it is situated;
11. Construction of driveways;
12. Reasonable emergency procedures as necessary for the safety or protection of property; and
13. Other activities similar to those listed in "1" through "12" above. Such Director determinations, including a finding of consistency with Goal 15, shall be made in accordance with Section 19.903.

C. The Oregon Department of Parks and Recreation shall be notified of a hearing on a conditional use in the WG Zone. The notice shall be sent via "certified mail, return receipt requested."

D. A greenway conditional use is required for all intensification or change of use, or alteration of the vegetation buffer area, or development, as defined in this section. Landscaping, construction of driveways, modifications of existing structures, or the construction or placement of such subsidiary structures or facilities as are usual and necessary to the use and enjoyment of existing improvements shall not be considered a change in use or intensification. Approval shall be granted only if the criteria in Subsection 19.401.6 are met.

E. Submittal Requirements

A vegetation/buffer plan must be submitted for each application for a greenway conditional use permit. A buffer plan is required only if the proposed development impacts the vegetation buffer defined in Subsection 19.401.8.

F. Written notice, including a copy of the application, will be sent upon receipt to the Oregon Parks and Recreation Department by certified mail—return receipt requested. The Oregon Division of State Lands, Oregon Department of Fish and Wildlife, and State Marine Board shall also be notified of each application.

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TITLE 19 ZONINGCHAPTER 19.400 OVERLAY ZONES AND SPECIAL AREAS19.401 WILLAMETTE GREENWAY ZONE WG**19.401.4 Definitions**

"Change of use" means making a different use of the land or water which requires construction; alterations of the land, river bed, bank, water, or other areas outside of existing buildings or structures; and which substantially alters or affects the land or water. It does not include a change of use of a building or other structure that does not substantially alter or affect the land or water upon which it is situated. Landscaping, construction of driveways, modifications of existing structures, the construction or placement of such subsidiary structures or facilities as are usual and necessary to the use and enjoyment of existing improvements (such as swing sets and patios), the improvement of existing paved recreation trails, or the construction of new, low-impact pathways within parks shall not be considered a change of use.

"Develop, developing" means activities which result in removal of substantial amounts of vegetation or in the substantial alteration of natural site characteristics; e.g., to construct or alter a structure, to conduct a mining operation, to make a physical change in the use or appearance of land, to divide land into parcels, to create or terminate rights of access.

"Development" means the act, process, or result of developing.

"Floodway" means the channel of the river and the adjacent land areas that must be reserved to discharge the base flood without cumulatively increasing the water surface elevation more than 1 ft (FEMA definition).

"Intensification" means any change of use; or action which increases or expands the area or amount of an existing use or the level of activity, including remodeling the exterior of a structure if the remodeling substantially alters the appearance of the structure. Maintenance and repair usual and necessary for the continuance of an existing use is not an intensification of use. Reasonable emergency procedures necessary for the safety or the protection of property are not an intensification of use. Residential use of lands within the WG Zone includes the practices and activities customarily related to the use and enjoyment of one's home. Landscaping, construction of driveways, modifications of existing structures, the construction or placement of such subsidiary structures or facilities as are usual and necessary to the use and enjoyment of existing improvements (such as swing sets and patios), the improvement of existing paved recreation trails, or the construction of new, low-impact pathways within parks shall not be considered an intensification of use.

"Large trees" means trees with at least a 6-in caliper at 5 ft of height.

"Low-impact pathways" means 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.

"Native vegetation" means plant species indigenous to the Portland metropolitan area, consisting of trees, shrubs, and ground cover, as identified in the Portland plant list.

"Nonresidential floating structure" means water-dependent or water-related structures, usually made of wood or concrete and containing a flotation system of polystyrene or similar materials, that ride on the river surface anchored by a cable either to the river bed, to piling, or to the riverbank, for uses including, but not limited to: public walks or river access not associated with marina or moorage; waterski jumps; swimmer's resting platform; storage of marine-related equipment or boat storage; or boat fueling facility. Sometimes fully enclosed buildings are situated atop the floating structure. Restaurants, snack bars, and the like are included in this definition.

"Ordinary high water line" means the line on the bank or shore to which the water ordinarily rises annually. Ordinary high water shall be established by the Division of State Lands (DSL) with reference to historical data, vegetation, field observations, survey, or other generally accepted methods.

"Public access" means facilities that enable the public to safely make physical contact with the river and its environs.