

MINUTES
MILWAUKIE CITY COUNCIL WORK SESSION
JANUARY 17, 2012

Mayor Ferguson called the work session to order at 5:00 p.m. in the City Hall Conference Room.

Council Present: Council President Greg Chaimov and Councilors Dave Hedges, Joe Loomis, and Mike Miller

Staff Present: City Manager Bill Monahan, City Recorder Pat DuVal, Community Development/Public Works Director Kenny Asher, Community Services Director JoAnn Herrigel,

Media: Molly Harbargar, *The Oregonian*

City Manager's Report

Mr. Monahan reviewed the regular session agenda. The group discussed upcoming meeting schedules including Council Goal Setting on February 28 and the proposed Budget Committee meeting schedule. No study session would be scheduled for March. He discussed the changes to the City Hall security system.

City Prosecutor Contract

Ms. DuVal introduced the topic and briefly discussed the request for proposal (RFP) process and subsequent application review and interview process. Of the 17 applicants, five were invited for interviews with a panel composed of Councilor Miller, Councilor Hedges, Tim Salyers, Carla Bantz, Bob Jordan, and Pat DuVal.

Mr. Monahan noted there would be a significant cost savings gained through this change.

Two finalists were identified, and Councilor Miller and Councilor Hedges, who had differing opinions, discussed the strengths and weaknesses of each. After discussion, City Council directed staff to negotiate a personal services agreement with Rhett Bernstein for City Prosecutor services and to consider a resolution to that effect during the regular session.

Bag Ban Update

Ms. Herrigel discussed public outreach in *The Pilot* and on the City website and followed up on some research the City Council had asked her to carry out. She noted that the City of Portland enforces its program based on complaints, and to date no enforcement actions had taken place. She discussed recycling options and compostable bags.

Mayor Ferguson had been in contact with Milwaukie Understands Sustainable Transition (MUST) members and Environment Oregon about organizing a retailer summit to determine if there was interest in dealing with the issue on a voluntary basis rather than staff enforcement of an ordinance.

Councilor Chaimov and **Councilor Miller** liked the idea of a summit, and Councilor Hedges supported a ban. **Councilor Loomis** could support a ban but liked the idea of retailers opting-in. **Councilor Chaimov** followed up by expressing his support for more public education.

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Mayor Ferguson would follow through with MUST and Environment Oregon. Ms. Herrigel was not asked to do more work on this matter at the time.

Mayor Ferguson adjourned the work session 5:54 p.m.

Council President Chaimov reconvened the work session at 6:31 p.m. to discuss the outline for the evening's hearing.

Mr. Ramis discussed what information the City Council was able to consider.

Respectfully submitted

Pat DuVal

Pat DuVal, Recorder

WORK SESSION

**MILWAUKIE CITY COUNCIL
WORK SESSION
JANUARY 17, 2012**

MILWAUKIE CITY HALL

Conference Room
10722 SE Main Street

WORK SESSION – 5:00 p.m.

A light dinner will be served

Discussion Items:

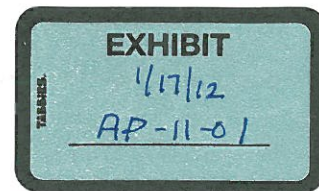
	<u>Time</u>	<u>Topic</u>	<u>Presenter</u>	<u>Page #</u>
1.	5:00 p.m.	City Manager's Report	Bill Monahan	
2.	5:30 p.m.	Boards, Commissions, and Committee 2012 Meetings with the City Council; Recruitment and Outreach Efforts	Teri Bankhead	1
3.	5:45 p.m.	City Prosecutor Contract	Pat DuVal	5
4.	6:15 p.m.	Bag Ban Update	JoAnn Herrigel	7
	6:45 p.m.	Adjournment		

Information

Executive Session: The Milwaukie City Council may meet in executive session pursuant to ORS 192.660(2). All discussions are confidential and those present may disclose nothing from the Session. Representatives of the news media are allowed to attend Executive Sessions as provided by ORS 192.660(3) but must not disclose any information discussed. No Executive Session may be held for the purpose of taking any final action or making any final decision. Executive Sessions are closed to the public.

Public Notice

- The Council may vote in work session on non-legislative issues.
- The time listed for each discussion item is approximate. The actual time at which each item is considered may change due to the length of time devoted to the one previous to it.
- The Council requests that all pagers and cell phones be either set on silent mode or turned off during the meeting.
- The City of Milwaukie is committed to providing equal access to information and public meetings per the Americans with Disabilities (ADA). If you need special accommodations, please call 503.786.7502 or email ocr@ci.milwaukie.or.us at least 48 hours prior to the meeting.



CITY COUNCIL OF THE CITY OF MILWAUKIE

**FINAL ORDER AFFIRMING APPLICATIONS
WG-11-01, DR-11-01, WQR-11-03, HCA-11-01, and CSU-11-09**

Based on a review of existing evidence, new and existing testimony, and new and existing arguments at public hearings on Jan 3 and Jan 17, 2012 on the appeal of the above-listed applications, the Milwaukie City Council orders as follows:

1. The Nov 23, 2011 Notice of Decision for land use applications WG-11-01, DR-11-01, WQR-11-03, HCA-11-01, and CSU-11-09 is affirmed subject to the Findings and Conditions of Approval in this Final Order.
 - A. City Council passed a motion on Dec 6, 2011 that initiated the appeal of land use applications WG-11-01, DR-11-01, WQR-11-03, HCA-11-01, and CSU-11-09. City Council finds that it has standing to appeal these applications based upon an interpretation of Milwaukie Municipal Code (MMC) Subsection 19.1010.6.A that views staff's participation in the original hearings as participation by the City as an organization in the original decision.
 - B. Two citizens, Maria Dion Shepard and Jo Anne Bird, submitted an appeal of land use applications WG-11-01, DR-11-01, WQR-11-03, HCA-11-01, and CSU-11-09 on December 8, 2011. Since the basis for the City's appeal and Ms. Shepard and Ms. Bird's appeal were effectively the same, staff combined the two appeals into a single appeal with Ms. Shepard, Ms. Bird, and the City Council as co-appellants (Land Use File Number AP-11-01).
 - C. The Jan 3, 2012 City Council public hearing on appeal application AP-11-01 was properly noticed pursuant to MMC Subsection 19.1010.6.B.
 - D. MMC Subsection 19.1010.5.C establishes that an appeal of a Type III decision shall be an on the record de novo hearing and therefore no new evidence may be considered by the Council in deciding the appeal. The City Council finds that new evidence was submitted into the record during the pendency of the appeal, but that the Council did not rely on any new evidence in deciding the appeal. The following new evidence was provided but not relied upon in deciding the appeal.
 - Donald Hammang's letter of Jan 3, 2012 (reference to multiple arborist reports; assertion that it will take 12 trees up to 15 years to replace the 2000 plus square feet of canopy lost by the removal of the tree)
 - JoAnne Bird's oral testimony of Jan 3, 2012 (reference to letter from engineer that alternative construction approaches available)
 - Mart Hughes' oral testimony of Jan 3, 2012 (reference to credentials)
 - Mark Gamba's oral testimony of Jan 3, 2012 (assertion that additional information would have led to a different decision by the Planning Commission)

- Cindy Tyler's oral testimony of Jan 3, 2012 (assertion that the best way to promote tree suckers is to chop down the tree and fertilize the root zone)
- Dominic Maze's oral testimony of Jan 3, 2012 (reference to his credentials; assertions that mushroom-like growths do not indicate disease, that evidence of damage in a tree this old is normal, and that it is common for oaks to hollow out)
- Susan Shawn's oral testimony of Jan 3, 2012 (assertion that the tree is 100 – 150 years old; assertion that the cost to replace the ecosystem value of the tree is high)
- Chris Runyard's oral testimony of Jan 3, 2012 (assertions that the hole in the tree is valuable habitat and that overall the tree is a typical oak specimen; site observations that the tree had big fat buds and no dead branches)
- Scott Churchill's oral testimony of Jan 3, 2012 (assertion that staging area would not need to increase in size in order to save the tree)

FINDINGS IN SUPPORT OF APPROVAL

1. The applicant, TriMet, submitted five land use applications (the "application") for approval of a light rail bridge over Kellogg Lake and McLoughlin Blvd ("Kellogg Bridge") as part of the Portland Milwaukie Light Rail (PMLR) project. The application requests approval for bridge design, natural resource mitigation, and temporary construction staging. The application has been assigned the following file numbers and consists of the following application types:
 - DR-11-01: Design Review
 - WG-11-01: Willamette Greenway
 - WQR-11-03: Water Quality Resource
 - HCA-11-01: Habitat Conservation Area
 - CSU-11-09: Community Service Use
2. The PMLR alignment, which includes the location of specific project elements such as the Kellogg Bridge, has an existing land use approval that was issued by Metro in 2008.¹ This land use final order (LUFO) was made pursuant to House Bill 3478 (1996), which provides for the review and siting of regional transportation facilities through local jurisdictions. The City may subject the Kellogg Bridge to reasonable and necessary conditions of approval to ensure conformance with local standards and appropriate mitigation of local impacts. It cannot, however, condition the approval of the bridge in such a way as to prevent the implementation of the 2008 LUFO.
3. The Kellogg Bridge site is composed of an assortment of public and private rights-of-way on Tax Maps 1S1E36BC, 1S1E36CB, and 1S1E35AD between SE Lake Rd and SE 22nd Ave that are under the ownership or jurisdiction of three different legal entities, namely the City of Milwaukie, Oregon Department of Transportation, and the Union Pacific Railroad (UPRR). The Kellogg Bridge site also includes a temporary construction staging area on Kronberg Park that is under the ownership of the City of Milwaukie, which consists of Tax Lots 1S1E36CB03100 and 1S1E36CB03000. TriMet has eminent domain authority and is in the process of purchasing portions of the sites listed above and/or acquiring the necessary easements to construct the bridge.
4. The application includes a design for a future pedestrian bridge over Kellogg Lake underneath the Kellogg Bridge. The applicant is not proposing to construct the pedestrian bridge as part of the PMLR project due to lack of funding. However, the applicant is proposing to advance the design and review process for the pedestrian bridge at this time in order to allow for the possibility of constructing the pedestrian bridge at the same time as the Kellogg Bridge, which

¹ Metro Resolution No. 08-3964 entitled 2008 South/North Land Use Final Order (LUFO) Amendment.

would result in significant time and cost savings for the pedestrian bridge project. The design and location of pedestrian pathways to the pedestrian bridge are not included in the current application and would require additional land use approvals at a later date.

5. The proposal includes the following elements:

- A jump span over Lake Rd; in this section it would be supported by an abutment on the north side and a set of columns on the south side that connects the light rail bridge to the station platform.
- A light rail bridge over Kellogg Lake; in this section it would be supported by two sets of columns on either side of the lake above ordinary high water. No in-water piers are proposed.
- A light rail bridge over McLoughlin Blvd; in this section it would be supported by a series of single columns.
- A future pedestrian bridge over Kellogg Lake underneath the light rail bridge.
- A temporary construction bridge in the UPRR right-of-way in Kellogg Lake on the east side of the permanent light rail bridge.

The jump span and light rail bridge contain a number of elements consistent with their purpose of carrying light rail trains (e.g. catenary poles and safety railings) and mitigating community impacts (e.g. sound walls). The jump span, light rail bridge, and pedestrian bridge materials consist primarily of weathering steel and concrete. The use of steel tubs as a defining horizontal element allows for the creation of a slender, uncluttered, visually coherent, and ribbon-like structure. The use of weathering steel gives the bridge a softer, less utilitarian, earth-toned quality in keeping with its proximity to natural areas around Kellogg Lake and vegetated areas along the Trolley Trail. Board-form treatments on the cast-in-place concrete bridge abutments and columns add visual interest.

6. As originally approved by the Planning Commission, the proposal results in the following water quality resource (WQR) and habitat conservation area (HCA) impacts:

Impact Area within Construction Limits	WQR Impacts			HCA Impacts		
	# of Trees Removed	Permanent (Sq. ft.)	Temporary (Sq. ft.)	# of Trees Removed	Permanent (Sq. ft.)	Temporary (Sq. ft.)
Willamette HCA	NA	NA	NA	1	1280	0
Kellogg Lake North	5	2170	3020	6	2040	2010
Kellogg Lake South	2	2580	110	0	580	70
Kronberg Park	1	0	3430	1	0	1165
TOTALS	8	4750	6560	8	3900	3245

As modified by the City Council, the proposal may have different WQR and HCA impacts in Kronberg Park pursuant to Finding 21.D and associated conditions of approval.

7. The applicant proposes the following mitigation plan:

- Restore areas temporarily impacted by construction with appropriate native plants pursuant to applicable WQR and HCA standards.

- Mitigate for areas permanently impacted by the Kellogg Bridge at a 1:1 replacement ratio on the bank of Kronberg Park outside of the construction limits between ordinary high water and top of bank.
- Remove invasive and nonnative species from within the construction limits and the Kronberg Park mitigation site.
- Monitor and maintain plantings for five years with a target survival rate of 80%.

The applicant also proposes to provide mitigation for an additional 515 square feet of area on the Kronberg Park mitigation site for permanent impacts from the anticipated pedestrian pathways to the future pedestrian bridge.

8. The applicant's mitigation plan was reviewed by ESA Northwest Biological Resources. ESA was retained by the City at the applicant's expense to provide independent technical review of the applicant's WQR and HCA analysis and mitigation plan. ESA determined that: (1) the applicant's analysis was reasonably complete and accurate, (2) the mitigation plan met code requirements, and (3) the mitigation plantings were suitable for the site and would improve local ecological functions.
9. The application was submitted on August 8, 2011. It was initially deemed incomplete by the City on September 7, 2011. The applicant revised and resubmitted the application on September 20, 2011 and requested that the application be deemed complete on that date. The City deemed the application complete on September 20, 2011, and now has until January 18, 2012 to issue a final decision on the application.
10. The majority of the Kellogg Bridge site has a base zone designation of Downtown Open Space (DOS) with an overlay zone designation of Willamette Greenway (WG). A small portion of the site (i.e. the northern half of the Lake Rd right-of-way) has a base zone designation of Downtown Office (DO). The portion of the Kellogg Bridge that is within a downtown zone and the WG overlay zone is subject to both Design Review and Willamette Greenway review. The future pedestrian bridge is also subject to both Design Review and Willamette Greenway review. A portion of the site around Kellogg Lake, including the construction staging area in Kronberg Park, is also subject to Water Quality Resource (WQR) and Habitat Conservation Area (HCA) review. Additionally, the construction staging area in Kronberg Park is subject to Community Service Use review and Willamette Greenway review due to its alteration of the vegetation buffer along Kellogg Lake.
11. The application is further subject to Development Review at or before the time of development permit submittal pursuant to MMC Section 19.906. The purpose of Development Review is to ensure compliance with applicable standards and conditions of approval through an efficient review process that effectively coordinates the City's land use and development permit review functions.
12. The Design and Landmarks Committee (DLC) evaluated the Design Review application (DR-11-01) on October 17, 2011 pursuant to MMC 19.1011 Design Review Meetings. The DLC recommended that the Planning Commission adopt Finding 17, and the associated conditions of approval, as the findings and conditions of approval for the Kellogg Bridge Design Review application.
13. The Planning Commission (PC) evaluated the entire application at a public hearing on November 8, 17, and 22 of 2011 pursuant to MMC Section 19.1006 Type III Review.

14. The October 17 DLC design review meeting and the November 8 PC public hearing on the application were properly noticed through direct mailings and sign postings pursuant to MMC Subsection 19.1006.3 Type III Public Notice, MMC Subsection 19.1011.2. Design Review Meeting Notice Requirements, and MMC Subsection 19.401.5 Willamette Greenway Zone Procedures.
15. The application was referred for comment to the following City departments and agencies: City of Milwaukie Engineering, Building, and Community Development Departments; Clackamas County Fire District #1; Oregon Department of Transportation; Oregon State Marine Board; Oregon Division of State Lands; Oregon Department of Fish and Wildlife; Oregon Parks and Recreation Department; and, North Clackamas Parks and Recreation District. It was also forwarded to the Historic Milwaukie and Island Station Neighborhood District Associations, and public copies were made available at City Hall, Ledding Library, and the Planning Department. Additionally, the Community Services Department broadly advertised the DLC's design review meeting and the PC's public hearing on the application at various public forums, such as the Milwaukie Farmers Market, and through direct e-mailings and the City's PMLR project website.

Four written comments were received by the City prior to October 17, 2011. Two of the comments were from Milwaukie residents, one was from the Oregon Department of Fish and Wildlife, and one was from the City's project design team. Additionally, two people testified at the October 17, 2011 DLC design review meeting. All verbal and written comments are summarized in and/or attached to the November 8, 2011 PC staff report.

16. The application is subject to the Milwaukie Design Guidelines, Interim Implementation Memo for Metro Title 13 Habitat Conservation Area, and the following provisions of the Milwaukie Zoning Ordinance, which is Title 19 of the Milwaukie Municipal Code (MMC):
- Section 19.310 – Downtown Zones
 - Section 19.401 – Willamette Greenway
 - Section 19.402 – Water Quality Resource
 - Section 19.904 – Community Service Use
 - Section 19.905 – Conditional Use
 - Section 19.907 – Downtown Design Review
 - Chapter 19.1000 – Review Procedures (specifically Section 19.1001 General Provisions and Section 19.1006 Type III Review)

Provisions not addressed in these findings are found to be not applicable to the decision on the application.

17. **DESIGN REVIEW:** MMC Subsection 19.907.7 contains the approval criteria for design review applications. The approval authority may approve, approve with conditions, or deny a design review application based on the following criteria:
- A. Compliance with Title 19 Zoning Ordinance.
- The only two applicable standards pertain to landscaping and wall design. Section 19.310.4.11 requires that a minimum of 20% of the site be landscaped. The applicant is proposing to retain approximately 70% of the site in landscaping. Section 19.310.6.C.2 contains the design standards for walls. The applicant is not proposing any wall-mounted mechanical equipment or any prohibited wall materials.

As conditioned, the City Council finds that these standards have been met and that this approval criterion is therefore met.

B. Substantial consistency with the Downtown Design Guidelines

Refer to Table 1 below for detailed findings pertaining to this approval criterion.

As conditioned, the City Council finds that the proposal is substantially consistent with the Downtown Design Guidelines and that this approval criterion is therefore met.

C. Submittal of a complete application and applicable fee as adopted by the City Council.

The applicant submitted a revised application on September 20, 2011 and requested that the City deem the application complete. The applicable design review application fee was paid August 8, 2011.

The City Council finds that this approval criterion has been met.

18. **WILLAMETTE GREENWAY:** MMC Subsection 19.401.6 contains the approval criteria for development in the Willamette Greenway (WG) Zone. MMC Subsection 19.905.4 contains the related Conditional Use (CU) approval criteria since all development in the WG Zone is considered a conditional use.

The WG Zone approval criteria ensure that the bridge and associated staging area are compatible with the character of the area and that views, public access, and the natural environment are protected and enhanced as much as possible. The CU approval criteria ensure that the bridge and associated staging area are appropriate for the location and will have minimal impacts on nearby uses. All identified impacts are required to be mitigated as much as practicable. Refer to Table 2 below for detailed findings pertaining to these approval criteria.

As conditioned, the City Council finds that the WG and CU approval criteria are met.

A. Vegetation Buffer Plan Requirement

Greenway conditional use approval is required for all development or alteration of the greenway vegetation buffer pursuant to Subsection 19.401.5.D. The greenway vegetation buffer is the area between ordinary high water and 25 feet upland of ordinary high water. Prior to development (e.g. removal of substantial amounts of vegetation or alteration of natural site characteristics) within the buffer, a vegetation buffer plan for the buffer area shall be submitted for review and approval pursuant to Subsection 19.401.5.E. The plan shall address the following elements:

- Riverbank Stabilization
- Scenic View Protection
- Native Vegetation Retention
- Native Vegetation Restoration
- Vegetation Buffer Enhancement

In this instance, the greenway vegetation buffer area is entirely contained within the water quality resource area, which is measured 50 feet upland of ordinary high water. The applicant's alternatives analysis and mitigation plan for the water quality resource area adequately addresses all of the required greenway vegetation buffer plan elements. In summary, no bank erosion has been identified and no bank stabilization is anticipated; areas of disturbance and plant removal have been minimized as much as practicable; all temporarily disturbed areas will be appropriately revegetated with native species; and all permanently disturbed areas will be mitigated through invasive and nonnative plant removal and native plantings along the bank of Kronberg Park.

As proposed, the City Council finds that the greenway vegetation buffer plan requirement is met.

19. **WATER QUALITY RESOURCE:** MMC Subsection 19.402.9 and 10 contain the application requirements and development standards respectively for development in water quality resource (WQR) areas.

The applicant submitted the required WQR materials and analysis for impacts to the banks of Kellogg Lake and Kronberg Park. Refer to Table 3 below for detailed findings pertaining to the applicant's alternatives analysis and mitigation plan, which are required per MMC Subsection 19.402.9.G and I respectively. Two separate reports were completed by the applicant at the City's direction. One report focused on the impacts to Kronberg Park. The second report focused on the impacts to the northern and southern banks of Kellogg Lake in the UPRR right-of-way. The City directed the applicant to evaluate the impacts to these areas separately because: (1) Kronberg Park is currently under—and will continue to be under—separate ownership, (2) Kronberg Park will not be permanently occupied or encumbered by the Kellogg Bridge, and (3) the City's WQR regulations limit where mitigation can be required. Evaluating the UPRR right-of-way area separately from the Kronberg Park tax lots for this review enabled the City to maximize its mitigation requirements for Kronberg Park.

As conditioned, the City Council finds that no practicable alternative exists to the proposed bridge or construction staging area; that disturbance to the WQR area is limited to the area necessary to accommodate the proposed bridge and construction staging area and is consistent with Finding 21.D; and that the mitigation plan proposed by the applicant for impacts to the WQR area caused by the proposed bridge and construction staging area is adequate.

A. Application Requirements

Ingress and egress across water quality resource areas, such as the Kellogg Bridge, are subject to Type III review pursuant to MMC Subsection 19.402.7. The applicant submitted all required information for Type III review, a summary of which is provided below.

- A topographic map of the site with contour intervals of five (5) feet or less showing a delineation of the water quality resource area and all wetlands.
- The location of all existing natural features including, but not limited to, all trees of a caliper greater than six (6) inches diameter at breast height (DBH).
- The location of all wetlands.
- An inventory and location of existing debris and noxious materials.
- An inventory of vegetation, including percentage ground and canopy coverage.
- An assessment of the existing condition of the water quality resource area.

Additionally, MMC Subsection 19.402.9.K requires payment of all adopted fees. The applicant paid the required water quality resource application fee and technical report review deposit. The deposit is meant to cover the City's expenses related to the hiring of a consultant with the appropriate technical expertise to review the applicant's water quality resource study.

The City Council finds that the water quality resource application requirements have been met for the bridge construction and staging area limits as proposed by the applicant. The City Council recognizes that the applicant may need to expand its area of disturbance in the Kronberg Park WQR area pursuant to Finding 21.D and associated conditions of approval. The City Council finds that the applicant's original WQR application adequately describes and assesses this adjacent WQR area and therefore does not trigger the need for a new WQR application.

B. Development Standards

Applications for development or land disturbance on properties that contain water quality resource areas shall demonstrate compliance with the following standards:

- The water quality resource area shall be restored and maintained in accordance with the approved mitigation plan and the specifications in MMC Table 19.402.9.E Water Quality Resource Area Requirements.
- Existing vegetation shall be protected and left in place wherever practicable. Work areas shall be carefully located and marked to reduce potential damage to the water quality resource area. Where existing vegetation has been removed, the site shall be revegetated as soon as practicable.
- Prior to construction the water quality resource area shall be flagged, fenced or otherwise marked and shall remain undisturbed except as may be allowed by this decision. Such markings shall be maintained until construction is complete.
- Appropriate site preparation and construction practices shall be followed to prevent erosion, pollution, sedimentation, or drainage of hazardous materials to the water quality resource area.
- Lights must be placed and hooded so that they do not shine directly into the water quality resource areas wherever practicable. Lights must provide the minimum level of lighting necessary for safe development operations and limited water quality resource area impacts.
- Storm water flows as a result of the proposed development within and to water quality resource areas shall not exceed pre-development flows. Storm water outfalls shall be appropriately designed to avoid erosion to stream banks or water quality resource area slopes.

Most of the standards in this section pertain to the development phase of the project and are appropriate as conditions of approval.

As conditioned, the City Council finds that these development standards will be met.

20. **HABITAT CONSERVATION AREAS:** The Planning Director's Interim Implementation Memo for Metro Title 13 Habitat Conservation Area (HCA) dated May 29, 2009 contains the approval criteria, application requirements, and development standards for development in habitat conservation areas.

The applicant submitted the required HCA materials and analysis for impacts to the banks of Kellogg Lake, Kronberg Park, and a small area of HCA on the west side of McLoughlin Blvd. Two separate HCA impact reports were completed by the applicant at the City's direction. One report focused on the impacts to Kronberg Park. The second report focused on the impacts to the northern and southern banks of Kellogg Lake in the UPRR right-of-way and to the small area of HCA on the west side of McLoughlin Blvd in the ODOT right-of-way. For purposes of this document, the HCA area in the ODOT right-of-way is called "Willamette HCA" because it is part of the mapped Willamette River floodplain. However, it is over 700 feet from the Willamette River and is bounded by McLoughlin Blvd on one edge and the freight rail tracks on another.

The City directed the applicant to evaluate the impacts to these areas separately because: (1) Kronberg Park is currently under—and will continue to be under—separate ownership, (2) Kronberg Park will not be permanently occupied or encumbered by the Kellogg Bridge, and (3) mitigation for HCA impacts in Kronberg Park are able to meet the City's clear and objective HCA development standards in Section 6. Evaluating the UPRR and ODOT rights-of-way area

separately from the Kronberg Park tax lots for this review enabled a more streamlined HCA review for Kronberg Park impacts.

Kronberg Park impacts are proposed to be evaluated and mitigated pursuant to Section 6 Development Standards. UPRR and ODOT rights-of-way impacts are proposed to be evaluated and mitigated pursuant to Section 7 Alternative Discretionary Development Standards due to the site constraints associated with these areas. Section 7 review requires more analysis and discretion, but also allows for more flexibility with respect to mitigation. In this instance, Section 7 review enables the applicant to propose mitigation plantings along the bank of Kronberg Park outside of the bridge construction limits to make up for sub-standard mitigation plantings underneath and next to the light rail bridge structure and in the Willamette HCA. Sub-standard mitigation plantings are proposed underneath and immediately adjacent to the light rail bridge structure for practical reasons (e.g. trees are not appropriate underneath a bridge); to accommodate access to the future pedestrian bridge; and in response to existing park conditions and possible future park development in Kronberg Park. Sub-standard mitigation plantings are proposed for the Willamette HCA due to the impracticality and unfeasibility of planting in this location.

Refer to Table 4 below for detailed findings pertaining to Section 6 review of impacts to and mitigation for Kronberg Park and Section 7 review of impacts to and mitigation for UPRR and ODOT rights-of-way.

As conditioned, the City Council finds that HCA impacts to Kronberg Park are allowed and that the proposed mitigation plan meets all applicable standards.

As conditioned, the City Council finds that the alternatives analysis and proposed mitigation plan for HCA impacts to the UPRR and ODOT rights-of-way meet all applicable approval criteria.

A. Application Requirements

The City's interim HCA regulations apply to all areas containing mapped habitat conservation areas outside of existing water quality resource areas. The applicant submitted all required information, or can be conditioned to submit all required information, a summary of which is provided below.

- Construction Management Plan pursuant to Section 5
- Detailed site plans showing HCA boundaries, existing conditions, and proposed temporary construction staging on Kronberg Park pursuant to Section 6
- Detailed site plans showing HCA boundaries, existing conditions, and proposed light rail bridge development pursuant to Section 7
- Impact evaluation, alternative analysis, and mitigation plan for proposed light rail bridge development pursuant to Section 7
- Boundary verification pursuant to Section 9

As conditioned, the City Council finds that the HCA application requirements will be met.

B. Development Standards and Habitat Friendly Development Practices

Applications for development or land disturbance on properties that contain water quality resource areas shall demonstrate compliance with the following standards:

- Disturbance area limitations
- Habitat protection during construction

- Design and construction practices to minimize hydrologic and wildlife corridor impacts
- Mitigation requirements

Most of the standards in this section pertain to the development phase of the project and are appropriate as conditions of approval.

As conditioned, the City Council finds that the HCA development standards will be met.

21. **COMMUNITY SERVICE USE:** MMC Subsection 19.904.4 contains the approval criteria for community service use (CSU) applications. An application for a CSU may be allowed if the following criteria are met:
- A. The building setback, height limitation, and off-street parking and similar requirements governing the size and location of development in the underlying zone are met. Where a specific standard is not proposed in the CSU, the standards of the underlying zone are met.
- The proposed use is for temporary construction staging for the Kellogg Bridge on the westernmost 50 feet of Kronberg Park. The applicant may need to expand the width of this staging area pursuant to Finding 21.D and associated conditions of approval. No permanent structures are proposed, and the site will be returned to a similar or better condition once construction is completed per the terms of the temporary construction easement between the City and TriMet.
- The City Council finds that this criterion is met.*
- B. Specific standards for the proposed uses as found in Subsections 19.904.7-11 are met.
- The only three applicable standards pertain to site improvements, noise, and lighting. Subsection 19.904.9.A requires that utilities, streets, or other improvements necessary for the use shall be provided by the agency constructing the use. Subsection 19.904.9.E requires that noise-generating equipment shall be sound-buffered when adjacent to residential areas. Subsection 19.904.9.F requires that lighting shall be designed to avoid glare on adjacent residential uses and public streets.
- The staging area requires access from McLoughlin Blvd. This right-of-way is under ODOT's jurisdiction. Any required improvements related to the proposed access point would need to be approved by ODOT. Construction impacts relating to noise and lighting will be minimized to the greatest extent practicable through TriMet's Conduct of Construction Plan and the City's construction and noise ordinances.
- As conditioned, the City Council finds that this criterion is met.*
- C. The hours and levels of operation of the proposed use are reasonably compatible with surrounding uses.
- The hours and levels of use of the staging area will vary over time. Construction impacts will be minimized to the greatest extent practicable through TriMet's Conduct of Construction Plan and the City's construction and noise ordinances. Normal operations will consist of 10 hour days, five days a week. Project needs may require some six-day work weeks. There may also be a need for some nighttime construction, such as girder erection over McLoughlin Blvd, due to jurisdictional requirements to minimize traffic impacts. Particular phases of construction will also result in varying levels of vehicular activity. Normal operations are expected to produce 30 vehicle trips/day. During peak operations, such as when major concrete pours are occurring, average trip generation might be nearer to 70 vehicle trips/day. Overall, due to the site's location near an

undeveloped and relatively unused open space area and adjacency to a freight rail bridge and State highway, the use of this site as a temporary construction staging area will have nominal impacts on surrounding uses.

The City Council finds that this criterion is met.

- D. The public benefits of the proposed use are greater than the negative impacts, if any, on the neighborhood.

The City Council interprets this criterion to address public benefits and negative impacts to a neighborhood based on a sliding scale, as all such benefits and impacts are not equal. Accordingly, in applying this criterion, the Council will give more weight to benefits and negative impacts that are more proximate to the proposed use, both chronologically and geographically.

The existence of the construction staging area results in the ability to build a bridge for light rail across Kellogg Lake. Associated with the ability for the light rail line to cross Kellogg Lake is the public benefit associated with an additional mode of transportation from south of Kellogg Lake to the areas served by light rail to the North of Kellogg Lake.

The temporary construction jobs may or may not benefit the Milwaukie public as it is unclear whether Milwaukie citizens will be employed to build this bridge. The evidence of economic benefit to areas along the light rail line is generally anecdotal and speculative, and is too far removed from the staging area for consideration as a public benefit under this provision. Potential benefits associated with future ridership and switching modes of transportation are similarly anecdotal, speculative, and factually removed from the existence of the staging area.

Negative impacts associated with the proposed staging area include construction equipment emissions, noise, dust, as well as the destruction of the park environment in the staging area and public access and use thereof during the entirety of the construction process. Impacts to the neighborhood also include additional traffic on surrounding streets associated with the transportation of workers and large equipment to and from the staging area.

The City Council interprets the HCA and WRQ mitigation requirements to be separate and distinct from the provisions addressing Community Service Uses. Said another way, compliance with the HCA and WQR mitigation requirements does not ensure an applicant of compliance with this criterion. To the extent that additional mitigation (beyond that required by the HCA and WQR) to ensure that the public benefit of the proposed use is greater than the negative impact to the neighborhood, conditions of approval under the Community Service Use provisions can be imposed to require mitigation in addition to the mitigation required under the HCA and WQR provisions.

Upon completion of construction, applicant will provide mitigation in order to offset some negative impacts associated with the destruction of the habitat, landscape, and value of the park as a public amenity, pursuant to the requirements of the WQR and HCA provisions of the Milwaukie Zoning Ordinance. The details of such mitigation are included in the findings addressing the WQR and HCA requirements. However, such mitigation does not alleviate the negative impacts to the neighborhood during the construction, do not address the loss of habitat and tree canopy on the site, and the benefits of such mitigation planting and landscaping are not immediately equal to the damage to the natural environment of Kronberg Park resulting from the construction staging.

In particular, such mitigation does not address or alleviate many impacts associated with the removal of the 36-inch Oregon white oak such as the loss of habitat, canopy, historic

resource and character, aesthetic value to public and park environment. For instance, the 12 replacement trees required to be planted under the HCA standards will not in the near term replace the loss of canopy associated with removal of the Oregon white oak. The importance of the Oregon white oak is further underscored by the letter from the Oregon Department of Fish and Wildlife ("ODFW") dated October 11, 2011, which states that the tree dates from before the founding of the community, and implores the City to preserve the tree unless "absolutely impossible."

Therefore, City Council finds that, as proposed, the public benefits of the proposed use are equal to or slightly less than the negative impacts to the neighborhood. Council also finds that if the 36-inch Oregon white oak can be preserved through the construction of the bridge and survive in the long term, that the benefits associated with the habitat and canopy provided by the Oregon white oak will result in the public benefit of the proposed use being greater than the negative impacts to the neighborhood. However, there is conflicting evidence in the record as to whether the Oregon white oak can be preserved and survive long term. If the Oregon white oak cannot be preserved and survive in the long term, the City Council finds that additional mitigation by the applicant sufficient to immediately replace the canopy loss associated with removal of the Oregon white oak will result in the public benefit of the proposed use being slightly greater than the negative impacts to the neighborhood.

As conditioned, the City Council finds that this criterion is met.

- E. The location is appropriate for the type of use proposed.

The temporary construction staging area being proposed for the bridge is immediately adjacent to the Kellogg Bridge site and has been minimized in size as much as possible so as not to impact Kronberg Park any more than necessary. A construction staging area on the north bank of Kellogg Lake was evaluated and rejected because of its more limited vehicular access and steep slopes. Off-site staging areas were also evaluated and rejected because of the number of additional vehicle trips that would be generated. The flat and accessible area within Kronberg Park adjacent to the construction site is the most logical location for construction staging and has the least impacts to the traveling public and surrounding uses. Unless otherwise specified in the temporary construction easement for use of a portion of Kronberg Park for staging, access to the staging area must be physically located within the easement area.

As conditioned, the City Council finds that this criterion is met.

22. Pursuant to Subsection 19.1001.7.E, the decision on this land use application shall expire and become void within the time periods specified in Subsection 19.1001.7.E.1 unless the review authority specifies a different expiration time period as allowed by Subsection 19.1001.7.E.2. Given the size, complexity, and phased nature of the proposal, the City Council finds that it is appropriate to extend the time period within which the applicant must obtain development permits from 2 years to 4 years, and within which the applicant must pass all final inspections from 4 years to 6 years, from the date of the land use decision on this application.

Table 1: Design Review Findings

MILWAUKIE CHARACTER GUIDELINES	
Applicant Information	Recommended Findings
a. Reinforce Milwaukie's Sense of Place = Strengthen the qualities and characteristics that make Milwaukie a unique place.	
<p>Milwaukie's history is largely formed and defined by its natural surroundings (hills, river, and lake) and its connections by road, rail, and the river. The project's parallel relationship to the existing rail trestle reinforces this transportation and technological history. Light rail is the steamship of the 21st century, and will provide Milwaukie with a new link to the region. It will provide unique views to the formative natural and urban areas that are Milwaukie of today, and will reinforce Milwaukie's qualities and characteristics into the future.</p>	<p>The overall design of the light rail bridge reinforces Milwaukie's sense of place as a small town with a long history of rail activity both in the form of freight rail (e.g. Union Pacific Railroad) and local and regional passenger rail (e.g. Portland Traction Company and Amtrak). As proposed, the light rail bridge connects Milwaukie to its neighbors to the south, which has the added benefit of minimizing the light rail footprint in the south downtown area. In other words, by traveling through Milwaukie, which requires a bridge over Kellogg Lake and McLoughlin Blvd, instead of terminating in Milwaukie, the additional infrastructure associated with a terminus is avoided. As proposed, the light rail bridge respects Milwaukie's sense of place by utilizing an existing rail corridor, designing a bridge with a modest horizontal profile, and using materials, such as weathered steel, that are visually compatible with the Kellogg Lake natural area.</p> <p><i>The proposal meets this guideline.</i></p>
b. Integrate the Environment = Building design should build upon environmental assets.	
<p>The design of the bridge respects the character of the natural area it crosses through its simple detailing, material selection, minimized structure, and careful placement of structural elements. Its presence will allow unique views to the environmental assets of Kellogg Lake, Kronberg Park, and Dogwood Park, and to the River and hills beyond. Removal of invasive plants and re-planting with appropriate native replacements will further enhance the immediate environmental quality. The potential future pedestrian bridge will further build on, support, and connect these central environmental assets.</p>	<p>As proposed, the design of the bridge respects the character of the Kellogg Lake natural area through its uncluttered design, earth-tone materials, and avoidance of in-water bridge supports. Unavoidable impacts to the lake and surrounding riparian and habitat areas will be mitigated. All mitigation plans require Type III review.</p> <p><i>The proposal meets this guideline.</i></p>
c. Promote Linkages to Horticultural Heritage = Celebrate Milwaukie's heritage of beautiful green spaces.	
<p>The bridge, by making a visual connection between the green areas to the north and to the south of Kellogg lake, and providing new and unique views for passengers above, celebrates those spaces. The design of the bridge also acknowledges and celebrates Milwaukie's open space heritage through its simple detailing, sympathetic materials and</p>	<p>As proposed, the light rail bridge provides passengers with unique views of Dog wood Park, Kronberg Park, Kellogg Lake, and the Willamette River to the west that are not currently available by any other means.</p> <p>Additionally, the future proposed pedestrian bridge over Kellogg Lake would connect parks and natural areas on both sides of Kellogg Lake in a way that hasn't occurred in decades. In addition to these localized</p>

<p>colors, minimized structure, and careful placement of structural elements. Its presence will allow unique views to Kellogg Lake, Kronberg Park, and Dogwood Park; as well as to the River, the Trolley Trail, and the hills beyond.</p>	<p>connections, the future pedestrian bridge would increase passive and active recreational opportunities in this area and afford connections to other open spaces that are further afield, such as Spring Park in Island Station.</p> <p><i>The proposal meets this guideline.</i></p>
<p>d. Establish or Strengthen Gateways = Projects should use arches, pylons, arbors, or other transitions to mark special or primary entries and/or borders between public and private spaces.</p>	
<p>The careful design of the bridge abutments, and their contrast with the ribbon like character of the bridge itself, heralds and marks the public and private spaces below.</p> <p>The pylons too, with their minimal scale, texture, and material, contribute to marking the transitions between these various zones, spaces, and ownerships.</p>	<p>As proposed, the jump span over Lake Rd along with the abutment wall and support columns on either side create a unique passageway through which drivers, bicyclists, and pedestrians can travel. Though not designed with this purpose in mind, this passageway serves as a sort of a gateway into the south downtown area. Specific design features of this passageway are evaluated under other guidelines.</p> <p><i>The proposal meets this guideline.</i></p>
<p>e. Consider View Opportunities = Building designs should maximize views of natural features or public spaces.</p>	
<p>The bridge will create new and very different viewpoints of Kellogg Lake, Kronberg Park, and the river and Greenway for the many passengers riding it each day. The bridge itself will enhance the views of the Lake and the Park, by providing a well-proportioned, designed, and detailed structure as a backdrop for views from the south, and from the future light rail station to which it will connect.</p>	<p>As proposed, the light rail bridge provides passengers with unique views of Dogwood Park, Kronberg Park, Kellogg Lake, and the Willamette River to the west that are not currently available by any other means.</p> <p>Additionally, the future proposed pedestrian bridge over Kellogg Lake would provide bicyclists and pedestrians with unique views of these areas as well.</p> <p><i>The proposal meets this guideline.</i></p>
<p>f. Consider Context = A building should strengthen and enhance the characteristics of its setting, or at least maintain key unifying patterns.</p>	
<p>The bridge will establish a new pattern of columns and spans that parallels, and is in plane with, the historic railroad trestle, thus providing both a modern contrast and a formal and utilitarian consistency. The bridge will, additionally, visually tie one side of Kellogg Creek/Lake to the other, and do so in a manner that provides an elegant and simple backdrop for the natural qualities and diversity of the Lake area and Kronberg Park.</p>	<p>As proposed, the light rail bridge maintains roughly the same horizontal clearance as the freight rail bridge over Lake Rd and McLoughlin Blvd and has roughly the same horizontal profile as the freight rail bridge over Kellogg Lake. As proposed, the design of the bridge respects the character of the Kellogg Lake natural area through its uncluttered design, earth-tone materials, and avoidance of in-water bridge supports.</p> <p><i>The proposal meets this guideline.</i></p>
<p>g. Promote Architectural Compatibility = Buildings should be “good neighbors.” They should be compatible with surrounding buildings by avoiding disruptive excesses. New buildings should not attempt to be the center of attention.</p>	
<p>The sleek ribbon like character of the bridge fits quietly into its surroundings. Rather than calling attention to itself thru aggressive structure or excessive detail, the bridge</p>	<p>As proposed, the tubs provide the main horizontal element of the light rail bridge both structurally and visually. Tubs are proposed instead of I-beams in order to provide a clean and thin bridge profile, an uncluttered</p>

<p>contributes elegantly to the visual character of the site. In contrast to the busier and more rustic railroad trestle, the new bridge, with its simple stoic form and structure, further reinforces its quieter neighborliness.</p>	<p>bridge underside, and few opportunities for bird perching. The use of weathering steel allows for the creation of a visually coherent ribbon-like structure with an organic, earth-tone quality. Cantilevered sides also serve to minimize its boxy appearance. The use of steel tubs throughout avoids a change in bridge materials since the portion of the bridge over McLoughlin Blvd must be constructed of steel. Overall, these design and material choices serve to create a visually low-key bridge with simple lines that do not compete with the neighboring freight rail bridge.</p> <p>In contrast to the light rail bridge's simple horizontal lines, the design of the future proposed pedestrian bridge over Kellogg Lake incorporates and celebrates the intricate and angular support beam pattern present in the freight rail bridge.</p> <p><i>The proposal meets this guideline.</i></p>
<p><i>h. Preserve Historic Buildings = Historic building renovation, restoration, or additions should respect the original structure.</i></p>	
<p>No historic buildings are affected by the Kellogg Bridge application.</p>	<p><i>This guideline is not applicable.</i></p>
<p><i>i. Use Architectural Contrast Wisely = Contrast is essential to creating an interesting urban environment. Used wisely, contrast can provide focus and drama, announce a socially significant use, help define an area, and clarify how the downtown is organized.</i></p>	
<p>The clean orthogonal design of the bridge creates an interesting backdrop with the natural areas it spans, and a gateway between the natural areas and the more urban downtown.</p> <p>The long span bridge structure reflects the advancement in structural materials since the construction of the adjacent railroad bridge. Unlike the railroad structure, the new bridge will clear span Kellogg Creek with environmentally sensitive materials and minimum structure, a clear symbol and manifestation of our increasing awareness of the need to protect and improve fisheries and other habitat.</p>	<p>As proposed, the design of the light rail bridge uses contrast in an intentional and thoughtful manner throughout.</p> <ul style="list-style-type: none"> • Round concrete vertical columns contrast with the horizontal lines of the weathering steel tubs. The lighter-colored concrete columns fade into the background and allow the earth-toned steel to move through the landscape as a thin visually-coherent ribbon. • Vertical offsets on the round concrete columns serve to create visual interest (e.g. depth and shadow), minimize width, and channel any rust caused by the weathering steel in a decorative manner. However, more information is needed to ensure that the vertical offsets contribute to the bridge's overall design and the pedestrian environment. • Open-face I-beam column caps add visual interest without detracting from the smooth clean lines of the tubs that they support. • The textured surfaces of the pre-cast concrete abutment wall (north side of Lake Rd) and the supporting set of columns (south side of Lake Rd) for the jump span contrast with the smooth weathering steel face of the jump span. The

	<p>textured surfaces on either side of the jump span unify the space and create visual interest at the pedestrian level. However, more information is needed to ensure that the textured wall and column surfaces contribute to an attractive pedestrian environment.</p> <p><i>As conditioned, the proposal meets this guideline.</i></p>
<p><i>j. Integrate Art = Public art should be used sparingly. It should not overwhelm outdoor spaces or render buildings mere backdrops. When used, public art should be integrated into the design of the building or public open space.</i></p>	
<p>TriMet's public art program installs a variety of artwork at appropriate locations along its light rail lines. Art is intended be installed at the nearby stations, as well as on the bridge itself. The art is being developed to be sensitively integrated, and specifically respectful of this guideline. The art is not specifically being reviewed through this process: it is being vetted through the Public Art process, with input from the public and respective Commissions in order to ensure the result is appropriate and contributory.</p>	<p>The proposal includes public art work on a portion of the structure. The current concept places a number of abstract forms on the surface of the tubs, creating a subtle, integrated project. Though the details of the art concept are still evolving, it is one that will not overwhelm the bridge itself nor neighboring places. TriMet has convened a Public Art Advisory Committee (PAAC) as part of the Portland Milwaukie Light Rail project. The PAAC is a citizen committee charged with artist selection and final review and approval of all art concepts along the alignment. It has representatives from along the entire alignment including several from the Milwaukie and Oak Grove areas.</p> <p><i>The proposal meets this guideline.</i></p>

Applicant Information	Recommended Findings
<p><i>a. Reinforce and Enhance the Pedestrian System = Barriers to pedestrian movement and visual and other nuisances should be avoided or eliminated, so that the pedestrian is the priority in all development projects.</i></p>	
<p>The Crossing structure preserves all existing pedestrian paths in the area and therefore creates no barrier to pedestrian movement. Instead of creating visual nuisances, the project creates a visual attraction that will enhance the pedestrian experience. The potential future pedestrian bridge will potentially further enhance the prioritization of the pedestrian movement, resulting in a simple and generous connection from Lake Road, across Kellogg Creek through to the Trolley Trail.</p>	<p>As proposed, travel on the light rail bridge is restricted to light rail trains and passengers. However, the applicant has included a design for a future pedestrian bridge over Kellogg Lake in its application as a way to advance the design and review process for this bridge at this time. This would allow for the possibility of constructing the pedestrian bridge at the same time as the light rail bridge, which would result in significant time and cost savings for the pedestrian bridge project.</p> <p>The applicant is not proposing to construct the pedestrian bridge as part of the Portland Milwaukie Light Rail project due to a lack of funding. However, the applicant will allow for the construction of the pedestrian bridge by any entity if and when funding is found. Moreover, the Planning Commission requires that the applicant construct the pedestrian bridge if funding is secured on or before Feb 1, 2013 for construction before Sep 30, 2013.</p> <p>As proposed, the light rail bridge does not introduce any new barriers to pedestrian movement. Bridge</p>

	<p>designers carefully considered impacts to pedestrian sight lines and safety issues when placing columns. Column widths were minimized as much as possible and CPTED (crime prevention through environmental design) principles were applied throughout.</p> <p>As proposed, the pedestrian experience is enhanced by vertical board-form column treatments and horizontal bands of textured wall treatments on either side of the jump span over Lake Rd.</p> <p>As conditioned, the pedestrian experience is improved to the greatest extent possible within the constraints of the Land Use Final Order.</p>
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b. Define the Pedestrian Environment = Provide human scale to the pedestrian environment, with variety and visual richness that enhance the public realm.

<p>While the bridge is a large structure, design elements such as the piers and guardrails have been detailed to provide human scale. Materials have been chosen - concrete contrasting with weathering steel, light guardrails, simple elegant light standards, details at the column caps and bases- to further add to the richness and enhancement of the public realm.</p>	<p>As proposed, the light rail bridge introduces human-scaled design treatments where the bridge elements intersect with the pedestrian environment.</p> <ul style="list-style-type: none"> • The widths of the columns have been minimized as much as possible while still providing the appropriate amount of structural support. Vertical board-form treatments serve to further minimize their bulk and create visual interest (e.g. depth and shadow) at the pedestrian level. However, more information is needed to ensure that the vertical treatments are appropriately-scaled and interesting at the pedestrian level. • The textured wall surfaces of the pre-cast concrete abutment wall (north side of Lake Rd) and the jump span supporting columns (south side of Lake Rd) unify the space and create visual interest at the pedestrian level. However, more information is needed to ensure that the proposed lighting and textured wall and column surfaces contribute to an attractive pedestrian environment. <p><i>As conditioned, the proposal meets this guideline.</i></p>
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c. Protect the Pedestrian from the Elements = Protect pedestrians from wind, sun, and rain.

<p>The bridge will protect pedestrians from wind, sun, and rain in two different respects. Boarding a train and riding from Milwaukie to points north and south will provide one form of protection. So too will the bridge itself: passing under the bridge - whether by Lake Road, Kronberg Park, or elsewhere - the bridge will provide protection from the elements above.</p>	<p>As proposed, travel on the light rail bridge is restricted to light rail trains and passengers. However, the future proposed pedestrian bridge over Kellogg Lake is naturally protected from some elements by the light rail bridge above it.</p> <p><i>The proposal meets this guideline.</i></p>
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d. Provide Places for Stopping and Viewing = Provide safe, comfortable places where people can stop to sit and rest, meet and visit with each other, and otherwise enjoy the downtown surroundings.

<p>The bridge provides a link from the Park</p>	<p>As proposed, travel on the light rail bridge is restricted</p>
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<p>Avenue park and ride to the light rail station, both of which have stopping, resting, and meeting areas. The bridge itself has no formal pedestrian places, but it does make the station pedestrian areas more accessible and helps to concentrate activity at those areas. The Lake Road overpass will also provide a place where weather protection and views down to the Lake and Park may afford meeting and visiting opportunities. Lighting provided under the overpass will ensure this area is comfortable and safe at all hours.</p>	<p>to light rail trains. Passengers are able to sit, meet, and visit with other passengers while riding the light rail system.</p> <p>As proposed, the future proposed pedestrian bridge over Kellogg Lake is designed as a transportation facility and does not include benches for resting or sitting. However, as a pedestrian facility, people would be able to socialize with one another and stop to admire the views while on the bridge.</p> <p><i>The proposal meets this guideline.</i></p>
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e. Create Successful Outdoor Spaces = Spaces should be designed for a variety of activities during all hours and seasons.

<p>By raising the light rail system above grade, the bridge allows for a flexible layering of uses during all hours and all seasons.</p>	<p>No outdoor spaces are proposed as part of the Kellogg Bridge application beyond the enclosure of a short length of Lake Rd by the jump span, abutment wall, and column walls. Specific design features of these walls are evaluated under other more relevant guidelines. Use of Lake Rd by the traveling public will not change.</p> <p><i>The proposal meets this guideline.</i></p>
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f. Integrate Barrier-Free Design = Accommodate handicap access in a manner that is integral to the building and public right-of-way and not designed merely to meet minimum building code standards.

<p>Tri Met consistently manifests an exceptional barrier free design integrated into all of its projects. The bridge is a part of a region wide accessible transportation network, and all elements associated with the project will exceed minimum standards, both technically and aesthetically.</p>	<p>ADA standards are not applicable to the light rail bridge, as it is only for use by light trains. As proposed, the future pedestrian bridge has a flat concrete walking surface that meets ADA standards. Future path connections to this bridge are not part of this proposal and are not being evaluated at this time.</p> <p><i>The proposal meets this guideline.</i></p>
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ARCHITECTURE GUIDELINES

Applicant Information	Recommended Findings
<p>a. Corner Doors = Locate entry doors on corners of commercial and retail buildings wherever possible.</p>	
<p>No doors are proposed as part of the Kellogg Bridge application.</p>	<p><i>This guideline is not applicable.</i></p>
<p>b. Retail and Commercial Doors = Doors should create an open and inviting atmosphere.</p>	
<p>No doors are proposed as part of the Kellogg Bridge application.</p>	<p><i>This guideline is not applicable.</i></p>

<p>c. Residential Doors = Residential front doors should define a friendly transition between the public and the private realm.</p>	
<p>No doors are proposed as part of the Kellogg Bridge application.</p>	<p><i>This guideline is not applicable.</i></p>
<p>d. Wall Materials = Use materials that create a sense of permanence.</p>	
<p>TriMet consistently applies the use of long lasting, high quality materials to ensure low maintenance costs for its facilities and enhance the quality of the communities. In this case, the use of concrete, weathering steel and galvanized metal have been designed and detailed in a manner that will ensure that the structure is of a consistent and well maintained quality, both physically and visually for the life of the project.</p>	<p>As proposed, the abutment walls and jump span supporting columns that enclose a portion of Lake Rd are made of concrete.</p> <p><i>The proposal meets this guideline.</i></p>
<p>e. Wall Structure = Use scale defining devices to break up the longitudinal dimensions of buildings, creating a comfortable sense of enclosure by establishing an uninterrupted street edge.</p>	
<p>This guideline applies exclusively to buildings. However, this portion of the project does include a street-enclosing wall element: the portion of the abutment under the Lake Road jump span. This wall is to be crafted of faceted pre-cast concrete panels that will provide a quality texture and finish fitting for this public passageway. The faceted texture contributes to its "human scale" and, coupled with lighting under the span in this location, will result in a wall and space that is safe and comfortable at all times.</p>	<p>As proposed, the abutment wall (north side of Lake Rd) and jump span column treatments (south side of Lake Rd) are made of pre-cast concrete and textured with a formliner that resembles a rusticated masonry surface to create a unified appearance and visual interest at the pedestrian level. However, more information is needed to ensure that the textured wall and column surfaces are appropriately-scaled for visual interest, effectively break up the longitudinal dimensions of these structures, and sufficiently hide the form pattern.</p> <p><i>As conditioned, the proposal meets this guideline.</i></p>
<p>f. Retail Windows = Use windows that create an open and inviting atmosphere.</p>	
<p>No retail windows are proposed as part of the Kellogg Bridge application.</p>	<p><i>This guideline is not applicable.</i></p>
<p>g. Residential Bay Windows = Provide bays to add variety and visual interest to façade and interesting views and outdoor spaces from the interiors.</p>	
<p>No residential bay windows are proposed as part of the Kellogg Bridge application.</p>	<p><i>This guideline is not applicable.</i></p>
<p>h. Silhouette and Roofline = Create interest and detail in silhouette and roofline.</p>	
<p>The ribbon of steel and concrete that forms the primary character of the Kellogg Creek crossing is enhanced by the careful modulation of the pillars and railings, and the rhythm of the catenaries, and railings. These elements are enhanced by the more subtle play of light and shadow and color that will result from the weathering steel and its</p>	<p>As proposed, the tubs provide the main horizontal element of the light rail bridge both structurally and visually. Tubs are proposed instead of I-beams in order to provide a clean and thin bridge profile. The use of weathering steel allows for the creation of a visually coherent ribbon-like structure with an organic, earth-tone quality. Cantilevered sides also serve to minimize its boxy appearance. Overall, these design and</p>

<p>various connections and details, and the contrast in color and texture between the concrete and weathering steel. These elements and treatments cumulatively will contribute interest and detail in silhouette and roofline.</p>	<p>material choices serve to create a bridge with a simple, elegant silhouette. <i>The proposal meets this guideline.</i></p>
<p><i>i. Rooftops = Integrate rooftop elements into building design.</i></p>	
<p>No rooftops are proposed as part of the Kellogg Bridge application.</p>	<p><i>This guideline is not applicable.</i></p>
<p><i>j. Green Architecture = New construction or building renovation should include sustainable materials and design.</i></p>	
<p>TriMet consistently applies the use of long lasting, high quality materials to ensure low maintenance costs for its facilities and enhance the quality of the communities. In this case, the use of concrete, weathering steel and galvanized metal have been designed and detailed in a manner that will ensure that the structure is sustainable by having permanent, quality materials with low life cycle costs. The steel elements, as well as the concrete, will include recycled content, and have been structurally designed to be as efficient as possible. Finally, a majority of the materials would be potentially recyclable - most readily the predominant use of steel - should the project ever have an end-of-use.</p>	<p>As proposed, the light rail bridge will be constructed of quality, durable materials with low lifecycle costs. The steel elements, as well as the concrete, include recycled content, and have been structurally designed to be as efficient as possible. Furthermore, a majority of the materials are potentially recyclable should the project ever have an end-of-use.</p> <p>Though not specifically described in the application, the applicant has indicated elsewhere that fluorescent tubes are proposed for the light fixtures underneath the jump span. While not specifically prohibited by the design guidelines, fluorescent tubes do not necessarily meet the intent or spirit of this guideline given the recent advancements in lighting technology. Consequently, more information is needed about the viability of other light fixtures and how they compare with fluorescent tubes with respect to energy efficiency and environmental sustainability to ensure this guideline is met.</p> <p><i>As conditioned, the proposal meets this guideline.</i></p>
<p><i>k. Building Security = Buildings and site planning should consider and employ techniques that create a safe environment.</i></p>	
<p>Safety is a prime design consideration for Tri Met in all its projects. TriMet's safety and security committee has reviewed the project and determined that in both construction and use, the anticipated construction techniques and overall design will contribute to a safe environment. TriMet has included intrusion detection on the bridge, to deter trespass, and will install CCTV at both ends of the bridge for an added layer of security.</p>	<p>As proposed, the light rail bridge includes safety railings on both sides for maintenance workers, intrusion detection devices on the bridge to deter trespassers, and CCTV surveillance.</p> <p>As proposed, the area underneath the jump span at Lake Rd includes lighting at sufficiently high enough levels for safe vehicular and pedestrian travel.</p> <p>However, more information is needed about what kinds of safety measures will be employed around the jump span columns to prevent climbing on the support beams and to minimize hiding places.</p> <p><i>As conditioned, the proposal meets this guideline.</i></p>

I. Parking Structures = Parking structures should be designed so that they appear like most other buildings in the downtown.

No parking structures are proposed as part of the Kellogg Bridge application.	<i>This guideline is not applicable.</i>
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LIGHTING GUIDELINES

Applicant Information	Recommended Findings
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a. Exterior Building Lighting = Architectural lighting should be an integral component of the façade composition.

<p>There is no architectural lighting intended for the bridge overall, nor would it be appropriate in this environmentally sensitive area. However, lighting is being provided under the Lake Road jump span. The lighting fixture has a minimum profile, has been discretely placed, and is of a finish that is compatible with the surrounding materials. It is also thematically consistent with other lighting and hardware elements incorporated elsewhere in the rail project design, and is also consistent with typical Milwaukie street elements. The light will wash the textured wall in a manner that heightens the aesthetic experience of the wall at night.</p>	<p>As proposed, the area underneath the jump span at Lake Rd includes 4 Guth light fixtures mounted at or near the top of the abutment wall and each of the supporting columns. The applicant's photometric studies indicate that the fixtures would light this area to an average level of 5.10 foot candles. The applicant's narrative also states that the fixtures would wash the concrete wall and column surfaces, which are proposed to have horizontal bands of rock-textured surface treatments, creating both a visually interesting and safe pedestrian experience.</p> <p>The proposed lighting level creates a safe pedestrian environment from a purely technical standpoint. However, more information is needed to better understand how the proposed lighting would create a comfortable and attractive pedestrian environment including, but not limited to:</p> <ul style="list-style-type: none"> • How the light from the light fixtures interacts with the underside of the jump span. • How the light from the light fixtures enhances the proposed wall treatments. • How the light fixtures compliment the style of the proposed wall treatments. • The degree to which the light fixtures are tamper resistant. <p>No lighting is proposed on the light rail bridge or on the future pedestrian bridge at this time. Lighting on the light rail bridge is neither necessary nor appropriate, but energy-efficient and wildlife-friendly lighting on the pedestrian bridge would be desirable.</p> <p><i>As conditioned, the proposal will meet this guideline.</i></p>
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b. Parking Lot Lighting = Ornamental street lights should be used to be compatible with downtown streetlight standards identified in the Public Area Requirements.

No parking lots are proposed as part of the Kellogg Bridge application.	<i>This guideline is not applicable.</i>
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<p>c. Landscape Lighting = Lighting should be used to highlight sidewalks, street trees, and other landscape features. Landscape lighting is especially appropriate as a way to provide pedestrian safety during holiday periods.</p>	
<p>Lighting is provided under the Lake Road jump span, contributing to the comfort and safety of this street/sidewalk area. There is no other architectural or landscape lighting intended for the bridge, as it would not be appropriate in this environmentally sensitive area.</p>	<p>No landscape lighting is proposed as part of the Kellogg Bridge application. <i>This guideline is not applicable.</i></p>
<p>d. Sign Lighting = Sign lighting should be designed as an integral component of the building and sign composition.</p>	
<p>No signs are proposed as part of the Kellogg Bridge application.</p>	<p><i>This guideline is not applicable.</i></p>

SIGN GUIDELINES	
Applicant Information	Recommended Findings
a. Wall Signs	
b. Hanging or Projecting Signs	
c. Window Signs	
d. Awning Signs	
e. Information and Guide Signs	
f. Kiosks and Monument Signs	
g. Temporary Signs	
<p>No signs are proposed as part of the Kellogg Bridge application.</p>	<p><i>These guidelines are not applicable.</i></p>

Table 2: Willamette Greenway Findings

MMC Subsection 19.401.6 – APPROVAL CRITERIA		
The following shall be taken into account in the consideration of a greenway conditional use.		
Criteria	Findings	
<p>A. Whether the land to be developed has been committed to an urban use, as defined under the State Willamette River Greenway Plan;</p>	<p>An urban use, as defined in the State Willamette Greenway Plan, is a use that is part of the built environment and that is not natural, rural, or agricultural in character. The north end of the Kellogg Bridge site is in the south downtown area, which has been committed to an urban use for over 150 years. The bridge crosses Lake Rd and parallels the existing freight rail line as it crosses Kellogg Lake and McLoughlin Blvd. Kellogg Lake is a manmade lake that is dammed further downstream where it flows underneath McLoughlin Blvd. On the south side of Kellogg Lake is Kronberg Park. Kronberg Park is an undeveloped open space area that was</p>	

		<p>used as a construction dumping site in the 1950's and is currently overrun with nonnative and invasive species along its banks. The bridge continues southward where it turns to the east, leaving the freight rail corridor behind and running parallel to McLoughlin Blvd, until its terminus at Park Ave. In summary, the Kellogg Bridge site has been the location of urban transportation infrastructure and urban open spaces for quite some time.</p> <p><i>The proposal meets this criterion.</i></p>
B.	Compatibility with the scenic, natural, historic, economic, and recreational character of the river;	<p>Kellogg Bridge, its associated staging area, and the future pedestrian bridge are compatible with the character of the area as described both here and in the Design Guidelines findings in Table 1. Both bridges will create new views to the Willamette River, Kellogg Lake, and Kronberg Park. Removal of invasive species and mitigation plantings will improve the scenic and environmental qualities of the area. The light rail bridge, which is immediately adjacent to the existing historic railroad trestle, builds on the role that both the rail and the river played in the history of Milwaukie's historic development, thus referencing Milwaukie's historical connection to the Willamette River. Lastly, the new bridge is part of a regional transit system that will bring new economic, recreational, and tourist activity to Milwaukie and the river.</p> <p><i>The proposal meets this criterion.</i></p>
C.	Protection of views both toward and away from the river;	<p>Much of the bridge will not be viewable from the Willamette River, nor will it obscure views toward the river, due to the presence of the existing freight rail trestle. As proposed, steel tubs provide the main horizontal element of the light rail bridge both structurally and visually. Use of steel reduces the thickness of the structure, creating a bridge with a thin profile that minimizes the blocking of any current views. Use of weathering steel allows the bridge to blend in with the natural setting around Kellogg Lake and any views beyond.</p> <p>The light rail bridge will provide passengers with unique views of Dogwood Park, Kronberg Park, Kellogg Lake, and the Willamette River to the west that are currently not available by any other means. Additionally, the future pedestrian bridge over Kellogg Lake would provide bicyclists and pedestrians with unique views of these areas as well.</p> <p>Due to the bridge's impacts on the water quality resource and habitat conservation areas on either side of Kellogg Lake, natural resource mitigation is required and is detailed elsewhere in this document. The proposed mitigation plan includes native plantings between Kellogg Lake's ordinary high water and Kronberg Park's top of bank. In order to ensure that these mitigation plantings balance ecological restoration with future park development and the desire to maintain some views to Kellogg Lake, a more detailed tree planting plan for Kronberg Park is necessary.</p> <p><i>As conditioned, the proposal meets this criterion.</i></p>
D.	Landscaping, aesthetic enhancement, open space, and vegetation between the activity and the river, to the maximum	<p>The proposal includes revegetation of areas disturbed during construction of the Kellogg Bridge and mitigation plantings to offset the temporary and permanent impacts caused by the bridge and its associated staging area. The proposal indicates that the areas underneath the bridge between Lake Rd and McLoughlin Blvd and</p>

	extent practicable;	<p>outside of the mitigation plan area will include landscaping, but no specific landscaping plan was included in the application. A landscaping plan needs to be provided for these areas that shows how they will be landscaped to the maximum extent practicable.</p> <p><i>As conditioned, the proposal meets this criterion.</i></p>
E.	Public access to and along the river, to the greatest possible degree, by appropriate legal means;	<p>The light rail bridge will not block any access that currently exists to Kellogg Lake or the Willamette River. The light rail station in downtown Milwaukie will be located just two blocks from Riverfront Park, which provides direct legal access to the Willamette River. The light rail bridge has also been engineered to accommodate a future pedestrian bridge, which will provide additional access through and to the greenway area along Kellogg Lake and in Kronberg Park.</p> <p><i>The proposal meets this criterion.</i></p>
F.	Emphasis on water-oriented and recreational uses;	<p>The light rail bridge is restricted to light rail trains and passengers. However, new views of Kellogg Lake and the Willamette River from the light rail bridge may attract new users to the area. The future pedestrian bridge will provide residents and visitors with new recreational opportunities and connections.</p> <p><i>The proposal meets this criterion.</i></p>
G.	Maintain or increase views between the Willamette River and downtown;	<p>The light rail bridge will provide passengers with unique views of downtown Milwaukie, including Dogwood Park, Kronberg Park, Kellogg Lake, and the Willamette River to the west that are currently not available by any other means. Additionally, the future pedestrian bridge over Kellogg Lake would provide bicyclists and pedestrians with unique views of these areas as well. Neither bridge will block views between the Willamette River and downtown Milwaukie.</p> <p><i>The proposal meets this criterion.</i></p>
H.	Protection of the natural environment according to regulations in the Natural Resource overlay Zone;	<p>Kellogg Bridge, its associated staging area, and the future pedestrian bridge are all subject to the City's water quality resource and habitat conservation area regulations. See Tables 3 and 4 below for detailed findings related to compliance with these regulations.</p> <p><i>The proposal meets this criterion.</i></p>
I.	Advice and recommendations of the Design and Landmark Committee, as appropriate;	<p>The Design and Landmarks Committee (DLC) reviewed the Kellogg Bridge and future pedestrian bridge design during a series of informal advisory meetings. The proposal was substantially modified and improved in response to these meetings. Additionally, the DLC evaluated both bridges at a formal design review meeting on October 17, 2011 and recommended findings and conditions of approval that have been incorporated into the final findings and conditions of approval forwarded to the Planning Commission for their consideration on November 8, 2011.</p> <p><i>The proposal meets this criterion.</i></p>
J.	Conformance to applicable Comprehensive Plan	<p>The applicable Comprehensive Plan Policies are individually addressed below in the next section of this table.</p> <p><i>The proposal meets this criterion.</i></p>

	policies;	
K.	The request is consistent with applicable plans and programs of the Division of State Lands;	<p>The entire PMLR project was referred to the Division of State Lands (DSL), which reviewed the project and had no objections. A Joint Permit Application was submitted to DSL and US Army Corp of Engineers (USACOE) on June 30, 2010. DSL issued a Removal/Fill permit for the project on November 17, 2010, while the USACOE issued a Section 404 permit on June 17, 2011, which required DSL approval/consultation prior to issuance.</p> <p><i>The proposal meets this criterion.</i></p>
L.	A vegetation buffer plan meeting the conditions of Subsections 19.401.8.A through C.	<p>A water quality resource report and mitigation plan has been provided that satisfies the greenway vegetation buffer plan requirements.</p> <p><i>The proposal meets this criterion.</i></p>

MMC Subsection 19.401.6.J – CONFORMANCE TO APPLICABLE COMPREHENSIVE PLAN POLICIES

The following comprehensive plan policies have been found to be applicable.

Policy	Findings
<p>Chapter 1: Citizen Involvement</p> <ul style="list-style-type: none"> • Objective #2 (Public Participation) • Objective #3 (Communication) 	<p>This City and TriMet have provided substantial and multiple opportunities for citizen involvement, including but not limited to community meetings, stakeholder meetings, and work sessions with the Design and Landmarks Committee, Planning Commission, and City Council. All meetings have been broadly advertised and widely attended. Additionally, the City and TriMet have maintained web sites with up-to-date project information, staffed information booths at community events, and drafted press releases and newsletter articles on a regular basis.</p> <p><i>The proposal conforms with this policy and its objectives.</i></p>
<p>Chapter 3: Environmental and Natural Resources</p> <p>Natural Hazards Element</p> <ul style="list-style-type: none"> • Objective #1 (Floodplain) • Objective #2 (Seismic Conditions) <p>Open Spaces, Scenic Resources, and Natural Resources Element</p> <ul style="list-style-type: none"> • Objective #1 (Open Space) • Objective #2 (Natural 	<p>Natural Hazards Element:</p> <p>The two sets of columns on either side of Kellogg Lake are located above ordinary high water but within the 100-year floodplain. The project has been designed to ensure elements within the floodplain have been minimized, and will be unaffected by any future inundation. The project has been engineered to meet or exceed all applicable seismic requirements.</p> <p>Open Spaces, Scenic Resources, and Natural Resources Element: Kellogg Lake is identified in Appendix 2 as Site #22 with riparian, habitat, and scenic values.</p> <p>The light rail bridge, its associated staging area, and the future pedestrian bridge have been designed to minimize impacts to Kellogg lake and the surrounding natural areas. No in-water piers are proposed, and the light rail bridge has been structurally designed</p>

<p>Resource Areas)</p> <ul style="list-style-type: none"> • Objective #3 (Scenic Areas) <p>Air, Water, and Land Resources Quality Element</p> <ul style="list-style-type: none"> • Objective #1 (Regional Air Quality) • Objective #2 (Local Air Quality) • Objective #3 (Noise) • Objective #4 (Water Quality) <p>Appendix 2: Kellogg Lake identified as Site #22 with riparian, habitat, and scenic values</p>	<p>to accommodate a pedestrian bridge without increasing the overall footprint of the bridge structure. Structural elements have been minimized as much as possible to minimize view impacts within and through the greenway area. To the extent that protected natural resource areas are affected, they will be enhanced through the removal of invasive and non-native plantings, the introduction of new appropriate riparian habitat, and the removal of approximately 12 derelict piles from Kellogg Lake. The removal of the derelict piles will restore approximately 60 square feet of Essential Fish Habitat since the piles currently provide perches for piscivorous birds, leach contaminants, and inhibit natural reclamation of shallow water habitat. In-water Best Management Practices will be utilized to prevent downstream turbidity during construction of the bridge and removal of the derelict piles. In-water work will occur only during the legally specified in-water work time period.</p> <p>Air, Water, and Land Resources Quality Element: The light rail bridge is part of a regional rail system that is a fundamental strategy for improving air quality, both regionally and locally, and is a cornerstone element of the Regional Non-Attainment and Air Quality Maintenance Plans of Metro and DEQ. Shifting transportation modes from automobile to rail has yielded significant positive air quality results elsewhere in the region. The new PMLR line is expected to build on that success.</p> <p>As a result of the project's noise analysis, noise reduction has been integrated into the project through the introduction of sound walls on private property and on the Kellogg Bridge itself. Homes identified by the analysis will receive upgrades to windows and insulation, as necessary, to reduce noise to acceptable levels per federal guidelines for transit projects. Additionally, the anticipated reduction of vehicle traffic along this corridor will further reduce noise at the local level.</p> <p>The habitat value improvements in the vicinity of Kellogg Lake will contribute to the quality of that resource. The bridge itself has been designed to minimally impact the lake through efficient design, limitations on in-water work, the placement of permanent structural elements outside of the water resource, and the removal of 12 derelict piles.</p> <p><i>The proposal conforms with this policy and its objectives.</i></p>
<p>Chapter 4: Land Use</p> <p>Economic Base and Industrial/Commercial Land Use Element</p> <ul style="list-style-type: none"> • Objective #1 (Economic Development) • Objective #12 (Town Center) 	<p>Economic Base and Industrial/Commercial Land Use Element: Light Rail has consistently demonstrated its role in stimulating economic development in a number of ways. It increases mobility, transportation options, and capacity, without widening roads, which allows for increased economic development within station areas. It serves to define and stimulate targeted growth for populations, businesses, and industries. The PMLR line and the bridge will thus serve to help implement and actuate Milwaukie's Town Center Plan, emphasizing downtown and contributing additional infrastructure improvements that will further the</p>

<p>Recreational Needs Element</p> <ul style="list-style-type: none"> • Objective #7 (Riverfront Recreation) <p>Willamette Greenway Element</p> <ul style="list-style-type: none"> • Objective #3 (Land Use) • Objective #5 (Public Access and View Protection) <p>Neighborhood Element</p> <ul style="list-style-type: none"> • Objective #2 (Neighborhood Needs Guideline) • Objective #4 (Community Open Space) 	<p>attractiveness and accessibility of the Town Center. This augmented urban environment is anticipated to stimulate investment in Milwaukie and contribute to its ongoing economic growth.</p> <p>Recreational Needs Element: The light rail station in downtown Milwaukie will provide convenient access to Riverfront Park and the Trolley Trail. Views of Kellogg Lake and the Willamette River from the light rail bridge may attract new users to the area, and the future pedestrian bridge will provide residents and visitors with new recreational opportunities and connections.</p> <p>Willamette Greenway Element: Refer to the Willamette Greenway findings in the first section of this table for more detailed findings that pertain to this policy. In summary, the light rail bridge is non-water dependent, does not interface directly with the river, and will contribute to the access and enjoyment of the river and the greenway. The bridge has been carefully designed to minimally impact the visual corridors to the Willamette River and Kellogg Lake through its slender profile, selection of aesthetically and visually appropriate materials, and co-location with the existing historic railroad trestle.</p> <p>Neighborhood Element: Light rail is a substantial public facility that will contribute to the economic vitality of the area. The light rail bridge and PMLR line are a part of a regional transportation strategy that is anticipated to result in increased traffic safety, improved traffic circulation, and less congestion. Mitigation for impacts caused by the light rail bridge and its associated staging area will improve the environmental quality around Kellogg Lake and within Kronberg Park. The future pedestrian bridge will provide access to, and appreciation of, these community open spaces.</p> <p><i>The proposal conforms with this policy and its objectives.</i></p>
<p>Chapter 5: Transportation, Public Facilities, and Energy Conservation</p> <p>Transportation Element (Transportation System Plan)</p> <ul style="list-style-type: none"> • Chapter 7 (Public Transit Element) <p>Energy Conservation Element</p> <ul style="list-style-type: none"> • Objective #2 (Transportation 	<p>Transportation Element (Transportation System Plan): High capacity transit (light rail) is identified as a specific system deficiency in Milwaukie along this corridor. The light rail bridge, as one element of the larger PMLR project, implements this aspect of the City's transit master plan.</p> <p>Energy Conservation Element: This fundamentally transformative contribution to mass transit in the area will result in vast increases in the use of the transit system, with associated accrued energy conservation at household, local, and regional levels.</p> <p><i>The proposal conforms with this policy and its objectives.</i></p>

System)	
MMC Subsection 19.905.4 – CONDITIONAL USE APPROVAL CRITERIA All uses in the Willamette Greenway Zone are subject to the conditional use provisions of Section 19.905. Establishment of a conditional use shall be approved if the following criteria are met.	
Criteria	Findings
1. The characteristics of the lot are suitable for the proposed use considering size, shape, location, topography, existing improvements, and natural features.	The location of the light rail alignment through Milwaukie, including the crossing of Kellogg Lake and McLoughlin Blvd in the existing freight rail corridor, was extensively evaluated at the local and regional levels and eventually approved by Metro in 2008. As such, the characteristics of the site are considered suitable for the light rail bridge, its associated staging area, and the future pedestrian bridge. <i>The proposal meets this criterion.</i>
2. The operating and physical characteristics of the proposed use will be reasonably compatible with, and have minimal impact on, nearby uses.	The location of the light rail alignment through Milwaukie, including the crossing of Kellogg Lake and McLoughlin Blvd in the existing freight rail corridor, was extensively evaluated at the local and regional levels and eventually approved by Metro in 2008. Metro's 2008 land use final order (LUFO) extended the original alignment southward through downtown Milwaukie to a new terminus at Park Ave in Clackamas County in order to be consistent with the Locally Preferred Alternative supported by the City. In other words, light rail service to and through Milwaukie, including the location of the Kellogg Bridge, has already been approved. Mitigation measures proposed by the applicant and imposed upon the applicant by the City through conditions of approval will ensure that the operating and physical characteristics of the light rail bridge, its associated staging area, and the future pedestrian bridge will be compatible with surrounding uses to the greatest extent practicable. <i>The proposal meets this criterion.</i>
3. All identified impacts will be mitigated to the extent practicable.	Noise, vibration, lighting, visual, and natural resource impacts associated with the light rail bridge and pedestrian bridge will be mitigated to the greatest extent practicable as described in detail elsewhere in this document and as conditioned by the City. Temporary construction impacts will be minimized to the greatest extent practicable through TriMet's Conduct of Construction Plan and the City's construction and noise ordinances. <i>As conditioned, the proposal meets this criterion.</i>
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 light rail system does not generate odor. All potential impacts from noise and vibration identified by the project's Noise and Vibration analysis will be mitigated as much as practicable through trackbed design, sound walls, and building insulation, as required by federal law. All light rail vehicles have electric propulsion systems and are designed with "skirts" to minimize noise from metal wheels running on rails. No sound walls are proposed on the bridge structure as the tracks curve near the McLoughlin Blvd crossing; however, the 2 nd floor residence at 11923 SE McLoughlin Blvd will be upgraded to mitigate for noise impacts at this location.

		<p>Additionally, a lubrication system, similar to what is used on other existing light rail lines curves, will be installed on this curve to reduce wheel squeal. Finally, a sound wall is proposed on the bridge structure between Bluebird St and River Rd, which is just south of this location and outside the area of this application’s review, to abate noise impacts on nearby residences to the west.</p> <p>No lighting is proposed on the light rail bridge or future pedestrian bridge at this time. Lighting is proposed only under the jump span over Lake Rd, and no lighting impacts to nearby natural resources areas or residential uses have been identified. Analysis of lighting impacts from the train itself was not included in the application. More information is needed to understand what, if any, impacts the train light will have on nearby residential uses and drivers on McLoughlin Blvd as the train travels through the Willamette Greenway Zone.</p> <p><i>As conditioned, the proposal meets this criterion.</i></p>
5.	The proposed use will comply with all applicable development standards and requirements of the base zone, any overlay zones, and the standards in Section 19.905.	<p>The applicable development standards of the Downtown Zones, Willamette Greenway Zone, Water Quality Resource Areas, and Habitat Conservation Areas are addressed in detail elsewhere in this document.</p> <p><i>The proposal meets this criterion.</i></p>
6.	The proposed use is consistent with applicable Comprehensive Plan policies related to the proposed use.	<p>The applicable Comprehensive Plan Policies are individually addressed in the middle section of this table.</p> <p><i>The proposal meets this criterion.</i></p>
7.	Adequate public transportation facilities and public utilities will be available to serve the proposed use prior to occupancy pursuant to Chapter 19.700.	<p>The project is a public transportation facility. As such, Chapter 19.700 does not apply to this project, but required improvements to accommodate the project through downtown are subject to the City’s Public Works Standards, which include requirements for undergrounding of utilities in downtown Milwaukie. The applicant is working with PGE to ensure that necessary utility upgrades are made to accommodate the project’s electrical needs.</p> <p><i>The proposal meets this criterion.</i></p>

Table 3: Water Quality Resource Findings

MMC Subsection 19.402.9.G – ALTERNATIVES ANALYSIS		
An alternatives analysis shall be included in the application that demonstrates the following		
	Requirement	Findings
1.	No practicable alternatives to the requested development	<p>Kellogg Bridge: The PMLR alignment has been vetted through a protracted National Environmental Policy Act (NEPA) process. No practicable</p>

	<p>exist that will not disturb the Water Quality Resource Area.</p>	<p>alternatives were identified through that process that were supported by the City of Milwaukie and that also met the Project's Purpose and Need Statement. As such, a light rail bridge crossing is needed at this location to extend the alignment through Milwaukie to its terminus at Park Ave in Clackamas County. The final alignment, site placement, and specific structural elements for this crossing have been designed to minimize all unavoidable disturbances to the WQR area in this area, including the more expensive option of placing all bridge supports above the ordinary high water level to avoid permanent in-water impacts.</p> <p>Staging Area: The temporary construction staging area for the bridge is immediately adjacent to the Kellogg Bridge site and has been minimized in size as much as possible so as not to impact the WQR area any more than necessary. A construction staging area on the north bank of Kellogg Lake was evaluated and rejected because of its more limited vehicular access and steep slopes. Off-site staging areas were also evaluated and rejected because of the number of additional vehicle trips that would be generated. The flat and accessible area within Kronberg Park adjacent to the construction site is the most logical location for construction staging. No permanent structures will be located within the Kronberg Park WQR area, and the site will be returned to an equal or better condition once construction is complete.</p> <p><i>This requirement is met.</i></p>
<p>2.</p>	<p>Development in the Water Quality Resource Area has been limited to the area necessary to allow for the proposed use.</p>	<p>Kellogg Bridge: Development in the WQR area has been limited to the area necessary for construction and placement of the light rail bridge. The bridge is located at a narrow point in Kellogg Lake, and is both perpendicular to the bank and within an existing freight rail corridor. The width of the bridge is the minimum necessary to structurally support the light rail crossing, and the use of steel has minimized the number of piers needed to support the bridge span. As a result, no in-water piers are proposed, and WQR area is minimized to the greatest extent possible.</p> <p>Staging Area: The size of the staging area has been limited as much as possible to allow for the construction of both a temporary bridge and the permanent light bridge on the east side of the existing freight rail bridge. The staging area is located immediately adjacent to the bridge site to consolidate the areas of impact. and is limited to 50 feet in width, which is approximately 9% of the total Kronberg Park area.</p> <p><i>This requirement is met.</i></p>
<p>3.</p>	<p>The Water Quality Resource Area can be</p>	<p>The current condition of the WQR area is degraded. A mitigation plan has been developed to compensate for the unavoidable</p>

<p>restored to an equal or better condition in accordance with Table 19.402.9.E.</p>	<p>impacts to this area pursuant to Table 19.402.9.E. The proposed mitigation plan will improve the current conditions and put the area on a trajectory toward providing better water quality function and habitat values. Specific elements of the plan include:</p> <ul style="list-style-type: none"> • Restoration of all WQR areas temporarily impacted by construction with appropriate native plants. • Mitigation for all WQR areas permanently impacted by the Kellogg Bridge (4750 sq. ft.) at a 1:1 replacement ratio on the bank of Kronberg Park outside of the construction limits between ordinary high water and top of bank. (More information about the square footage of all the mitigation areas is needed to ensure a minimum 1:1 replacement ratio in Kronberg Park for the mitigation area outside the construction limits.) • Mitigation for all HCA areas permanently impacted by the Kellogg Bridge (3900 sq. ft.) at a 1:1 replacement ratio on the bank of Kronberg Park outside of the construction limits between ordinary high water and top of bank. (More information about the square footage of all the mitigation areas is needed to ensure a minimum 1:1 replacement ratio in Kronberg Park for the mitigation area outside the construction limits.) • Removal of invasive and nonnative species from within the construction limits and the Kronberg Park mitigation site. • Monitoring and maintaining plantings for five years with a target survival rate of 80%. <p>The mitigation plan took the need for pedestrian access through this area and future park development into consideration. However, to better balance ecological restoration with safe pedestrian access and future park redevelopment, the mitigation plan would benefit from the following refinements:</p> <ul style="list-style-type: none"> • Reduce the shrub density to 6' on center underneath the bridge structure to increase visibility. • Place lower shrubs (e.g. sword ferns and low Oregon grape) closer to areas where pedestrians are likely to walk in the future to access the future pedestrian bridge to ensure a safe pedestrian environment. • Show the existing trees on the Kronberg Park bank in the proposed mitigation area as being retained on the mitigation plan or provide an explanation for their removal. • Add some shrubs above top of bank on the Kellogg Lake north bank in the water quality resource area on the mitigation plan or provide an explanation for their exclusion. • Incorporate a few oaks into the mitigation plan to replace the one that will be removed by this project. Consider replacing 3 of the proposed Douglas firs with Oregon white oaks in the Kronberg Park WQR area. Oaks should be planted at top of bank or just up from top of bank. No other trees should be
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		<p>planted within 20 feet. This could be a mechanism for eventually providing or maintaining views of the water, which is consistent with the Willamette Greenway view protection criterion that applies to this area.</p> <ul style="list-style-type: none"> • <u>Incorporate oaks into the mitigation plan to foster a native oak community in this area and as a means of providing views of the water, which is consistent with the Willamette Greenway view protection criterion that applies to this area. Oaks should be located in areas where they are most likely to thrive, in consultation with the City, and in consideration of recent restoration plantings in Kronberg Park. To facilitate their survival, oaks should also be planted with appropriate understory and ground cover plants.</u> • Add more flowering shrubs that provide wildlife habitat. Consider reducing the amount of common snowberry (from 100 to 40) and adding red-flowering currant (20), ocean-spray (20), and blue elderberry (20) in the Kronberg Park WQR area. • Add herbaceous plant species to the native grass species mix to provide a food source for native pollinators. Selecting species that bloom at different times throughout the growing season will provide a constant food source. <p>The approval of the application has been conditioned to ensure the mitigation plan is implemented as proposed and as altered by these findings.</p> <p><i>As conditioned, this requirement is met.</i></p>
<p>4.</p>	<p>An explanation of the rationale behind choosing the alternative selected, including how adverse impacts to resource areas will be avoided and/or minimized.</p>	<p>Kellogg Bridge.</p> <p>The proposed alignment, which includes construction of a light rail bridge over Kellogg Lake, was selected based on its ability to balance transit benefits with environmental, construction, social and economic impacts. While several alternatives may have resulted in slightly lower impacts to the WQR areas around Kellogg Lake, they were not deemed practicable when analyzing effects on the overall project and to other environmental considerations around the Kellogg Lake area.</p> <p>The project minimized impacts at Kellogg Lake by aligning the bridge as perpendicular as practicable to the shore line and placing piers above current ordinary high water (OHW). An alignment that resulted in less over-water structure was evaluated to the west of the existing railroad bridge, but it was not practicable due to constraints within the City of Milwaukie and interactions with the existing railroad alignment. The alignment through downtown Milwaukie would have to have changed to the west of the existing rail line, resulting in much higher impacts to residences, businesses, and schools; and likely impacting more water quality and habitat resources at Crystal Creek and Spring Creek.</p> <p>An alternative design placed the piers and abutments for the bridge above the top of bank (TOB) of Kellogg Lake, but the depth of the</p>

	<p>span would have been inordinately thick to support a structure so massive. It would have also had to be much taller to account for this depth, resulting in much higher visual impacts and potentially unsafe grades on the approaches. Therefore this alternative was determined to not be practicable.</p> <p>Another alternative placed a pier below the existing OHW level with the assumption that the level would be lower once the dam downstream of the bridge was removed. During advanced design, the one pier was moved to above the OHW. This change resulted in lower impacts to Kellogg Lake while changing visual and grade elements negligibly and was advanced as the proposed design option with the least impacts.</p> <p>Different construction alternatives were considered for placement of the bridge piers. It was determined that drilled shaft construction techniques conducted from a work bridge would greatly reduce hydroacoustic impacts to fish and other aquatic species.</p> <p>Staging Area: The temporary construction staging area for the bridge is immediately adjacent to the Kellogg Bridge site and has been minimized in size as much as possible so as not to impact the WQR area any more than necessary. A construction staging area on the north bank of Kellogg Lake was evaluated and rejected because of its more limited vehicular access and steep slopes. Off-site staging areas were also evaluated and rejected because of the number of additional vehicle trips that would be generated. The flat and accessible area within Kronberg Park adjacent to the construction site is the most logical location for construction staging for the bridge.</p> <p>Several measures have been employed to avoid and/or minimize impacts to the WQR by the light rail bridge and its associated staging area. They are as follows:</p> <ul style="list-style-type: none"> • The bridge is proposed at a narrow point in Kellogg Lake that is both perpendicular to the bank and within an existing freight rail corridor. • The width of the bridge is the minimum necessary to structurally support the bridge span, and the use of steel has minimized the number of piers needed to support the bridge span. No in-water piers are proposed. • The width of the columns is the minimum necessary to structurally support the light rail bridge. • Over-water and in-water construction procedures will minimize turbidity and contamination. • The construction staging area is proposed immediately adjacent to the bridge site to consolidate and contain impacts. • A mitigation plan has been developed to compensate for the
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		<p>unavoidable temporary and permanent impacts to this area. The proposed mitigation plan will improve the current conditions and put the area on a trajectory toward providing better water quality function and habitat values. The approval of the application has been conditioned to ensure the mitigation plan is implemented as proposed and as altered by these findings.</p> <ul style="list-style-type: none"> • A Construction Management Plan will be developed to ensure that existing resources are protected during construction. The approval of the application has been conditioned to ensure the protection of the existing resources during construction. <p><i>As conditioned, this requirement is met.</i></p>
<p>MMC Subsection 19.402.9.I – MITIGATION PLAN A mitigation plan shall be included in the application that includes the following information.</p>		
<p>1.</p>	<p>A description of adverse impacts that will be caused as a result of development.</p>	<p>Construction of the light rail bridge will require removal of all vegetation within the defined construction limits, including the temporary staging area in Kronberg Park. The area underneath the bridge will be permanently impacted. Though it will be vegetated after construction is complete, the bridge effectively prevents this area from being restored to a natural state. No trees are proposed underneath the bridge for practical reasons. <u>As originally proposed</u>, bridge construction will result in:</p> <ul style="list-style-type: none"> • 4,750 sq. ft. of permanent impacts • 6,560 sq. ft. of temporary impacts • Removal of 8 trees greater than 6 inches in diameter at breast height (DBH) <p><u>As modified by the City Council, the proposal may have different WQR impacts in Kronberg Park pursuant to Finding 21.D and associated conditions of approval.</u></p> <p>Short-term impacts include a slight reduction in the shading of Kellogg Lake and loss of tree canopy habitat. These impacts will gradually diminish over time as the mitigation plantings mature.</p> <p><i>This requirement is met.</i></p>
<p>2.</p>	<p>An explanation of how adverse impacts to resource areas will be avoided, minimized, and/or mitigated in accordance with, but not limited to, Table 19.402.9.E.</p>	<p>An explanation of how adverse impacts to WQR areas will be avoided, minimized, and/or mitigated is included under Subsections 19.402.9.G.3 and 4 above.</p> <p>Though not required as mitigation for impacts to the WQR areas around Kellogg Lake, derelict piles will be removed as part of this project that will restore approximately 60 square feet of Essential Fish Habitat.</p> <p><i>This requirement is met.</i></p>
<p>3.</p>	<p>A list of all responsible parties including, but not limited to, the owner, applicant, contractor, or</p>	<p>TriMet is the principal party responsible for work on the light rail bridge and its associated staging area. Additional detailed information will be made available to the City prior to construction as specific construction contracts are executed.</p>

	other persons responsible for work on the development site.	<i>This requirement is met.</i>
4.	A map showing where the specific mitigation activities will occur.	The required map has been provided. <i>This requirement is met.</i>
5.	An implementation schedule, including timeline for construction, mitigation, mitigation maintenance, monitoring, reporting, and a contingency plan. All in-stream work in fish-bearing streams shall be done in accordance with the Oregon Department of Fish and Wildlife in-stream timing schedule.	All in-water work is to be done in accordance with the ODFW in-water work schedule between July 15 – September 30. Bareroot plant materials will be planted between December 1 and February 28 th following the completion of heavy construction. TriMet will monitor and maintain the site for five years after the initial planting. Maintenance will include providing mulch rings around trees and shrubs, watering, and weeding as necessary to allow the native plant community to mature to a self-sustaining condition. The target survival rate of plantings is 80%. If plant mortality exceeds 20% of the original planting quantities at any time during the five year period, TriMet will replace with new plants to achieve an overall 80% survival rate. TriMet will submit an annual report to the Planning Director documenting the survival of the trees and shrubs on the mitigation site for a period of five years. The approval of the application has been conditioned to ensure the mitigation plan is implemented as proposed and as altered by these findings. <i>As conditioned, this requirement is met.</i>

Table 4: Habitat Conservation Area Findings

Metro Title 13 Section 6 – DEVELOPMENT STANDARDS APPROVAL CRITERIA (KRONBERG PARK)	
The development standards described in this section apply to all development that occurs within Habitat Conservation Areas unless the applicant chooses to use the alternative discretionary standards in Section 7. The applicant chose to use the standards in Section 6 for the Kronberg Park site.	
Standard	Finding
<p>1. Application Requirements. Applications for a building permit or development permit must provide a development plan and accompanying narrative explanation that includes the following information in addition to any other building permit or development permit requirements.</p>	<p>The required site plan has been provided. No permanent structures are proposed in the Kronberg Park HCA. A portion of the park will be used as temporary construction staging for the Kellogg Bridge. <u>As originally proposed</u>, there is a total of 1,165 sq. ft. of HCA within the construction limits. 245 sq. ft. are mapped as Low HCA and 920 sq. ft. are mapped as Moderate HCA. One 42-inch DBH Oregon white oak is within the construction limits. <u>The oak is discussed in Finding 21.D.</u> All vegetation (including the one oak tree) within the construction limits will be removed.</p> <p>The total size of the HCA on Kronberg Park is greater than one acre. However, disturbance to the HCA will be less than one acre. Only minimal grading will be required in the HCA for access and staging.</p> <p><i>This standard is met.</i></p>

<p>2.</p>	<p>Development in HCAs. The following development standards apply to all development that occurred with the HCA except for exempted uses and conditioned activities addressed in Section 3 of this ordinance and utility facilities addressed in subsection 6(D) of this ordinance.</p>	<p>Kronberg Park is about 3.5 acres in size and contains 650 sq. ft. of Low HCA and 21,600 sq.ft. of Moderate HCA. <u>As originally proposed</u>, use of the park for construction staging will disturb 245 sq. ft. (38% of the total Low) and 920 sq. ft. (4% of the total Moderate) of the HCA on the site.</p> <p><u>Council recognizes that the applicant may need to expand its area of disturbance in the Kronberg Park HCA pursuant to Finding 21.D and associated conditions of approval. Council finds that the applicant may expand its area of disturbance in this HCA up to the maximum disturbance area (MDA) allowed by right pursuant to Section 6 Table 2 of Metro Title 13. If the applicant needs to expand its area of disturbance and this disturbance exceeds the MDA for the Kronberg Park site, a new HCA application will be required that addresses Section 7 of Metro Title 13.</u></p> <p>The disturbance to the HCA will be temporary and will not result in a change to the HCA boundaries in the park. The mitigation plan took the need for pedestrian access through this area and future park development into consideration. Mitigation plantings are proposed between the OHW of Kellogg Lake and TOB so as not to interfere with future park development or pedestrian bridge access.</p> <p>To better balance ecological restoration with safe pedestrian access and future park redevelopment, the mitigation plan would benefit from the following refinements:</p> <ul style="list-style-type: none"> • Reduce the shrub density to 6 ft on center underneath the bridge structure to increase visibility. • Place lower shrubs (e.g. sword ferns and low Oregon grape) closer to areas where pedestrians are likely to walk in the future to access the future pedestrian bridge to ensure a safe pedestrian environment. • Add herbaceous plant species to the native grass species mix to provide a food source for native pollinators. Selecting species that bloom at different times throughout the growing season will provide a constant food source. <p><i>As conditioned, this standard is met.</i></p>
<p>3.</p>	<p>Mitigation requirements for disturbance in HCAs. In order to achieve the goal of reestablishing forested canopy that meets the ecological values and functions described in section 1(A) of this ordinance, tree replacement and vegetation planting are required when development intrudes into a</p>	<p><u>As originally proposed</u>, mitigation planting within the Kronberg Park HCA has been designed to meet the mitigation requirements of Section 6(E)(1)(b) Mitigation Option 2, <u>as this results in more tree plantings. Since the applicant's impacts to the Kronberg Park HCA may change as a result of Finding 21.D, the applicant's mitigation requirements will need to be recalculated pursuant to Section 6.E.1 of Metro Title 13. Because the site only has one tree, Mitigation Option 2 results in more tree and shrub plantings than Option 1. Option 2 will require the planting of 12 trees and 58 shrubs.</u></p> <p>All plantings will occur on Kronberg Park and contiguous to the HCA in the adjacent water quality resource area between OHW and TOB. The planting schedule includes 1-inch trees and 18 – 24-inch height</p>

<p>HCA according to the following standards pertaining to:</p> <ul style="list-style-type: none"> • Plant types and densities • Plant size • Plant spacing • Plant diversity • On-site mitigation • Invasive vegetation removal • Tree and shrub survival • Survival Enhancement • Monitoring and reporting 	<p>shrubs. All trees and shrubs will be planted and spaced per the standards and will meet the plant diversity standards. Seven different types of trees and 12 different types of shrubs are proposed. No more than 50 of the trees are of the same genus.</p> <p>All Invasive non-native and noxious vegetation will be removed within the mitigation area prior to planting. The target survival rate of plantings is 80%. If plant mortality exceeds 20% of the original planting quantities at any time during the five-year period, TriMet will replace with new plants to achieve an overall 80% survival rate. TriMet will submit an annual report to the Planning Director documenting the survival of the trees and shrubs on the mitigation site for a period of five years. To enhance survivability:</p> <ul style="list-style-type: none"> • Mulch rings will be provided around trees and shrubs per the standard. • Vegetation suitable to the site, with a high probability of survivability under natural circumstances will be used and replaced as necessary. • Watering will be provided as necessary to allow the native plant community to mature to a self-sustaining condition. • Weeds will be controlled throughout the maintenance period. <p>The approval of the application has been conditioned to ensure the mitigation plan is implemented as proposed and as altered by these findings.</p> <p><i>As conditioned, this standard is met.</i></p>
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Metro Title 13 Section 7 – ALTERNATIVE DISCRETIONARY DEVELOPMENT STANDARDS APPROVAL CRITERIA (KELLOGG LAKE)

Applicants may choose to use the alternative discretionary development standards provided in Section 7 rather than the development standards provided in Section 6. The applicant chose to use the standards in Section 7 for the UPRR and ODOT rights-of-way site as they afforded the opportunity to propose off-site mitigation and more appropriate site-specific planting densities for the areas underneath and immediately adjacent to the bridge structure.

	Criteria	Finding
1.	<p>All application requirements in subsection 7(D)(1) shall be met.</p>	<p>The application contained all the required materials, including an impact evaluation, alternatives analysis, and mitigation plan.</p> <p>Three separate areas will be impacted by the Kellogg Bridge:</p> <ul style="list-style-type: none"> • Kellogg Lake North HCA is located within the UPRR right-of-way and contains 840 sq ft of Low HCA and 3,210 sq ft of Moderate HCA for a total of 4,050 sq ft of HCA within the construction limits. • Kellogg Lake South HCA is located within the UPRR right-of-way and contains 650 sq ft of Low HCA within the construction limits. • Willamette HCA is located within the ODOT right-of-way and contains 1,980 sq ft of Low HCA consisting of 410 sq ft of pavement (McLoughlin Blvd), 209 sq ft of compacted gravel sidewalk, and 1,280 sq ft of nonnative invasive groundcover. <p>Construction of the light rail bridge will require the removal of all vegetation within the defined construction limits. The area</p>

	<p>underneath the bridge is considered a permanent impact. Though it will be vegetated after construction, the bridge effectively prevents this area from being restored to a natural state. As such, no trees are proposed underneath the bridge for practical reasons.</p> <p>The impact evaluation identified both permanent and temporary impacts as a result of Kellogg Bridge construction:</p> <ul style="list-style-type: none">• 2,620 sq. ft. of permanent impacts to the Kellogg Lake HCA.• 2,080 sq. ft. of temporary impacts to Kellogg Lake HCA.• 1,280 sq. ft. of permanent impacts to the Willamette HCA.• Removal of 8 trees greater than 6 inches in diameter at breast height (DBH). <p>However, no grading or bridge supports are proposed within the HCAs. Disturbed HCAs will be revegetated and additional areas outside the construction limits will receive mitigation plantings to offset permanent HCA impacts. The proposed mitigation plan compensates for unavoidable detrimental impacts to ecological functions as identified in the impacts evaluation. Specific elements of the plan include:</p> <ul style="list-style-type: none">• Restoration of all HCA areas temporarily impacted by construction with appropriate native plants, with the exception of the Willamette HCA where no plantings are proposed.• Mitigation for all HCA areas permanently impacted by the Kellogg Bridge (3900 sq. ft.) at a 1:1 replacement ratio on the bank of Kronberg Park outside of the construction limits between ordinary high water and top of bank. (More information about the square footage of all the mitigation areas is needed to ensure a minimum 1:1 replacement ratio in Kronberg Park for the mitigation area outside the construction limits.)• Removal of invasive and nonnative species from within the construction limits and the Kronberg Park mitigation site.• Monitoring and maintaining plantings for five years with a target survival rate of 80%. <p>The approval of the application has been conditioned to ensure the mitigation plan is implemented as proposed and as altered by these findings.</p> <p>The PMLR alignment has been vetted through a protracted National Environmental Policy Act (NEPA) process. The proposed alignment was selected based on balancing its transit benefits with its environmental, construction, social, and economic impacts. No practicable alternatives were identified through that process that were supported by the City of Milwaukie and that also met the Project's Purpose and Need Statement. As such, a light rail bridge crossing is needed at this location to extend the alignment through Milwaukie to its terminus at Park Ave in Clackamas County. The final alignment, site placement, and specific structural elements for</p>
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		<p>this crossing have been designed to minimize all unavoidable disturbances to this area, including the more expensive option of placing all bridge supports above the ordinary high water level to avoid permanent in-water impacts.</p> <p>An alignment that resulted in less over-water structure was evaluated to the west of the existing railroad bridge, but it was not practicable due to constraints within the City of Milwaukie and interactions with the existing railroad alignment. An alignment through downtown Milwaukie would have to have moved to the west of the existing rail line, resulting in much higher impacts to residences, businesses, and schools; and likely impacting more water quality and habitat resources at Crystal Creek and Spring Creek.</p> <p>An alternative design placed the piers and abutments for the bridge above the top of bank (TOB) of Kellogg Lake, but the depth of the span would have to have been inordinately thick to support a structure so massive. It would have also had to be much taller to account for this depth, resulting in greater visual impacts and potentially unsafe grades on the approaches. Therefore this alternative was determined to not be practicable.</p> <p>Another alternative placed a pier below the existing OHW level with the assumption that the level would be lower once the dam downstream of the bridge was removed. During advanced design, the one pier was moved to above the OHW level. This change resulted in lower impacts to Kellogg Lake while changing visual and grade elements negligibly and was advanced as the proposed design option with the least impacts.</p> <p><i>As conditioned, this criterion is met.</i></p>
2.	<p>Avoid. An applicant shall first avoid the intrusion of development into the HCA to the extent practicable.</p>	<p>Other alignments that did not include a crossing of Kellogg Lake at this location were considered but not advanced. The resource area is avoided to the extent that the footprint of the bridge structure is as small as possible for its intended purpose of carrying light rail trains and does not include any bridge support within the HCAs.</p> <p><i>This criterion is met.</i></p>
3.	<p>Minimize. If the applicant demonstrates that there is no practicable alternative that will not avoid disturbance of the HCA, then the development proposed by the applicant within the HCA shall minimize detrimental impacts to the extent practicable.</p>	<p>The project has minimized intrusion of the light rail bridge into the HCAs to the extent practicable. All bridge supports are located outside of the HCAs. The HCAs will be disturbed during bridge construction but will be revegetated once construction is complete with appropriate plants from the Milwaukie Plant List.</p> <p><i>This criterion is met.</i></p>
4.	<p>Mitigate. If the applicant demonstrates that there is</p>	<p>The proposed mitigation plan compensates for unavoidable detrimental impacts to ecological functions as identified in the</p>

<p>no practicable alternative that will not avoid disturbance of the HCA, then development must mitigate for adverse impacts to the HCA. All proposed mitigation plans must meet the following standards.</p> <ul style="list-style-type: none"> • The mitigation plan shall demonstrate that it compensates for detrimental impacts to ecological functions provided by HCAs. • Mitigation shall occur on the site of the disturbance, to the extent practicable. Off-site mitigation shall be approved if the applicant has demonstrated that it is not practicable to complete the mitigation on-site. • All re-vegetation plantings shall be with native plants listed on the Metro Native Plant List. • All in-stream work in fish-bearing streams shall be done in accordance with the Oregon Department of Fish and Wildlife in-stream work-timing schedule. • A mitigation maintenance plan shall be included and shall be sufficient to ensure the success of the planting, and compliance with the plan shall be a condition of development approval. 	<p>impacts evaluation. It takes into consideration the resource values that require mitigation, the specific growing conditions under and near the bridge, pedestrian access through the site to the future pedestrian bridge, and the redevelopment potential of Kronberg Park. Specific elements of the plan include:</p> <ul style="list-style-type: none"> • No grading or bridge supports within the HCAs. • Restoration of all HCA areas temporarily impacted by construction with appropriate native plants, with the exception of the Willamette HCA where no plantings are proposed. • Mitigation for all HCA areas permanently impacted by the Kellogg Bridge (3900 sq. ft.) at a 1:1 replacement ratio on the bank of Kronberg Park outside of the construction limits between ordinary high water and top of bank. • Removal of invasive and nonnative species from within the construction limits and the Kronberg Park mitigation site. • Monitoring and maintaining plantings for five years with a target survival rate of 80%. <p>The mitigation plan took the need for pedestrian access through this area and future park development into consideration. However, to better balance ecological restoration with safe pedestrian access and future park redevelopment, the mitigation plan would benefit from the following refinements:</p> <ul style="list-style-type: none"> • Reduce the shrub density to 6' on center underneath the bridge structure to increase visibility. • Place lower shrubs (e.g. sword ferns and low Oregon grape) closer to areas where pedestrians are likely to walk in the future to access the future pedestrian bridge to ensure a safe pedestrian environment. • Add herbaceous plant species to the native grass species mix to provide a food source for native pollinators. Selecting species that bloom at different times throughout the growing season will provide a constant food source. <p>Off-site mitigation is proposed for permanent impacts to the HCAs because it was not possible to mitigate for all ecological impacts on site. Kronberg Park, Kellogg North, and Kellogg South HCAs are in the same subwatershed. Therefore, the off-site mitigation proposed in Kronberg Park for the impacts to the Kellogg North and Kellogg South HCAs are in the same subwatershed.</p> <p>Kronberg Park and the Willamette River HCA are not within the same subwatersheds even though they are located within approximately 375 feet of each other. The Willamette HCA is dominated by nonnative invasive ground cover. The overall tree canopy cover is sparse and is provided by one 24-inch DBH Norway maple tree (Norway maple is a Rank B Nuisance by the City of Portland). The HCA is not connected to water, and although part of the mapped Willamette River floodplain, it is over 700 feet from the</p>
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	<p>Willamette River. The HCA is not connected to other habitats. It is completed surrounded by development. TriMet does not have ownership interest outside of its easements. There are no feasible areas that TriMet has the authority to provide mitigation that would effectively mitigate for this area within the subwatershed. Mitigation plantings in this area are neither beneficial nor feasible.</p> <p>The goal of the proposed off-site mitigation is to ensure the successful establishment of a native riparian community along Kellogg Lake in Kronberg Park that will provide a higher ecological function than treeless plantings under the bridge structure and an isolated and shaded roadside planting adjacent to McLoughlin Blvd.</p> <p>The mitigation site will be permanently revegetated during the first planting season following the completion of bridge construction. Bareroot plant materials will be planted between Dec 1 – Feb 28 following the completion of heavy construction. All in-water work will be done in accordance with the ODFW in-water work schedule between July 15 – Sep 30. TriMet will monitor and maintain the site for five years after the initial planting. Maintenance will include providing mulch rings around trees and shrubs, watering, and weeding as necessary to allow the native plant community to mature to a self-sustaining condition. The target survival rate of plantings is 80%. If plant mortality exceeds 20% of the original planting quantities at any time during the five year period, TriMet will replace with new plants to achieve an overall 80% survival rate. TriMet will submit an annual report to the Planning Director documenting the survival of the trees and shrubs on the mitigation site for a period of five years.</p> <p>The approval of the application has been conditioned to ensure the mitigation plan is implemented as proposed and as altered by these findings.</p> <p><i>As conditioned, this criterion is met.</i></p>
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CONDITIONS OF APPROVAL

1. The plans submitted to the City of Milwaukie for construction of the Portland Milwaukie Light Rail bridge over Kellogg Lake and McLoughlin Blvd ("Kellogg Bridge") shall be in substantial conformance with the plans reviewed by the Design and Landmarks Committee (DLC), Planning Commission (PC), and City Council (CC) that were date stamped by the City on September 20, 2011. The plans shall be modified only as described in these conditions of approval or through a future land use application or formal modification process.
2. The plans submitted to the City of Milwaukie for construction of the pedestrian bridge underneath the Kellogg Bridge shall be in substantial conformance with the plans reviewed by the DLC, PC, and CC that were date stamped by the City on September 20, 2011. The plans shall be modified only as described in these conditions of approval or through a future land use application or formal modification process.
3. Prior to approval of development permits for any proposed pathways to the pedestrian bridge underneath the Kellogg Bridge, the applicant or other authorized entity shall obtain all required land use approvals including, but not limited to, natural resource review.
4. Prior to approval of development permits for the pedestrian bridge, the applicant or other authorized entity shall propose pedestrian scale lighting for the pedestrian bridge. The Planning Director shall consult with the DLC about the proposed lighting prior to approving any development permits for the pedestrian bridge.
 - A. Propose energy-efficient and wildlife-friendly lighting, preferably LED lighting.
 - B. Shield lights from shining directly into windows on residential properties.
5. The development permit submission for the Kellogg Bridge shall include a detailed written and/or graphic description of any plan changes that are not part of these conditions of approval or that were not specified by the final decision-making authority.
6. The DLC requested more information and different light fixture options for lighting underneath the jump span than what was presented by the applicant at the Oct 17 DLC design review meeting. The applicant shall resubmit this design item for consideration during the land use proceedings for the Milwaukie Light Rail Station. A summary of the DLC's design direction to the applicant is as follows:
 - A. Provide more detailed information about the underside of the jump span (the "ceiling" of the room) and the light from the light fixtures that demonstrates how the light interacts with the ceiling to make for a comfortable, attractive, and safe pedestrian environment.
 - B. Provide more detailed information about the light from the light fixtures that demonstrates how the location, output, and angle of the light enhances the proposed wall treatments and provides for a comfortable, attractive, and safe pedestrian environment.
 - C. Provide a less modern and utilitarian light fixture option. Specifically, provide detailed information that demonstrates how the style and color of the light fixture and the method of mounting compliments the style of the proposed wall treatments and provides for a comfortable, attractive, and safe pedestrian environment.
 - D. Provide illustrations and analysis demonstrating that the proposed lighting achieves the following during both daytime and nighttime conditions:
 - Uniform lighting of the sidewalk
 - Minimal glare
 - Minimal deep shadows beneath the structure

- E. Explore other energy efficient and low-pollutant lighting options with a focus on comparing fluorescent lighting with LED and other feasible lighting options. Provide a memo that summarizes key findings and includes a rationale for the final lighting selection.
7. The development permit submission for the Kellogg Bridge shall include the following items to demonstrate conformance with the Milwaukie Downtown Design Guidelines, specifically those that address Milwaukie character, the pedestrian environment, wall design, sustainability, safety, and lighting. Development permits shall not be issued until the Planning Director is satisfied that the following conditions of approval are met.
- A. Wall Treatments on the Northernmost Bridge Abutment and Jump Span Columns:
1. Provide specifications and photos that accurately depict the scale and surface finish of the final wall and column treatments. The final wall treatments should have the appearance of stacked ashlar stone with: (a) formliner seams hidden as much as possible, and (b) individual stone dimensions that are proportionally appropriate for the wall surface areas and the pedestrian environment.
 2. Demonstrate how the wall will be articulated and light in color throughout the pedestrian zone (6 ft and below), particularly on the north side of Lake Rd where the grade change could leave more smooth concrete exposed.
- B. Column Treatments:
1. Provide illustrations and/or material samples for the surface treatment of the remaining bridge columns outside of the jump span area that demonstrates how these columns provide visual interest at the pedestrian level and architectural interest at a distance.
 - Vertical reveals shall have a rough-sawn wood textured surface for visual contrast and interest.
 - Vertical reveals shall taper in depth at the top edge to soften the transition to the column face.
 - Vertical reveals shall randomly vary from each other in both height and width and shall also be randomly spaced around the column so as to soften the hard edges and verticality and regularity of the overall design.
- C. Provide a memo that describes how crime prevention through environmental design (CPTED) principles were applied to the area behind and between the jump span columns on the south side of Lake Rd. CPTED solutions could include plantings, fencing, and/or lighting.
8. The development permit submission for the Kellogg Bridge shall include the following items to demonstrate conformance with the Downtown Open Space Zone development standards. Development permits shall not be issued until the Planning Director is satisfied that the following conditions of approval are met.
- A. Demonstrate that at least 20% of the Kellogg Bridge site will be landscaped pursuant to Milwaukie Municipal Code (MMC) Section 19.310.4.11. The proposed mitigation plan shows how some of the site underneath the Kellogg Bridge will be landscaped. However, it is unclear whether these plantings meet or exceed the 20% landscaping standard. If they do not meet the standard, a landscaping plan will be required that demonstrates how the landscaping standard will be met.
9. The development permit submission for the Kellogg Bridge shall include the following items to

demonstrate conformance with the Willamette Greenway criteria. Development permits shall not be issued until the Planning Director is satisfied that the following conditions of approval are met.

- A. Provide a landscaping plan for the area underneath the Kellogg Bridge between Lake Rd and McLoughlin Blvd that demonstrates conformance with MMC Subsection 19.401.6.D.
 - B. Provide a detailed tree planting plan for Kronberg Park that is consistent with the approved mitigation plan and that balances ecological restoration with the desire to maintain some views to Kellogg Lake. Consider clustering trees to allow for gaps in the tree canopies and/or planting 12 ft on center instead of 10 ft on center where proposed on the Kronberg Park bank.
 - C. Provide a memo that describes the lighting impacts, if any, from the train light on drivers traveling on McLoughlin Blvd and on nearby residential uses as the train travels through the Willamette Greenway Zone on the Kellogg Bridge. If there are any such lighting impacts, provide a mitigation plan that demonstrates conformance with MMC Subsection 19.905.4.A.3 and 4.
10. The development permit submission for the Kellogg Bridge shall include the following items to demonstrate conformance with the Water Quality Resource and Habitat Conservation Area regulations and to balance ecological restoration with safe pedestrian access and future park redevelopment. Development permits shall not be issued until the Planning Director is satisfied that the following conditions of approval are met.
- A. Revise the mitigation plan as follows:
 1. Provide the square footage of all mitigation areas to ensure appropriate plant densities and a minimum 1:1 replacement ratio in Kronberg Park for the mitigation area outside the construction limits.
 2. Reduce the shrub density to 6 ft on center underneath the bridge structure to increase visibility.
 3. Place lower shrubs (e.g. sword ferns and low Oregon grape) closer to areas where pedestrians are likely to walk in the future to access the future pedestrian bridge to ensure a safe pedestrian environment.
 4. Show the existing trees on the Kronberg Park bank in the proposed mitigation area as being retained on the mitigation plan or provide an explanation for their removal.
 5. Add some shrubs above top of bank on the Kellogg Lake north bank in the water quality resource area on the mitigation plan or provide an explanation for their exclusion.
 6. Incorporate oaks into the mitigation plan to foster a native oak community in this area ~~replace the one in Kronberg Park that will be removed by this project~~ and as a means of providing views to the water, which is consistent with the Willamette Greenway view protection criterion that applies to this area. Oaks should be located in areas where they are most likely to thrive, in consultation with the City, and in consideration of recent restoration plantings in Kronberg Park. To facilitate their survival, oaks should also be planted with appropriate understory and ground cover plants.
 7. Add more flowering shrubs that provide wildlife habitat. Reduce the amount of common snowberry (decrease from 100 to 40) and add red-flowering currant (add 20), ocean-spray (add 20), and blue elderberry (add 20) in the Kronberg Park WQR area.

8. Add herbaceous plant species to the native grass species mix to provide a food source for native pollinators. Selecting species that bloom at different times throughout the growing season will provide a constant food source.
11. ~~The development permit submission for the Kellogg Bridge shall include the following items to demonstrate conformance with the Community Service Use criteria. Development permits shall not be issued until the Planning Director is satisfied that the following conditions of approval are met. The following conditions of approval ensure compliance with the Community Service Use criteria.~~
- A. ~~Relocate construction staging area access so that it is physically located within the easement area or negotiate for a larger easement area to accommodate the location of the existing access. The development permit submission for the Kellogg Bridge shall include a relocated construction staging area access so that it is physically located within the easement area or the applicant shall negotiate for a larger easement area to accommodate the location of the existing access. Development permits shall not be issued until the Planning Director is satisfied that this condition of approval is met.~~
- B. ~~Repurpose the remnant of the 36-inch Oregon white oak removed by the project for use in the pedestrian pathways through the area and/or in Kronberg Park. Do not grind the stump. Allow for the possibility that a new tree may grow from the stump. Both the applicant and citizen appellants shall select and secure the services of an ISA certified arborist, who is also an ISA Board Certified Master Arborist or an ASCA Member or Registered Consulting Arborist, to examine the Oregon white oak in Kronberg Park. The applicant and citizen appellants shall provide the City with their respective arborists' reports within 30 days following this decision. If the appellant does not select an arborist within 14 days following this decision, the appellant will have forfeited the opportunity and the City will select and secure the services of an arborist with the qualifications described above, instead of the appellant. Neither arborist shall be employed by Mason, Bruce, and Girard, Inc.~~

Upon receipt of an invoice, the City shall pay for the services of the arborist selected by the appellant, in an amount not to exceed \$2,000. The applicant shall be responsible for paying for the services of its selected arborist.

Prior to undertaking any analysis related to the oak, the two selected arborists shall select a mutually agreed upon third ISA certified arborist who preferably has experience working with oak trees common to Oregon, and provide the name of the third arborist to the City. Evidence of experience may be determined by prior experience consulting to preserve oak trees, authoring professional publications addressing the preservation or diseases of Oregon white oak, or lecturing at the college level regarding the science related to oak trees. The third arborist will be contacted to establish availability, but shall not be engaged for his or her services unless the first two arborists are in disagreement, as described below. If the initial third arborist is not available, the first two arborists shall select a different third arborist prior to undertaking any analysis. This process shall be repeated as needed until the availability of a qualified third arborist is confirmed. If the services of the third arborist are required, the City shall pay for the services of the third arborist in an amount not to exceed \$2,000.

In preparation of the arborists' report, the City shall provide each arborist with the evidence in the record of this proceeding which addresses and describes the likely impacts to the Oregon white oak associated with the construction staging for and construction of the light rail bridge. Based on this information and an on-site examination of the oak, each arborist shall independently provide their professional opinion

answering the following inquiry in the affirmative or negative. The arborists may use whatever tests or tools they consider appropriate and necessary to answer the following inquiry; however, invasive tests shall be limited to resistograph testing.

Subsequent to the construction staging for and construction of the light rail bridge, is the white oak reasonably likely to survive in the long term?

Each arborist that determines the above inquiry in the affirmative shall also include the following in his or her report.

- 1) A program of preferred practices for protection of the Oregon white oak throughout the duration of the applicant's use of Kronberg Park for construction, staging, and remediation.
- 2) An estimate of the additional cost to the applicant associated with performing the program to protect the white oak, as compared to its removal.

Outcome 1:

Should both arborists agree that subsequent to the construction staging for and construction of the light rail bridge, the white oak is not reasonably likely to survive in the long term, the applicant shall not be required to preserve the Oregon white oak tree, but shall repurpose the oak remnant for use in the pedestrian pathways throughout the area and/or in Kronberg Park. Applicant shall not grind the stump of the Oregon white oak so as to allow for the possibility that a new tree may grow from the stump. As mitigation for the removal of the oak, the applicant shall pay to the City an amount equal to the current cost of purchasing, planting, and five years of maintenance of replacement trees to equal the canopy of the removed oak at the time such replacement trees would be planted.

Outcome 2:

Should both arborists agree that subsequent to the construction staging for and construction of the light rail bridge, the white oak is reasonably likely to survive in the long term, the applicant must preserve the white oak by performing all of the arborists' preferred practices for protection that are consistent, and are not found to be unreasonable or unnecessary pursuant to Section 8 of 1996 HB 3478, enacted as Oregon Laws 1996, Chapter 12, as adopted and implemented by Metro Ord. No. 08-3964.

Modification of the staging area described on Page 3 of the applicant's Nov 8, 2011 PowerPoint presentation and Exhibit P1 of the applicant's Sep 20, 2011 application submittal is permitted to the minimum extent necessary to comply with this condition. Should the applicant need to modify the staging area, the following shall be submitted to City staff prior to approval of development permits.

- 1) A modified site plan showing the newly proposed staging area.
- 2) An updated HCA mitigation requirement calculation pursuant to Section 6.E.1 of Metro Title 13.
- 3) A modified mitigation plan, if required, pursuant to Section 6.E of Metro Title 13 and Section 19.402.9.1 of the Milwaukie Municipal Code.
- 4) An updated HCA disturbance calculation pursuant to Section 6, Table 2 of Metro Title 13, demonstrating that the maximum disturbance area limitation is not exceeded.

Outcome 3:

Should one of the arborists answer the above inquiry in the negative and the other arborist

answer in the affirmative, the services of the mutually agreed upon third arborist shall be obtained by the City. The third arborist shall be presented the same evidence from the record as the prior two arborists, perform an on-site evaluation of the oak, review the reports of the first two arborists, and answer the same inquiry asked of the first two arborists within 14 days of confirming availability.

Should two of the three arborists find that subsequent to the construction staging for and construction of the light rail bridge, the Oregon white oak is reasonably likely to survive in the long term, the applicant shall comply with Outcome 2. Otherwise, the applicant shall comply with Outcome 1.

12. Ongoing conditions of approval:
 - A. Maintain and monitor the water quality resource and habitat conservation area plantings for five years per the approved mitigation plan prepared by Vigil Agrimis and subsequently modified by these conditions of approval. Provide a copy of the annual monitoring report to the City of Milwaukie Planning Director no later than the end of each calendar year during the five years in which the plantings are monitored.
 - B. Construct the pedestrian bridge beneath the light rail bridge if funding becomes available on or before Feb 1, 2013 for construction before Sep 30, 2013. TriMet shall actively seek funding for the construction of the pedestrian bridge in partnership with the City of Milwaukie up until Feb 1, 2013. The pedestrian bridge must connect to each bank but need not include pedestrian walkway connections through Kronberg Park or to nearby streets.
 - C. Allow the construction of the pedestrian bridge by any entity.
 - D. Pursuant to Subsection 19.1001.7.E.2, the time period within which the applicant must obtain development permits for the Kellogg Bridge and future pedestrian bridge over Kellogg Lake is extended from 2 years to 4 years, and the time period within which the applicant must pass all final inspections is extended from 4 years to 6 years, from the date of the land use decision on this application.

ADDITIONAL REQUIREMENTS

The following items are not conditions of approval necessary to meet applicable land use review criteria. They relate to other development standards and permitting requirements contained in the Milwaukie Municipal Code and Public Works Standards that are required at various points in the development and permitting process.

1. The development permit submission for the Kellogg Bridge shall include the following items to demonstrate conformance with the Milwaukie Public Works Standards. Development permits shall not be issued until the Engineering Director has reviewed and approved the following items.
 - A. Submit a storm water management plan prepared by a qualified professional engineer that conforms to Section 2 – Stormwater Design Standards of the City of Milwaukie Public Works Standards. All stormwater from the Kellogg Bridge shall be treated and infiltrated on private property unless otherwise approved by the Engineering Director.
 1. The storm water management plan shall demonstrate that the post-development runoff does not exceed pre-development runoff, including any existing storm water management facilities serving the development site.

2. The storm water management plan shall demonstrate compliance with water quality standards in accordance with the City of Portland Stormwater Management Manual.
- B. In the event the storm management system contains underground injection control devices, the applicant shall submit proof of acceptance of the storm system design from the Department of Environmental Quality. The storm water management plan must also be designed to meet water quality resource development standards contained in MMC Subsection 19.402.10, specifically:
1. Storm water flows as a result of the proposed development within and to water quality resource areas shall not exceed pre-development flows.
 2. Storm water outfalls shall be appropriately designed to avoid erosion to stream banks or water quality resource area slopes.
2. The development permit submission for the Kellogg Bridge shall include the following items to demonstrate conformance with Milwaukie Title 18 Flood Hazard Regulations. Development permits shall not be issued until the Engineering Director has reviewed and approved the following items.
- A. Provide the following information with the development permit application:
1. Scaled plans showing nature, location, dimensions, and elevations of the development property, including existing and proposed structures, fill, storage of materials, and drainage facilities. Include both the floodplain and floodway boundaries.
 2. Elevation in relation to mean sea level of all structures.
 3. Description of the extent to which any watercourse will be altered or relocated as a result of the proposed development.
- B. Provide an anchor design by a registered professional engineer, such that all new construction within the 100-year floodplain is anchored to prevent flotation, collapse, or lateral movement of the structure(s). Include a written summary that describes how the design of the structure(s) meets this requirement.
- C. Construct all structures within the 100-year floodplain utilizing materials resistant to flood damage. Include a written summary that describes how the design of the structure(s) meets this requirement.
- D. Placement of fill or structures that displaces more than ten cubic yards of flood storage area shall comply with the following standards.
1. No net fill in any floodplain is allowed, including the volume of structures within the floodplain.
 2. All fill placed in a floodplain shall be balanced with at least an equal amount of soil material removed.
 3. Any excavation below bankful 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.
- E. Placement of fill or structures within the floodway shall comply with flood storage area requirements and the following additional requirements.

1. The proposed encroachments into the floodway shall result in no rise above the Base Flood Elevation as determined through hydrologic and hydraulic analysis in a No-Rise Certification. The No-Rise Certification must be supported by technical data and signed by a registered professional engineer, including a step-backwater analysis and conveyance compensation analysis resulting in a 0.00 foot increase at every cross section in the "with floodway" profile.
2. If an increase in the base flood elevation is unavoidable, a conditional approval of such increase is required from the FEMA regional office prior to development permit approval.
3. Prior to commencement of any earth disturbing activities, the applicant shall:
 - A. Submit a Construction Management Plan pursuant to Metro Title 13 Section 5.
 - B. Obtain an erosion control permit pursuant to MMC Title 16 Erosion Control.
 - C. Flag, fence, or otherwise mark the extent of the construction limits.
 - D. Flag, fence, or otherwise mark the water quality resource and habitat conservation areas not proposed to be disturbed pursuant to MMC Subsection 19.402.10 and Metro Title 13 Section 6.C.2. These natural resource areas must be identified in the field by a qualified professional.
4. During site development, the applicant shall:
 - A. Limit development activity from 7 a.m. to 7 p.m. Monday through Friday and 8 a.m. to 5 p.m. Saturday and Sunday pursuant to Milwaukie Public Works Standards Division 105.13, unless otherwise approved by the Engineering Director, and abide by MMC Chapter 8.08 regarding construction noise. Variances to maximum permitted noise levels or prohibited noises as identified in MMC Chapter 8.08 may be granted by the Police Department pursuant to MMC Subsection 8.08.110.
 - B. Safeguard the water quality resource and habitat conservation areas pursuant to MMC Subsection 19.402.10 and Metro Title 13 Section 6.C.2 as follows:
 1. All site development activities shall conform to the Construction Management Plan.
 2. Protection fencing shall be maintained around areas not proposed to be disturbed until site development is complete. Trees shall not be used as anchors to stabilize construction equipment or activities.
 3. Appropriate site preparation and construction practices shall be followed to prevent erosion, pollution, sedimentation, or drainage of hazardous materials to the water quality resource area.
 4. Native soils disturbed during development shall not be removed from the site.
 5. The water quality resource and habitat conservation areas shall be re-vegetated per the approved mitigation plan and as soon as practicable after the approved development activity in the resource area is complete.
5. Prior to final inspection of the Kellogg Bridge, the applicant shall complete the following items to the satisfaction of the Planning Director:
 - A. Restore and improve the water quality resource and habitat conservation areas per the approved mitigation plan prepared by Vigil Agrimis and subsequently modified by these conditions of approval pursuant to MMC Subsection 19.402.10.A. Submit a letter from

the project's natural resource consultant attesting that all required restoration and mitigation work has been completed in conformance with the approved mitigation plan.

6. Prior to final inspection of the Kellogg Bridge, the applicant shall complete the following items to the satisfaction of the Engineering Director:
 - A. Construct a private storm management system to accommodate stormwater runoff from the bridge. The private storm management system shall be constructed according to the approved storm water management plan.

The above-listed conditions of approval and additional requirements shall not be interpreted or applied by themselves or cumulatively in a manner that would prevent implementation of a land use final order, significantly negatively impact the operations of the South North MAX Light Rail Project or Project extension, significantly delay the completion or prevent the timely implementation of the South North MAX Light Rail Project or Project extension, or require funding beyond the project budget.

DATE OF COUNCIL ACTION: January 17, 2012

Greg Chaimov, Council President

DRAFT



900 S.W. Fifth Avenue, Suite 2600
Portland, Oregon 97204
main 503.224.3380
fax 503.220.2480
www.stoel.com

January 17, 2012

STEVEN W. ABEL
Direct (503) 294-9599
swabel@stoel.com

BY HAND DELIVERY

Milwaukie City Council
10722 SE Main Street
Milwaukie, OR 97222

Re: Appeal of Planning Commission Approval Regarding Light Rail Bridge Over Kellogg Lake and McLoughlin Boulevard -- Jurisdictional Defect (File No. Ap 11 01)

Dear Councilors:

As you know, this office represents TriMet respecting the above-captioned appeal of the Milwaukie Planning Commission's approval of the light rail bridge over Kellogg Lake. This letter is submitted to alert the Council to a jurisdictional defect in the appeal and to preserve the issue for review in the event TriMet is forced to appeal the final decision of the Milwaukie City Council ("City Council").

A. Factual Background

On November 23, 2011, the Milwaukie Planning Commission ("Planning Commission") approved with conditions a light rail bridge over Kellogg Lake and McLoughlin Boulevard as part of the Portland Milwaukie Light Rail project (File Nos. WG-11-01, DR-11-01, WQR-11-03, HCA-11-01, CSU-11-09).

On December 8, 2011, the City Council filed an appeal of the Planning Commission's decision. The filed documentation shows that City Council did not pay an appeal fee at the time of filing.

On December 8, 2011, Maria Dion Shepard and Jo Anne Bird (the "citizens") also filed an appeal of the Planning Commission's decision. The filed documentation shows that citizens paid an appeal fee of \$1,000 at the time of filing.



During its December 20, 2011 Regular Session, the City Council unanimously approved a fee waiver for the citizens' appeal. *See Exhibit A.*¹

B. Legal Background

Milwaukie Municipal Code ("MCC") Section 19.1010 provides that a decision on a Type III application may be appealed by filing a written appeal within 15 days of the decision. The MCC requires that the appeal fee be paid at the time of filing. MCC 19.1010.1.B. The MCC further provides that "[i]f the appeal application and applicable fee are not submitted within the 15-day appeal period * * * *the application shall not be accepted by the City.*" MCC 19.1010.1.C (emphasis added).

The City of Milwaukie's Fee Schedule (effective July 1, 2011) provides that the fee for an appeal to the City Council is \$1000. The Fee Schedule notes that appeal fees are waived for appeals sponsored by Neighborhood District Associations ("NDAs"), pursuant to Resolution No. 26-1999. No other waivers are listed in the MCC or the Fee Schedule.

Resolution No. 26-1999 provides that "*staff* are directed to waive fees for * * * quasi-judicial land use decisions for all City-recognized [NDAs]." (Emphasis added.) *See Exhibit B.* Resolution No. 26-1999 further provides that an appeal fee may be waived *only if the following are met:*

"The appeal is not being made on behalf of an individual; and

"The decision to appeal was made by a majority vote of the general membership of the NDA in attendance at an open meeting, or of a majority vote of an NDA land use committee in an open meeting as authorized in the Standard by-laws; and

"The appeal contains the signature of the chairperson or vice chairperson of the recognized [NDA], confirming the vote to appeal."

¹ The Council's deliberations and fee waiver decision relate to the matters at issue in this appeal and are therefore part of the record.



C. Argument

1. The City Council's Appeal

The City Council lacks jurisdiction to hear its own appeal. The MCC makes it clear that the City Council may not entertain appeals that have not been filed and fully paid for within the time prescribed. *See e.g., McKay Creek Valley Association v. Washington County*, 16 Or LUBA 690, 693 (1988) (“[H]aving adopted language in its code providing that timely payment is jurisdictional, the county is bound to interpret the [code] to impose a jurisdictional requirement.”)

Here, the City Council failed to submit an appeal fee within the 15-day appeal period. Accordingly, the MCC dictates that the appeal “shall not be accepted by the City.” Because the code makes timely payment of the appeal fee jurisdictional, the City Council may not hear the City Council’s appeal.

Moreover, the City Council lacks standing to appeal the Planning Commission’s decision. MCC 19.1010.6 provides that a Type III decision may be appealed by the “applicant, applicant’s representative, or any other person or organization *who participated in the original decision by providing either testimony or evidence on the record* leading to the decision by the review authority.”

Here, there is no evidence that the City Council appeared on the record leading up to the Planning Commission’s decision. Accordingly, the City Council lacks standing to appeal.

2. The Citizens’ Appeal

Likewise, the City Council lacks jurisdiction to hear the citizens’ appeal. Although the filed documentation shows that the citizens initially paid an appeal fee, the City Council subsequently waived the fee. As noted above, the MCC requires that an appeal shall not be accepted by the City if it is not accompanied by an appeal fee.

The after-the fact fee waiver was improper. First, the waiver was granted by the Council, not staff. By the express terms of Resolution No. 26-1999, staff is the sole authority to evaluate and act on fee waiver requests. *See, e.g., Cummings v. Tillamook County*, 30 Or LUBA 17, 24 (1995) (reasoning that Community Development Director was sole authority to act on fee waivers, so Board of Commissioners could not act on fee waiver request). Simply put, there is no authority in the MCC that allows the City Council to grant a fee waiver request.



City Council
January 17, 2012
Page 4

Moreover, there is no evidence that the citizens' appeal was sponsored by a recognized NDA, much less that the decision was made by a majority vote of the membership or land use committee. The appeal form was not signed by the chairperson or vice chairperson of a recognized NDA. Because there are no other waivers available, the Council's decision to grant a fee waiver has no legal basis. The law does not look favorably upon after-the-fact waivers contrary to City standards.

Further, the after-the-fact waiver of the appeal fee violates the City's own ethics standards. MCC Section 2.04.290 states that City Councilors "must maintain the highest standards of ethical conduct and assure *fair and equal treatment* of all persons, claims, and transactions coming before Council." (Emphasis added.) This obligation includes the duty to refrain from:

"Requesting preferential treatment for themselves, relatives, associates, clients, co-workers, or friends;

* * *

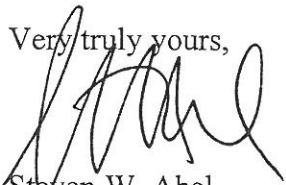
"Actions benefitting special interest groups at the expense of the City as a whole." See Exhibit C.

Here, the City Council violated its own ethical standard by failing to ensure "fair and equal" treatment to all persons coming before the City Council.

D. Conclusion

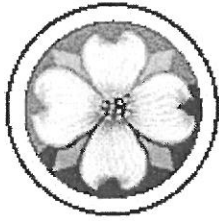
For the reasons set forth above, the City Council lacks jurisdiction to hear the appeal of the Planning Commission approval of the light rail bridge over Kellogg Lake and McLoughlin Boulevard.

Very truly yours,



Steven W. Abel

SWA:dew
Attachments



MILWAUKIE

Dogwood City of the West

**CITY OF MILWAUKIE
CITY COUNCIL MEETING
Regular Session
December 20, 2011**

CALL TO ORDER

Present: Mayor Ferguson, Councilor Chaimov, Councilor Hedges, Councilor Loomis, and Councilor Miller

Staff City Recorder DuVal, City Manager Monahan, City Attorney Ramis,

Present: Community Services Director Herrigel, Finance Director Camors, Finance Director Seals, Assistant to the City Manager Bankhead, and Public Affairs Coordinator Wheeler

PROCLAMATIONS, COMMENDATIONS, SPECIAL REPORTS, AND AWARDS

CONSENT AGENDA

It was moved by Mayor Ferguson and seconded by Councilor Hedges to approve the City Council minutes as presented. Motion passed unanimously. [5:0]

It was moved by Councilor Chaimov and seconded by Councilor Hedges to approve the fee waiver for the TriMet Light Rail Bridge, File #A-11-01. Motion passed unanimously. [4:0]

City Council Minutes

October 25, 2011 Study Session

November 1, 2011 Regular Session

November 15, 2011 Regular Session

December 6, 2011 Regular Session

Exhibit A

Consideration of a Fee Waiver - Appeal of the TriMet Light Rail Bridge File # A-11-01

AUDIENCE PARTICIPATION

PUBLIC HEARING

Adopt Supplemental Budget - Resolution

Staff: Casey Camors, Finance Director

It was moved by Councilor Chaimov and seconded by Councilor Loomis to approve the resolution adjusting the budget for fiscal year 2011 - 2012 by adopting this supplemental budget and revising appropriations. Motion passed unanimously. [5:0]

OTHER BUSINESS

Riverfront Park Task Force - Ordinance & Resolution

Staff: JoAnn Herrigel, Community Services Director

It was moved by Councilor Miller and seconded by Councilor Loomis to approve the first and second readings by title only and adoption of the ordinance amending the Milwaukie Municipal code to remove language regarding the Riverfront Board. Motion passed unanimously. [5:0]

It was moved by Councilor Chaimov and seconded by Councilor Miller to approve the resolution creating a Riverfront Task Force. Motion passed unanimously. [5:0]

Property Acquisition at Bowman and Brae

It was moved by Councilor Miller and seconded by Councilor Loomis to approve adoption of the resolution approving the purchase of real properties located at the NW corner of SE Bowman Street and SE Brae Street for use as a City Park. Motion passed unanimously. [5:0]

Council Reports

INFORMATION

ADJOURNMENT

It was moved by Councilor Chaimov and seconded by Councilor Hedges to approve adjournment of the regular session at 7:40 p.m. Motion passed unanimously. [5:0]

Public Information

*Note: The information presented constitutes action minutes only. The full meeting minutes are available at <http://www.ci.milwaukie.or.us/meetings> by clicking the Minutes link under the Full Minutes column.

RESOLUTION NO. 26-1999

A RESOLUTION OF THE CITY OF MILWAUKIE, OREGON, WAIVING APPEAL FEES FOR ADMINISTRATIVE AND QUASI-JUDICIAL LAND USE DECISIONS FOR CITY-RECOGNIZED NEIGHBORHOOD DISTRICT ASSOCIATIONS.

WHEREAS, the Neighborhood District Association program developed by the City provides for and supports citizen input in the land use planning process as outlined in Chapter 1 of Milwaukie's Comprehensive Plan; and

WHEREAS, the City has developed the framework for a comprehensive Neighborhood District Association Program, including Standard Bylaws governing the operation of Neighborhood District Associations recognized by the City Council; and


WHEREAS, administrative and quasi-judicial land use decisions may be appealed to either the Planning Commission or the City Council, subject to the requirements of City of Milwaukie Zoning Ordinance Section 1000 "Administrative Decisions" and after submitting a \$265 processing fee.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MILWAUKIE THAT:

Staff are directed to waive appeal fees for administrative and quasi-judicial land use decisions for all City-recognized Neighborhood District Associations. An appeal fee may be waived for a Neighborhood District Association recognized in Chapter 1 of the Milwaukie Comprehensive Plan, if all of the following are met:

1. The appeal is not being made on behalf of an individual; and
2. The decision to appeal was made by a majority vote of the general membership of the NDA in attendance at an open meeting, or of a majority vote of an NDA land use committee in an open meeting as authorized in the Standard by-laws; and
3. The appeal contains the signature of the chairperson or vice chairperson of the recognized Neighborhood District Association, confirming the vote to appeal.


Introduced and adopted by the City Council of the City of Milwaukie,
Oregon on this 15th day of June 1999.



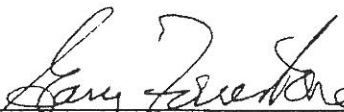
Carolyn Tomei, Mayor

ATTEST:

APPROVED AS TO FORM:
Ramis, Crew, Corrigan & Bachrach, LLP



Pat Duvall, City Recorder



Gary Freestone
City Attorney

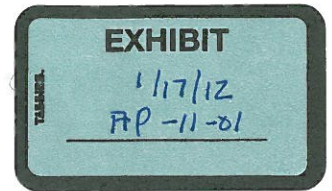
Milwaukie Municipal Code

[Up](#)[Previous](#)[Next](#)[Main](#)[Search](#)[Print](#)[No Frames](#)[TITLE 2 ADMINISTRATION AND PERSONNEL](#)[CHAPTER 2.04 CITY COUNCIL](#)[ARTICLE II MEETINGS](#)**2.04.290 GOVERNMENT ETHICS**

A. Councilors shall review and observe the requirements of the Oregon Government Ethics Law (ORS 244.010 to 244.400) dealing with the use of public office for private financial gain. Councilors shall give public notice of any potential conflicts of interest, and the notice will be reported in the meeting minutes. In addition to matters of financial interest, Councilors shall maintain the highest standards of ethical conduct and assure fair and equal treatment of all persons, claims, and transactions coming before Council. This general obligation includes the duty to refrain from:

1. Disclosing confidential information or making use of special knowledge or information before it is made available to the general public;
2. Making decisions involving business associates, customers, clients, and competitors;
3. Violating Council rules;
4. Appointing relatives, clients, or employees to boards and commissions;
5. Requesting preferential treatment for themselves, relatives, associates, clients, co-workers, or friends;
6. Seeking employment of relatives with the City;
7. Actions benefitting special interest groups at the expense of the City as a whole;
8. Attending meetings or participating in decisions of City boards and commissions where there is a possibility of appeal of the matter to the Council;
9. Expressing an opinion which is contrary to the official position of the Council without so stating.

B. In general, Councilors shall conduct themselves so as to bring credit upon the government of the City by respecting the rule of law, ensuring nondiscriminatory delivery of public services, keeping informed concerning the matters coming before the Council, and abiding by all decisions of the Council, whether or not the member voted on the prevailing side. (Ord. 1988 § 6, 2008; Ord. 1812 § 8, 1996; Ord. 1480 § 4(H), 1981)



CITY COUNCIL OF THE CITY OF MILWAUKIE

**FINAL ORDER AFFIRMING APPLICATIONS
WG-11-01, DR-11-01, WQR-11-03, HCA-11-01, and CSU-11-09**

Based on a review of existing evidence, new and existing testimony, and new and existing arguments at public hearings on Jan 3 and Jan 17, 2012 on the appeal of the above-listed applications, the Milwaukie City Council orders as follows:

1. The Nov 23, 2011 Notice of Decision for land use applications WG-11-01, DR-11-01, WQR-11-03, HCA-11-01, and CSU-11-09 is affirmed subject to the Findings and Conditions of Approval in this Final Order.
 - A. City Council passed a motion on Dec 6, 2011 that initiated the appeal of land use applications WG-11-01, DR-11-01, WQR-11-03, HCA-11-01, and CSU-11-09. City Council finds that it has standing to appeal these applications based upon an interpretation of Milwaukie Municipal Code (MMC) Subsection 19.1010.6.A that views staff's participation in the original hearings as participation by the City as an organization in the original decision.
 - B. Two citizens, Maria Dion Shepard and Jo Anne Bird, submitted an appeal of land use applications WG-11-01, DR-11-01, WQR-11-03, HCA-11-01, and CSU-11-09 on December 8, 2011. Since the basis for the City's appeal and Ms. Shepard and Ms. Bird's appeal were effectively the same, staff combined the two appeals into a single appeal with Ms. Shepard, Ms. Bird, and the City Council as co-appellants (Land Use File Number AP-11-01).
 - C. The Jan 3, 2012 City Council public hearing on appeal application AP-11-01 was properly noticed pursuant to MMC Subsection 19.1010.6.B.
 - D. MMC Subsection 19.1010.5.C establishes that an appeal of a Type III decision shall be an on the record de novo hearing and therefore no new evidence may be considered by the Council in deciding the appeal. The City Council finds that new evidence was submitted into the record during the pendency of the appeal, but that the Council did not rely on any new evidence in deciding the appeal. The following new evidence was provided but not relied upon in deciding the appeal.
 - Donald Hammang's letter of Jan 3, 2012 (reference to multiple arborist reports; assertion that it will take 12 trees up to 15 years to replace the 2000 plus square feet of canopy lost by the removal of the tree)
 - JoAnne Bird's oral testimony of Jan 3, 2012 (reference to letter from engineer that alternative construction approaches available)
 - Mart Hughes' oral testimony of Jan 3, 2012 (reference to credentials)
 - Mark Gamba's oral testimony of Jan 3, 2012 (assertion that additional information would have led to a different decision by the Planning Commission)

- Cindy Tyler's oral testimony of Jan 3, 2012 (assertion that the best way to promote tree suckers is to chop down the tree and fertilize the root zone)
- Dominic Maze's oral testimony of Jan 3, 2012 (reference to his credentials; assertions that mushroom-like growths do not indicate disease, that evidence of damage in a tree this old is normal, and that it is common for oaks to hollow out)
- Susan Shawn's oral testimony of Jan 3, 2012 (assertion that the tree is 100 – 150 years old; assertion that the cost to replace the ecosystem value of the tree is high)
- Chris Runyard's oral testimony of Jan 3, 2012 (assertions that the hole in the tree is valuable habitat and that overall the tree is a typical oak specimen; site observations that the tree had big fat buds and no dead branches)
- Scott Churchill's oral testimony of Jan 3, 2012 (assertion that staging area would not need to increase in size in order to save the tree)

FINDINGS IN SUPPORT OF APPROVAL

1. The applicant, TriMet, submitted five land use applications (the "application") for approval of a light rail bridge over Kellogg Lake and McLoughlin Blvd ("Kellogg Bridge") as part of the Portland Milwaukie Light Rail (PMLR) project. The application requests approval for bridge design, natural resource mitigation, and temporary construction staging. The application has been assigned the following file numbers and consists of the following application types:
 - DR-11-01: Design Review
 - WG-11-01: Willamette Greenway
 - WQR-11-03: Water Quality Resource
 - HCA-11-01: Habitat Conservation Area
 - CSU-11-09: Community Service Use
2. The PMLR alignment, which includes the location of specific project elements such as the Kellogg Bridge, has an existing land use approval that was issued by Metro in 2008.¹ This land use final order (LUFO) was made pursuant to House Bill 3478 (1996), which provides for the review and siting of regional transportation facilities through local jurisdictions. The City may subject the Kellogg Bridge to reasonable and necessary conditions of approval to ensure conformance with local standards and appropriate mitigation of local impacts. It cannot, however, condition the approval of the bridge in such a way as to prevent the implementation of the 2008 LUFO.
3. The Kellogg Bridge site is composed of an assortment of public and private rights-of-way on Tax Maps 1S1E36BC, 1S1E36CB, and 1S1E35AD between SE Lake Rd and SE 22nd Ave that are under the ownership or jurisdiction of three different legal entities, namely the City of Milwaukie, Oregon Department of Transportation, and the Union Pacific Railroad (UPRR). The Kellogg Bridge site also includes a temporary construction staging area on Kronberg Park that is under the ownership of the City of Milwaukie, which consists of Tax Lots 1S1E36CB03100 and 1S1E36CB03000. TriMet has eminent domain authority and is in the process of purchasing portions of the sites listed above and/or acquiring the necessary easements to construct the bridge.
4. The application includes a design for a future pedestrian bridge over Kellogg Lake underneath the Kellogg Bridge. The applicant is not proposing to construct the pedestrian bridge as part of the PMLR project due to lack of funding. However, the applicant is proposing to advance the design and review process for the pedestrian bridge at this time in order to allow for the possibility of constructing the pedestrian bridge at the same time as the Kellogg Bridge, which

¹ Metro Resolution No. 08-3964 entitled 2008 South/North Land Use Final Order (LUFO) Amendment.

would result in significant time and cost savings for the pedestrian bridge project. The design and location of pedestrian pathways to the pedestrian bridge are not included in the current application and would require additional land use approvals at a later date.

5. The proposal includes the following elements:

- A jump span over Lake Rd; in this section it would be supported by an abutment on the north side and a set of columns on the south side that connects the light rail bridge to the station platform.
- A light rail bridge over Kellogg Lake; in this section it would be supported by two sets of columns on either side of the lake above ordinary high water. No in-water piers are proposed.
- A light rail bridge over McLoughlin Blvd; in this section it would be supported by a series of single columns.
- A future pedestrian bridge over Kellogg Lake underneath the light rail bridge.
- A temporary construction bridge in the UPRR right-of-way in Kellogg Lake on the east side of the permanent light rail bridge.

The jump span and light rail bridge contain a number of elements consistent with their purpose of carrying light rail trains (e.g. catenary poles and safety railings) and mitigating community impacts (e.g. sound walls). The jump span, light rail bridge, and pedestrian bridge materials consist primarily of weathering steel and concrete. The use of steel tubs as a defining horizontal element allows for the creation of a slender, uncluttered, visually coherent, and ribbon-like structure. The use of weathering steel gives the bridge a softer, less utilitarian, earth-toned quality in keeping with its proximity to natural areas around Kellogg Lake and vegetated areas along the Trolley Trail. Board-form treatments on the cast-in-place concrete bridge abutments and columns add visual interest.

6. As originally approved by the Planning Commission, the proposal results in the following water quality resource (WQR) and habitat conservation area (HCA) impacts:

Impact Area within Construction Limits	WQR Impacts			HCA Impacts		
	# of Trees Removed	Permanent (Sq. ft.)	Temporary (Sq. ft.)	# of Trees Removed	Permanent (Sq. ft.)	Temporary (Sq. ft.)
Willamette HCA	NA	NA	NA	1	1280	0
Kellogg Lake North	5	2170	3020	6	2040	2010
Kellogg Lake South	2	2580	110	0	580	70
Kronberg Park	1	0	3430	1	0	1165
TOTALS	8	4750	6560	8	3900	3245

As modified by the City Council, the proposal may have different WQR and HCA impacts in Kronberg Park pursuant to Finding 21.D and associated conditions of approval.

7. The applicant proposes the following mitigation plan:

- Restore areas temporarily impacted by construction with appropriate native plants pursuant to applicable WQR and HCA standards.

- Mitigate for areas permanently impacted by the Kellogg Bridge at a 1:1 replacement ratio on the bank of Kronberg Park outside of the construction limits between ordinary high water and top of bank.
- Remove invasive and nonnative species from within the construction limits and the Kronberg Park mitigation site.
- Monitor and maintain plantings for five years with a target survival rate of 80%.

The applicant also proposes to provide mitigation for an additional 515 square feet of area on the Kronberg Park mitigation site for permanent impacts from the anticipated pedestrian pathways to the future pedestrian bridge.

8. The applicant's mitigation plan was reviewed by ESA Northwest Biological Resources. ESA was retained by the City at the applicant's expense to provide independent technical review of the applicant's WQR and HCA analysis and mitigation plan. ESA determined that: (1) the applicant's analysis was reasonably complete and accurate, (2) the mitigation plan met code requirements, and (3) the mitigation plantings were suitable for the site and would improve local ecological functions.
9. The application was submitted on August 8, 2011. It was initially deemed incomplete by the City on September 7, 2011. The applicant revised and resubmitted the application on September 20, 2011 and requested that the application be deemed complete on that date. The City deemed the application complete on September 20, 2011, and now has until January 18, 2012 to issue a final decision on the application.
10. The majority of the Kellogg Bridge site has a base zone designation of Downtown Open Space (DOS) with an overlay zone designation of Willamette Greenway (WG). A small portion of the site (i.e. the northern half of the Lake Rd right-of-way) has a base zone designation of Downtown Office (DO). The portion of the Kellogg Bridge that is within a downtown zone and the WG overlay zone is subject to both Design Review and Willamette Greenway review. The future pedestrian bridge is also subject to both Design Review and Willamette Greenway review. A portion of the site around Kellogg Lake, including the construction staging area in Kronberg Park, is also subject to Water Quality Resource (WQR) and Habitat Conservation Area (HCA) review. Additionally, the construction staging area in Kronberg Park is subject to Community Service Use review and Willamette Greenway review due to its alteration of the vegetation buffer along Kellogg Lake.
11. The application is further subject to Development Review at or before the time of development permit submittal pursuant to MMC Section 19.906. The purpose of Development Review is to ensure compliance with applicable standards and conditions of approval through an efficient review process that effectively coordinates the City's land use and development permit review functions.
12. The Design and Landmarks Committee (DLC) evaluated the Design Review application (DR-11-01) on October 17, 2011 pursuant to MMC 19.1011 Design Review Meetings. The DLC recommended that the Planning Commission adopt Finding 17, and the associated conditions of approval, as the findings and conditions of approval for the Kellogg Bridge Design Review application.
13. The Planning Commission (PC) evaluated the entire application at a public hearing on November 8, 17, and 22 of 2011 pursuant to MMC Section 19.1006 Type III Review.

14. The October 17 DLC design review meeting and the November 8 PC public hearing on the application were properly noticed through direct mailings and sign postings pursuant to MMC Subsection 19.1006.3 Type III Public Notice, MMC Subsection 19.1011.2. Design Review Meeting Notice Requirements, and MMC Subsection 19.401.5 Willamette Greenway Zone Procedures.
15. The application was referred for comment to the following City departments and agencies: City of Milwaukie Engineering, Building, and Community Development Departments; Clackamas County Fire District #1; Oregon Department of Transportation; Oregon State Marine Board; Oregon Division of State Lands; Oregon Department of Fish and Wildlife; Oregon Parks and Recreation Department; and, North Clackamas Parks and Recreation District. It was also forwarded to the Historic Milwaukie and Island Station Neighborhood District Associations, and public copies were made available at City Hall, Ledding Library, and the Planning Department. Additionally, the Community Services Department broadly advertised the DLC's design review meeting and the PC's public hearing on the application at various public forums, such as the Milwaukie Farmers Market, and through direct e-mailings and the City's PMLR project website.
- Four written comments were received by the City prior to October 17, 2011. Two of the comments were from Milwaukie residents, one was from the Oregon Department of Fish and Wildlife, and one was from the City's project design team. Additionally, two people testified at the October 17, 2011 DLC design review meeting. All verbal and written comments are summarized in and/or attached to the November 8, 2011 PC staff report.
16. The application is subject to the Milwaukie Design Guidelines, Interim Implementation Memo for Metro Title 13 Habitat Conservation Area, and the following provisions of the Milwaukie Zoning Ordinance, which is Title 19 of the Milwaukie Municipal Code (MMC):
- Section 19.310 – Downtown Zones
 - Section 19.401 – Willamette Greenway
 - Section 19.402 – Water Quality Resource
 - Section 19.904 – Community Service Use
 - Section 19.905 – Conditional Use
 - Section 19.907 – Downtown Design Review
 - Chapter 19.1000 – Review Procedures (specifically Section 19.1001 General Provisions and Section 19.1006 Type III Review)

Provisions not addressed in these findings are found to be not applicable to the decision on the application.

17. **DESIGN REVIEW:** MMC Subsection 19.907.7 contains the approval criteria for design review applications. The approval authority may approve, approve with conditions, or deny a design review application based on the following criteria:
- A. Compliance with Title 19 Zoning Ordinance.
- The only two applicable standards pertain to landscaping and wall design. Section 19.310.4.11 requires that a minimum of 20% of the site be landscaped. The applicant is proposing to retain approximately 70% of the site in landscaping. Section 19.310.6.C.2 contains the design standards for walls. The applicant is not proposing any wall-mounted mechanical equipment or any prohibited wall materials.

As conditioned, the City Council finds that these standards have been met and that this approval criterion is therefore met.

B. Substantial consistency with the Downtown Design Guidelines

Refer to Table 1 below for detailed findings pertaining to this approval criterion.

As conditioned, the City Council finds that the proposal is substantially consistent with the Downtown Design Guidelines and that this approval criterion is therefore met.

C. Submittal of a complete application and applicable fee as adopted by the City Council.

The applicant submitted a revised application on September 20, 2011 and requested that the City deem the application complete. The applicable design review application fee was paid August 8, 2011.

The City Council finds that this approval criterion has been met.

18. **WILLAMETTE GREENWAY:** MMC Subsection 19.401.6 contains the approval criteria for development in the Willamette Greenway (WG) Zone. MMC Subsection 19.905.4 contains the related Conditional Use (CU) approval criteria since all development in the WG Zone is considered a conditional use.

The WG Zone approval criteria ensure that the bridge and associated staging area are compatible with the character of the area and that views, public access, and the natural environment are protected and enhanced as much as possible. The CU approval criteria ensure that the bridge and associated staging area are appropriate for the location and will have minimal impacts on nearby uses. All identified impacts are required to be mitigated as much as practicable. Refer to Table 2 below for detailed findings pertaining to these approval criteria.

As conditioned, the City Council finds that the WG and CU approval criteria are met.

A. Vegetation Buffer Plan Requirement

Greenway conditional use approval is required for all development or alteration of the greenway vegetation buffer pursuant to Subsection 19.401.5.D. The greenway vegetation buffer is the area between ordinary high water and 25 feet upland of ordinary high water. Prior to development (e.g. removal of substantial amounts of vegetation or alteration of natural site characteristics) within the buffer, a vegetation buffer plan for the buffer area shall be submitted for review and approval pursuant to Subsection 19.401.5.E. The plan shall address the following elements:

- Riverbank Stabilization
- Scenic View Protection
- Native Vegetation Retention
- Native Vegetation Restoration
- Vegetation Buffer Enhancement

In this instance, the greenway vegetation buffer area is entirely contained within the water quality resource area, which is measured 50 feet upland of ordinary high water. The applicant's alternatives analysis and mitigation plan for the water quality resource area adequately addresses all of the required greenway vegetation buffer plan elements. In summary, no bank erosion has been identified and no bank stabilization is anticipated; areas of disturbance and plant removal have been minimized as much as practicable; all temporarily disturbed areas will be appropriately revegetated with native species; and all permanently disturbed areas will be mitigated through invasive and nonnative plant removal and native plantings along the bank of Kronberg Park.

As proposed, the City Council finds that the greenway vegetation buffer plan requirement is met.

19. **WATER QUALITY RESOURCE:** MMC Subsection 19.402.9 and 10 contain the application requirements and development standards respectively for development in water quality resource (WQR) areas.

The applicant submitted the required WQR materials and analysis for impacts to the banks of Kellogg Lake and Kronberg Park. Refer to Table 3 below for detailed findings pertaining to the applicant's alternatives analysis and mitigation plan, which are required per MMC Subsection 19.402.9.G and I respectively. Two separate reports were completed by the applicant at the City's direction. One report focused on the impacts to Kronberg Park. The second report focused on the impacts to the northern and southern banks of Kellogg Lake in the UPRR right-of-way. The City directed the applicant to evaluate the impacts to these areas separately because: (1) Kronberg Park is currently under—and will continue to be under—separate ownership, (2) Kronberg Park will not be permanently occupied or encumbered by the Kellogg Bridge, and (3) the City's WQR regulations limit where mitigation can be required. Evaluating the UPRR right-of-way area separately from the Kronberg Park tax lots for this review enabled the City to maximize its mitigation requirements for Kronberg Park.

As conditioned, the City Council finds that no practicable alternative exists to the proposed bridge or construction staging area; that disturbance to the WQR area is limited to the area necessary to accommodate the proposed bridge and construction staging area and is consistent with Finding 21.D; and that the mitigation plan proposed by the applicant for impacts to the WQR area caused by the proposed bridge and construction staging area is adequate.

A. Application Requirements

Ingress and egress across water quality resource areas, such as the Kellogg Bridge, are subject to Type III review pursuant to MMC Subsection 19.402.7. The applicant submitted all required information for Type III review, a summary of which is provided below.

- A topographic map of the site with contour intervals of five (5) feet or less showing a delineation of the water quality resource area and all wetlands.
- The location of all existing natural features including, but not limited to, all trees of a caliper greater than six (6) inches diameter at breast height (DBH).
- The location of all wetlands.
- An inventory and location of existing debris and noxious materials.
- An inventory of vegetation, including percentage ground and canopy coverage.
- An assessment of the existing condition of the water quality resource area.

Additionally, MMC Subsection 19.402.9.K requires payment of all adopted fees. The applicant paid the required water quality resource application fee and technical report review deposit. The deposit is meant to cover the City's expenses related to the hiring of a consultant with the appropriate technical expertise to review the applicant's water quality resource study.

The City Council finds that the water quality resource application requirements have been met for the bridge construction and staging area limits as proposed by the applicant. The City Council recognizes that the applicant may need to expand its area of disturbance in the Kronberg Park WQR area pursuant to Finding 21.D and associated conditions of approval. The City Council finds that the applicant's original WQR application adequately describes and assesses this adjacent WQR area and therefore does not trigger the need for a new WQR application.

B. Development Standards

Applications for development or land disturbance on properties that contain water quality resource areas shall demonstrate compliance with the following standards:

- The water quality resource area shall be restored and maintained in accordance with the approved mitigation plan and the specifications in MMC Table 19.402.9.E Water Quality Resource Area Requirements.
- Existing vegetation shall be protected and left in place wherever practicable. Work areas shall be carefully located and marked to reduce potential damage to the water quality resource area. Where existing vegetation has been removed, the site shall be revegetated as soon as practicable.
- Prior to construction the water quality resource area shall be flagged, fenced or otherwise marked and shall remain undisturbed except as may be allowed by this decision. Such markings shall be maintained until construction is complete.
- Appropriate site preparation and construction practices shall be followed to prevent erosion, pollution, sedimentation, or drainage of hazardous materials to the water quality resource area.
- Lights must be placed and hooded so that they do not shine directly into the water quality resource areas wherever practicable. Lights must provide the minimum level of lighting necessary for safe development operations and limited water quality resource area impacts.
- Storm water flows as a result of the proposed development within and to water quality resource areas shall not exceed pre-development flows. Storm water outfalls shall be appropriately designed to avoid erosion to stream banks or water quality resource area slopes.

Most of the standards in this section pertain to the development phase of the project and are appropriate as conditions of approval.

As conditioned, the City Council finds that these development standards will be met.

20. **HABITAT CONSERVATION AREAS:** The Planning Director's Interim Implementation Memo for Metro Title 13 Habitat Conservation Area (HCA) dated May 29, 2009 contains the approval criteria, application requirements, and development standards for development in habitat conservation areas.

The applicant submitted the required HCA materials and analysis for impacts to the banks of Kellogg Lake, Kronberg Park, and a small area of HCA on the west side of McLoughlin Blvd. Two separate HCA impact reports were completed by the applicant at the City's direction. One report focused on the impacts to Kronberg Park. The second report focused on the impacts to the northern and southern banks of Kellogg Lake in the UPRR right-of-way and to the small area of HCA on the west side of McLoughlin Blvd in the ODOT right-of-way. For purposes of this document, the HCA area in the ODOT right-of-way is called "Willamette HCA" because it is part of the mapped Willamette River floodplain. However, it is over 700 feet from the Willamette River and is bounded by McLoughlin Blvd on one edge and the freight rail tracks on another.

The City directed the applicant to evaluate the impacts to these areas separately because: (1) Kronberg Park is currently under—and will continue to be under—separate ownership, (2) Kronberg Park will not be permanently occupied or encumbered by the Kellogg Bridge, and (3) mitigation for HCA impacts in Kronberg Park are able to meet the City's clear and objective HCA development standards in Section 6. Evaluating the UPRR and ODOT rights-of-way area

separately from the Kronberg Park tax lots for this review enabled a more streamlined HCA review for Kronberg Park impacts.

Kronberg Park impacts are proposed to be evaluated and mitigated pursuant to Section 6 Development Standards. UPRR and ODOT rights-of-way impacts are proposed to be evaluated and mitigated pursuant to Section 7 Alternative Discretionary Development Standards due to the site constraints associated with these areas. Section 7 review requires more analysis and discretion, but also allows for more flexibility with respect to mitigation. In this instance, Section 7 review enables the applicant to propose mitigation plantings along the bank of Kronberg Park outside of the bridge construction limits to make up for sub-standard mitigation plantings underneath and next to the light rail bridge structure and in the Willamette HCA. Sub-standard mitigation plantings are proposed underneath and immediately adjacent to the light rail bridge structure for practical reasons (e.g. trees are not appropriate underneath a bridge); to accommodate access to the future pedestrian bridge; and in response to existing park conditions and possible future park development in Kronberg Park. Sub-standard mitigation plantings are proposed for the Willamette HCA due to the impracticality and unfeasibility of planting in this location.

Refer to Table 4 below for detailed findings pertaining to Section 6 review of impacts to and mitigation for Kronberg Park and Section 7 review of impacts to and mitigation for UPRR and ODOT rights-of-way.

As conditioned, the City Council finds that HCA impacts to Kronberg Park are allowed and that the proposed mitigation plan meets all applicable standards.

As conditioned, the City Council finds that the alternatives analysis and proposed mitigation plan for HCA impacts to the UPRR and ODOT rights-of-way meet all applicable approval criteria.

A. Application Requirements

The City's interim HCA regulations apply to all areas containing mapped habitat conservation areas outside of existing water quality resource areas. The applicant submitted all required information, or can be conditioned to submit all required information, a summary of which is provided below.

- Construction Management Plan pursuant to Section 5
- Detailed site plans showing HCA boundaries, existing conditions, and proposed temporary construction staging on Kronberg Park pursuant to Section 6
- Detailed site plans showing HCA boundaries, existing conditions, and proposed light rail bridge development pursuant to Section 7
- Impact evaluation, alternative analysis, and mitigation plan for proposed light rail bridge development pursuant to Section 7
- Boundary verification pursuant to Section 9

As conditioned, the City Council finds that the HCA application requirements will be met.

B. Development Standards and Habitat Friendly Development Practices

Applications for development or land disturbance on properties that contain water quality resource areas shall demonstrate compliance with the following standards:

- Disturbance area limitations
- Habitat protection during construction

- Design and construction practices to minimize hydrologic and wildlife corridor impacts
- Mitigation requirements

Most of the standards in this section pertain to the development phase of the project and are appropriate as conditions of approval.

As conditioned, the City Council finds that the HCA development standards will be met.

21. **COMMUNITY SERVICE USE:** MMC Subsection 19.904.4 contains the approval criteria for community service use (CSU) applications. An application for a CSU may be allowed if the following criteria are met:
- A. The building setback, height limitation, and off-street parking and similar requirements governing the size and location of development in the underlying zone are met. Where a specific standard is not proposed in the CSU, the standards of the underlying zone are met.
- The proposed use is for temporary construction staging for the Kellogg Bridge on the westernmost 50 feet of Kronberg Park. The applicant may need to expand the width of this staging area pursuant to Finding 21.D and associated conditions of approval. No permanent structures are proposed, and the site will be returned to a similar or better condition once construction is completed per the terms of the temporary construction easement between the City and TriMet.
- The City Council finds that this criterion is met.*
- B. Specific standards for the proposed uses as found in Subsections 19.904.7-11 are met.
- The only three applicable standards pertain to site improvements, noise, and lighting. Subsection 19.904.9.A requires that utilities, streets, or other improvements necessary for the use shall be provided by the agency constructing the use. Subsection 19.904.9.E requires that noise-generating equipment shall be sound-buffered when adjacent to residential areas. Subsection 19.904.9.F requires that lighting shall be designed to avoid glare on adjacent residential uses and public streets.
- The staging area requires access from McLoughlin Blvd. This right-of-way is under ODOT's jurisdiction. Any required improvements related to the proposed access point would need to be approved by ODOT. Construction impacts relating to noise and lighting will be minimized to the greatest extent practicable through TriMet's Conduct of Construction Plan and the City's construction and noise ordinances.
- As conditioned, the City Council finds that this criterion is met.*
- C. The hours and levels of operation of the proposed use are reasonably compatible with surrounding uses.
- The hours and levels of use of the staging area will vary over time. Construction impacts will be minimized to the greatest extent practicable through TriMet's Conduct of Construction Plan and the City's construction and noise ordinances. Normal operations will consist of 10 hour days, five days a week. Project needs may require some six-day work weeks. There may also be a need for some nighttime construction, such as girder erection over McLoughlin Blvd, due to jurisdictional requirements to minimize traffic impacts. Particular phases of construction will also result in varying levels of vehicular activity. Normal operations are expected to produce 30 vehicle trips/day. During peak operations, such as when major concrete pours are occurring, average trip generation might be nearer to 70 vehicle trips/day. Overall, due to the site's location near an

undeveloped and relatively unused open space area and adjacency to a freight rail bridge and State highway, the use of this site as a temporary construction staging area will have nominal impacts on surrounding uses.

The City Council finds that this criterion is met.

- D. The public benefits of the proposed use are greater than the negative impacts, if any, on the neighborhood.

The City Council interprets this criterion to address public benefits and negative impacts to a neighborhood based on a sliding scale, as all such benefits and impacts are not equal. Accordingly, in applying this criterion, the Council will give more weight to benefits and negative impacts that are more proximate to the proposed use, both chronologically and geographically.

The existence of the construction staging area results in the ability to build a bridge for light rail across Kellogg Lake. Associated with the ability for the light rail line to cross Kellogg Lake is the public benefit associated with an additional mode of transportation from south of Kellogg Lake to the areas served by light rail to the North of Kellogg Lake.

The public benefits resulting from use of this site as a staging area for construction of a portion of the PMLR project are expected to be substantial, both locally and regionally. They include a more efficient transit system, reduced automobile usage and associated reduction in vehicle emissions and congestion, improved access and mobility for residents, a significant increase in local construction jobs, an accessible connection to the region's light rail system, enhanced regional economic competitiveness, and eventual downtown economic benefits typically associated with transit-oriented development.

Negative impacts associated with the proposed staging area include construction equipment emissions, noise, dust, as well as the destruction of the park environment in the staging area and public access and use thereof during the entirety of the construction process. Impacts to the neighborhood also include additional traffic on surrounding streets associated with the transportation of workers and large equipment to and from the staging area.

The City Council interprets the HCA and WRQ mitigation requirements to be separate and distinct from the provisions addressing Community Service Uses. Said another way, compliance with the HCA and WQR mitigation requirements does not ensure an applicant of compliance with this criterion: To the extent that additional mitigation (beyond that required by the HCA and WQR) to ensure that the public benefit of the proposed use is greater than the negative impact to the neighborhood, conditions of approval under the Community Service Use provisions can be imposed to require mitigation in addition to the mitigation required under the HCA and WQR provisions.

Upon completion of construction, applicant will provide mitigation in order to offset some negative impacts associated with the destruction of the habitat, landscape, and value of the park as a public amenity, pursuant to the requirements of the WQR and HCA provisions of the Milwaukie Zoning Ordinance. The details of such mitigation are included in the findings addressing the WQR and HCA requirements. However, such mitigation does not alleviate the negative impacts to the neighborhood during the construction, do not address the loss of habitat and tree canopy on the site, and the benefits of such mitigation planting and landscaping are not immediately equal to the damage to the natural environment of Kronberg Park resulting from the construction staging.

In particular, such mitigation does not address or alleviate many impacts associated with the removal of the 36-inch Oregon white oak such as the loss of habitat, canopy, historic

resource and character, aesthetic value to public and park environment. For instance, the 12 replacement trees required to be planted under the HCA standards will not in the near term replace the loss of canopy associated with removal of the Oregon white oak. The importance of the Oregon white oak is further underscored by the letter from the Oregon Department of Fish and Wildlife ("ODFW") dated October 11, 2011, which states that the tree dates from before the founding of the community, and implores the City to preserve the tree unless "absolutely impossible."

The City Council finds that a condition of approval will ensure that the project meets this criterion. Therefore, City Council finds that the public benefits of the proposed use are greater than the negative impacts to the neighborhood.

As conditioned, the City Council finds that this criterion is met.

- E. The location is appropriate for the type of use proposed.

The temporary construction staging area being proposed for the bridge is immediately adjacent to the Kellogg Bridge site and has been minimized in size as much as possible so as not to impact Kronberg Park any more than necessary. A construction staging area on the north bank of Kellogg Lake was evaluated and rejected because of its more limited vehicular access and steep slopes. Off-site staging areas were also evaluated and rejected because of the number of additional vehicle trips that would be generated. The flat and accessible area within Kronberg Park adjacent to the construction site is the most logical location for construction staging and has the least impacts to the traveling public and surrounding uses. Unless otherwise specified in the temporary construction easement for use of a portion of Kronberg Park for staging, access to the staging area must be physically located within the easement area.

As conditioned, the City Council finds that this criterion is met.

22. Pursuant to Subsection 19.1001.7.E, the decision on this land use application shall expire and become void within the time periods specified in Subsection 19.1001.7.E.1 unless the review authority specifies a different expiration time period as allowed by Subsection 19.1001.7.E.2. Given the size, complexity, and phased nature of the proposal, the City Council finds that it is appropriate to extend the time period within which the applicant must obtain development permits from 2 years to 4 years, and within which the applicant must pass all final inspections from 4 years to 6 years, from the date of the land use decision on this application.

Table 1: Design Review Findings

MILWAUKIE CHARACTER GUIDELINES	
Applicant Information	Recommended Findings
a. Reinforce Milwaukie's Sense of Place = Strengthen the qualities and characteristics that make Milwaukie a unique place.	
<p>Milwaukie's history is largely formed and defined by its natural surroundings (hills, river, and lake) and its connections by road, rail, and the river. The project's parallel relationship to the existing rail trestle reinforces this transportation and technological history. Light rail is the steamship of the 21st century, and will provide Milwaukie with a new link to the region. It will provide unique views to the formative natural and urban areas that are Milwaukie of today, and will reinforce Milwaukie's qualities and characteristics into the future.</p>	<p>The overall design of the light rail bridge reinforces Milwaukie's sense of place as a small town with a long history of rail activity both in the form of freight rail (e.g. Union Pacific Railroad) and local and regional passenger rail (e.g. Portland Traction Company and Amtrak). As proposed, the light rail bridge connects Milwaukie to its neighbors to the south, which has the added benefit of minimizing the light rail footprint in the south downtown area. In other words, by traveling through Milwaukie, which requires a bridge over Kellogg Lake and McLoughlin Blvd, instead of terminating in Milwaukie, the additional infrastructure associated with a terminus is avoided. As proposed, the light rail bridge respects Milwaukie's sense of place by utilizing an existing rail corridor, designing a bridge with a modest horizontal profile, and using materials, such as weathered steel, that are visually compatible with the Kellogg Lake natural area.</p> <p><i>The proposal meets this guideline.</i></p>
b. Integrate the Environment = Building design should build upon environmental assets.	
<p>The design of the bridge respects the character of the natural area it crosses through its simple detailing, material selection, minimized structure, and careful placement of structural elements. Its presence will allow unique views to the environmental assets of Kellogg Lake, Kronberg Park, and Dogwood Park, and to the River and hills beyond. Removal of invasive plants and re-planting with appropriate native replacements will further enhance the immediate environmental quality. The potential future pedestrian bridge will further build on, support, and connect these central environmental assets.</p>	<p>As proposed, the design of the bridge respects the character of the Kellogg Lake natural area through its uncluttered design, earth-tone materials, and avoidance of in-water bridge supports. Unavoidable impacts to the lake and surrounding riparian and habitat areas will be mitigated. All mitigation plans require Type III review.</p> <p><i>The proposal meets this guideline.</i></p>
c. Promote Linkages to Horticultural Heritage = Celebrate Milwaukie's heritage of beautiful green spaces.	
<p>The bridge, by making a visual connection between the green areas to the north and to the south of Kellogg lake, and providing new and unique views for passengers above, celebrates those spaces. The design of the bridge also acknowledges and celebrates Milwaukie's open space heritage through its simple detailing, sympathetic materials and</p>	<p>As proposed, the light rail bridge provides passengers with unique views of Dog wood Park, Kronberg Park, Kellogg Lake, and the Willamette River to the west that are not currently available by any other means.</p> <p>Additionally, the future proposed pedestrian bridge over Kellogg Lake would connect parks and natural areas on both sides of Kellogg Lake in a way that hasn't occurred in decades. In addition to these localized</p>

<p>colors, minimized structure, and careful placement of structural elements. Its presence will allow unique views to Kellogg Lake, Kronberg Park, and Dogwood Park; as well as to the River, the Trolley Trail, and the hills beyond.</p>	<p>connections, the future pedestrian bridge would increase passive and active recreational opportunities in this area and afford connections to other open spaces that are further afield, such as Spring Park in Island Station.</p> <p><i>The proposal meets this guideline.</i></p>
<p>d. Establish or Strengthen Gateways = Projects should use arches, pylons, arbors, or other transitions to mark special or primary entries and/or borders between public and private spaces.</p>	
<p>The careful design of the bridge abutments, and their contrast with the ribbon like character of the bridge itself, heralds and marks the public and private spaces below.</p> <p>The pylons too, with their minimal scale, texture, and material, contribute to marking the transitions between these various zones, spaces, and ownerships.</p>	<p>As proposed, the jump span over Lake Rd along with the abutment wall and support columns on either side create a unique passageway through which drivers, bicyclists, and pedestrians can travel. Though not designed with this purpose in mind, this passageway serves as a sort of a gateway into the south downtown area. Specific design features of this passageway are evaluated under other guidelines.</p> <p><i>The proposal meets this guideline.</i></p>
<p>e. Consider View Opportunities = Building designs should maximize views of natural features or public spaces.</p>	
<p>The bridge will create new and very different viewpoints of Kellogg Lake, Kronberg Park, and the river and Greenway for the many passengers riding it each day. The bridge itself will enhance the views of the Lake and the Park, by providing a well-proportioned, designed, and detailed structure as a backdrop for views from the south, and from the future light rail station to which it will connect.</p>	<p>As proposed, the light rail bridge provides passengers with unique views of Dogwood Park, Kronberg Park, Kellogg Lake, and the Willamette River to the west that are not currently available by any other means.</p> <p>Additionally, the future proposed pedestrian bridge over Kellogg Lake would provide bicyclists and pedestrians with unique views of these areas as well.</p> <p><i>The proposal meets this guideline.</i></p>
<p>f. Consider Context = A building should strengthen and enhance the characteristics of its setting, or at least maintain key unifying patterns.</p>	
<p>The bridge will establish a new pattern of columns and spans that parallels, and is in plane with, the historic railroad trestle, thus providing both a modern contrast and a formal and utilitarian consistency. The bridge will, additionally, visually tie one side of Kellogg Creek/Lake to the other, and do so in a manner that provides an elegant and simple backdrop for the natural qualities and diversity of the Lake area and Kronberg Park.</p>	<p>As proposed, the light rail bridge maintains roughly the same horizontal clearance as the freight rail bridge over Lake Rd and McLoughlin Blvd and has roughly the same horizontal profile as the freight rail bridge over Kellogg Lake. As proposed, the design of the bridge respects the character of the Kellogg Lake natural area through its uncluttered design, earth-tone materials, and avoidance of in-water bridge supports.</p> <p><i>The proposal meets this guideline.</i></p>
<p>g. Promote Architectural Compatibility = Buildings should be “good neighbors.” They should be compatible with surrounding buildings by avoiding disruptive excesses. New buildings should not attempt to be the center of attention.</p>	
<p>The sleek ribbon like character of the bridge fits quietly into its surroundings. Rather than calling attention to itself thru aggressive structure or excessive detail, the bridge</p>	<p>As proposed, the tubs provide the main horizontal element of the light rail bridge both structurally and visually. Tubs are proposed instead of I-beams in order to provide a clean and thin bridge profile, an uncluttered</p>

<p>contributes elegantly to the visual character of the site. In contrast to the busier and more rustic railroad trestle, the new bridge, with its simple stoic form and structure, further reinforces its quieter neighborliness.</p>	<p>bridge underside, and few opportunities for bird perching. The use of weathering steel allows for the creation of a visually coherent ribbon-like structure with an organic, earth-tone quality. Cantilevered sides also serve to minimize its boxy appearance. The use of steel tubs throughout avoids a change in bridge materials since the portion of the bridge over McLoughlin Blvd must be constructed of steel. Overall, these design and material choices serve to create a visually low-key bridge with simple lines that do not compete with the neighboring freight rail bridge.</p> <p>In contrast to the light rail bridge's simple horizontal lines, the design of the future proposed pedestrian bridge over Kellogg Lake incorporates and celebrates the intricate and angular support beam pattern present in the freight rail bridge.</p> <p><i>The proposal meets this guideline.</i></p>
<p><i>h. Preserve Historic Buildings = Historic building renovation, restoration, or additions should respect the original structure.</i></p>	
<p>No historic buildings are affected by the Kellogg Bridge application.</p>	<p><i>This guideline is not applicable.</i></p>
<p><i>i. Use Architectural Contrast Wisely = Contrast is essential to creating an interesting urban environment. Used wisely, contrast can provide focus and drama, announce a socially significant use, help define an area, and clarify how the downtown is organized.</i></p>	
<p>The clean orthogonal design of the bridge creates an interesting backdrop with the natural areas it spans, and a gateway between the natural areas and the more urban downtown.</p> <p>The long span bridge structure reflects the advancement in structural materials since the construction of the adjacent railroad bridge. Unlike the railroad structure, the new bridge will clear span Kellogg Creek with environmentally sensitive materials and minimum structure, a clear symbol and manifestation of our increasing awareness of the need to protect and improve fisheries and other habitat.</p>	<p>As proposed, the design of the light rail bridge uses contrast in an intentional and thoughtful manner throughout.</p> <ul style="list-style-type: none"> • Round concrete vertical columns contrast with the horizontal lines of the weathering steel tubs. The lighter-colored concrete columns fade into the background and allow the earth-toned steel to move through the landscape as a thin visually-coherent ribbon. • Vertical offsets on the round concrete columns serve to create visual interest (e.g. depth and shadow), minimize width, and channel any rust caused by the weathering steel in a decorative manner. However, more information is needed to ensure that the vertical offsets contribute to the bridge's overall design and the pedestrian environment. • Open-face I-beam column caps add visual interest without detracting from the smooth clean lines of the tubs that they support. • The textured surfaces of the pre-cast concrete abutment wall (north side of Lake Rd) and the supporting set of columns (south side of Lake Rd) for the jump span contrast with the smooth weathering steel face of the jump span. The

	<p>textured surfaces on either side of the jump span unify the space and create visual interest at the pedestrian level. However, more information is needed to ensure that the textured wall and column surfaces contribute to an attractive pedestrian environment.</p> <p><i>As conditioned, the proposal meets this guideline.</i></p>
<p><i>j. Integrate Art = Public art should be used sparingly. It should not overwhelm outdoor spaces or render buildings mere backdrops. When used, public art should be integrated into the design of the building or public open space.</i></p>	
<p>TriMet's public art program installs a variety of artwork at appropriate locations along its light rail lines. Art is intended be installed at the nearby stations, as well as on the bridge itself. The art is being developed to be sensitively integrated, and specifically respectful of this guideline. The art is not specifically being reviewed through this process: it is being vetted through the Public Art process, with input from the public and respective Commissions in order to ensure the result is appropriate and contributory.</p>	<p>The proposal includes public art work on a portion of the structure. The current concept places a number of abstract forms on the surface of the tubs, creating a subtle, integrated project. Though the details of the art concept are still evolving, it is one that will not overwhelm the bridge itself nor neighboring places. TriMet has convened a Public Art Advisory Committee (PAAC) as part of the Portland Milwaukie Light Rail project. The PAAC is a citizen committee charged with artist selection and final review and approval of all art concepts along the alignment. It has representatives from along the entire alignment including several from the Milwaukie and Oak Grove areas.</p> <p><i>The proposal meets this guideline.</i></p>

<p style="text-align: center;">PEDESTRIAN EMPHASIS GUIDELINES</p>	
<p>Applicant Information</p>	<p>Recommended Findings</p>
<p><i>a. Reinforce and Enhance the Pedestrian System = Barriers to pedestrian movement and visual and other nuisances should be avoided or eliminated, so that the pedestrian is the priority in all development projects.</i></p>	
<p>The Crossing structure preserves all existing pedestrian paths in the area and therefore creates no barrier to pedestrian movement. Instead of creating visual nuisances, the project creates a visual attraction that will enhance the pedestrian experience. The potential future pedestrian bridge will potentially further enhance the prioritization of the pedestrian movement, resulting in a simple and generous connection from Lake Road, across Kellogg Creek through to the Trolley Trail.</p>	<p>As proposed, travel on the light rail bridge is restricted to light rail trains and passengers. However, the applicant has included a design for a future pedestrian bridge over Kellogg Lake in its application as a way to advance the design and review process for this bridge at this time. This would allow for the possibility of constructing the pedestrian bridge at the same time as the light rail bridge, which would result in significant time and cost savings for the pedestrian bridge project.</p> <p>The applicant is not proposing to construct the pedestrian bridge as part of the Portland Milwaukie Light Rail project due to a lack of funding. However, the applicant will allow for the construction of the pedestrian bridge by any entity if and when funding is found. Moreover, the Planning Commission requires that the applicant construct the pedestrian bridge if funding is secured on or before Feb 1, 2013 for construction before Sep 30, 2013.</p> <p>As proposed, the light rail bridge does not introduce any new barriers to pedestrian movement. Bridge</p>

	<p>designers carefully considered impacts to pedestrian sight lines and safety issues when placing columns. Column widths were minimized as much as possible and CPTED (crime prevention through environmental design) principles were applied throughout.</p> <p>As proposed, the pedestrian experience is enhanced by vertical board-form column treatments and horizontal bands of textured wall treatments on either side of the jump span over Lake Rd.</p> <p>As conditioned, the pedestrian experience is improved to the greatest extent possible within the constraints of the Land Use Final Order.</p>
<p>b. Define the Pedestrian Environment = Provide human scale to the pedestrian environment, with variety and visual richness that enhance the public realm.</p>	
<p>While the bridge is a large structure, design elements such as the piers and guardrails have been detailed to provide human scale. Materials have been chosen - concrete contrasting with weathering steel, light guardrails, simple elegant light standards, details at the column caps and bases- to further add to the richness and enhancement of the public realm.</p>	<p>As proposed, the light rail bridge introduces human-scaled design treatments where the bridge elements intersect with the pedestrian environment.</p> <ul style="list-style-type: none"> • The widths of the columns have been minimized as much as possible while still providing the appropriate amount of structural support. Vertical board-form treatments serve to further minimize their bulk and create visual interest (e.g. depth and shadow) at the pedestrian level. However, more information is needed to ensure that the vertical treatments are appropriately-scaled and interesting at the pedestrian level. • The textured wall surfaces of the pre-cast concrete abutment wall (north side of Lake Rd) and the jump span supporting columns (south side of Lake Rd) unify the space and create visual interest at the pedestrian level. However, more information is needed to ensure that the proposed lighting and textured wall and column surfaces contribute to an attractive pedestrian environment. <p><i>As conditioned, the proposal meets this guideline.</i></p>
<p>c. Protect the Pedestrian from the Elements = Protect pedestrians from wind, sun, and rain.</p>	
<p>The bridge will protect pedestrians from wind, sun, and rain in two different respects. Boarding a train and riding from Milwaukie to points north and south will provide one form of protection. So too will the bridge itself: passing under the bridge - whether by Lake Road, Kronberg Park, or elsewhere - the bridge will provide protection from the elements above.</p>	<p>As proposed, travel on the light rail bridge is restricted to light rail trains and passengers. However, the future proposed pedestrian bridge over Kellogg Lake is naturally protected from some elements by the light rail bridge above it.</p> <p><i>The proposal meets this guideline.</i></p>
<p>d. Provide Places for Stopping and Viewing = Provide safe, comfortable places where people can stop to sit and rest, meet and visit with each other, and otherwise enjoy the downtown surroundings.</p>	
<p>The bridge provides a link from the Park</p>	<p>As proposed, travel on the light rail bridge is restricted</p>

<p>Avenue park and ride to the light rail station, both of which have stopping, resting, and meeting areas. The bridge itself has no formal pedestrian places, but it does make the station pedestrian areas more accessible and helps to concentrate activity at those areas. The Lake Road overpass will also provide a place where weather protection and views down to the Lake and Park may afford meeting and visiting opportunities. Lighting provided under the overpass will ensure this area is comfortable and safe at all hours.</p>	<p>to light rail trains. Passengers are able to sit, meet, and visit with other passengers while riding the light rail system.</p> <p>As proposed, the future proposed pedestrian bridge over Kellogg Lake is designed as a transportation facility and does not include benches for resting or sitting. However, as a pedestrian facility, people would be able to socialize with one another and stop to admire the views while on the bridge.</p> <p><i>The proposal meets this guideline.</i></p>
<p>e. Create Successful Outdoor Spaces = Spaces should be designed for a variety of activities during all hours and seasons.</p>	
<p>By raising the light rail system above grade, the bridge allows for a flexible layering of uses during all hours and all seasons.</p>	<p>No outdoor spaces are proposed as part of the Kellogg Bridge application beyond the enclosure of a short length of Lake Rd by the jump span, abutment wall, and column walls. Specific design features of these walls are evaluated under other more relevant guidelines. Use of Lake Rd by the traveling public will not change.</p> <p><i>The proposal meets this guideline.</i></p>
<p>f. Integrate Barrier-Free Design = Accommodate handicap access in a manner that is integral to the building and public right-of-way and not designed merely to meet minimum building code standards.</p>	
<p>Tri Met consistently manifests an exceptional barrier free design integrated into all of its projects. The bridge is a part of a region wide accessible transportation network, and all elements associated with the project will exceed minimum standards, both technically and aesthetically.</p>	<p>ADA standards are not applicable to the light rail bridge, as it is only for use by light trains. As proposed, the future pedestrian bridge has a flat concrete walking surface that meets ADA standards. Future path connections to this bridge are not part of this proposal and are not being evaluated at this time.</p> <p><i>The proposal meets this guideline.</i></p>

<p style="text-align: center;">ARCHITECTURE GUIDELINES</p>	
<p>Applicant Information</p>	<p>Recommended Findings</p>
<p>a. Corner Doors = Locate entry doors on corners of commercial and retail buildings wherever possible.</p>	
<p>No doors are proposed as part of the Kellogg Bridge application.</p>	<p><i>This guideline is not applicable.</i></p>
<p>b. Retail and Commercial Doors = Doors should create an open and inviting atmosphere.</p>	
<p>No doors are proposed as part of the Kellogg Bridge application.</p>	<p><i>This guideline is not applicable.</i></p>

<p>c. Residential Doors = Residential front doors should define a friendly transition between the public and the private realm.</p>	
<p>No doors are proposed as part of the Kellogg Bridge application.</p>	<p><i>This guideline is not applicable.</i></p>
<p>d. Wall Materials = Use materials that create a sense of permanence.</p>	
<p>TriMet consistently applies the use of long lasting, high quality materials to ensure low maintenance costs for its facilities and enhance the quality of the communities. In this case, the use of concrete, weathering steel and galvanized metal have been designed and detailed in a manner that will ensure that the structure is of a consistent and well maintained quality, both physically and visually for the life of the project.</p>	<p>As proposed, the abutment walls and jump span supporting columns that enclose a portion of Lake Rd are made of concrete.</p> <p><i>The proposal meets this guideline.</i></p>
<p>e. Wall Structure = Use scale defining devices to break up the longitudinal dimensions of buildings, creating a comfortable sense of enclosure by establishing an uninterrupted street edge.</p>	
<p>This guideline applies exclusively to buildings. However, this portion of the project does include a street-enclosing wall element: the portion of the abutment under the Lake Road jump span. This wall is to be crafted of faceted pre-cast concrete panels that will provide a quality texture and finish fitting for this public passageway. The faceted texture contributes to its "human scale" and, coupled with lighting under the span in this location, will result in a wall and space that is safe and comfortable at all times.</p>	<p>As proposed, the abutment wall (north side of Lake Rd) and jump span column treatments (south side of Lake Rd) are made of pre-cast concrete and textured with a formliner that resembles a rusticated masonry surface to create a unified appearance and visual interest at the pedestrian level. However, more information is needed to ensure that the textured wall and column surfaces are appropriately-scaled for visual interest, effectively break up the longitudinal dimensions of these structures, and sufficiently hide the form pattern.</p> <p><i>As conditioned, the proposal meets this guideline.</i></p>
<p>f. Retail Windows =Use windows that create an open and inviting atmosphere.</p>	
<p>No retail windows are proposed as part of the Kellogg Bridge application.</p>	<p><i>This guideline is not applicable.</i></p>
<p>g. Residential Bay Windows =Provide bays to add variety and visual interest to façade and interesting views and outdoor spaces from the interiors.</p>	
<p>No residential bay windows are proposed as part of the Kellogg Bridge application.</p>	<p><i>This guideline is not applicable.</i></p>
<p>h. Silhouette and Roofline = Create interest and detail in silhouette and roofline.</p>	
<p>The ribbon of steel and concrete that forms the primary character of the Kellogg Creek crossing is enhanced by the careful modulation of the pillars and railings, and the rhythm of the catenaries, and railings. These elements are enhanced by the more subtle play of light and shadow and color that will result from the weathering steel and its</p>	<p>As proposed, the tubs provide the main horizontal element of the light rail bridge both structurally and visually. Tubs are proposed instead of I-beams in order to provide a clean and thin bridge profile. The use of weathering steel allows for the creation of a visually coherent ribbon-like structure with an organic, earth-tone quality. Cantilevered sides also serve to minimize its boxy appearance. Overall, these design and</p>

<p>various connections and details, and the contrast in color and texture between the concrete and weathering steel. These elements and treatments cumulatively will contribute interest and detail in silhouette and roofline.</p>	<p>material choices serve to create a bridge with a simple, elegant silhouette. <i>The proposal meets this guideline.</i></p>
<p><i>i. Rooftops = Integrate rooftop elements into building design.</i></p>	
<p>No rooftops are proposed as part of the Kellogg Bridge application.</p>	<p><i>This guideline is not applicable.</i></p>
<p><i>j. Green Architecture = New construction or building renovation should include sustainable materials and design.</i></p>	
<p>TriMet consistently applies the use of long lasting, high quality materials to ensure low maintenance costs for its facilities and enhance the quality of the communities. In this case, the use of concrete, weathering steel and galvanized metal have been designed and detailed in a manner that will ensure that the structure is sustainable by having permanent, quality materials with low life cycle costs. The steel elements, as well as the concrete, will include recycled content, and have been structurally designed to be as efficient as possible. Finally, a majority of the materials would be potentially recyclable - most readily the predominant use of steel - should the project ever have an end-of-use.</p>	<p>As proposed, the light rail bridge will be constructed of quality, durable materials with low lifecycle costs. The steel elements, as well as the concrete, include recycled content, and have been structurally designed to be as efficient as possible. Furthermore, a majority of the materials are potentially recyclable should the project ever have an end-of-use.</p> <p>Though not specifically described in the application, the applicant has indicated elsewhere that fluorescent tubes are proposed for the light fixtures underneath the jump span. While not specifically prohibited by the design guidelines, fluorescent tubes do not necessarily meet the intent or spirit of this guideline given the recent advancements in lighting technology. Consequently, more information is needed about the viability of other light fixtures and how they compare with fluorescent tubes with respect to energy efficiency and environmental sustainability to ensure this guideline is met.</p> <p><i>As conditioned, the proposal meets this guideline.</i></p>
<p><i>k. Building Security = Buildings and site planning should consider and employ techniques that create a safe environment.</i></p>	
<p>Safety is a prime design consideration for Tri Met in all its projects. TriMet's safety and security committee has reviewed the project and determined that in both construction and use, the anticipated construction techniques and overall design will contribute to a safe environment. TriMet has included intrusion detection on the bridge, to deter trespass, and will install CCTV at both ends of the bridge for an added layer of security.</p>	<p>As proposed, the light rail bridge includes safety railings on both sides for maintenance workers, intrusion detection devices on the bridge to deter trespassers, and CCTV surveillance.</p> <p>As proposed, the area underneath the jump span at Lake Rd includes lighting at sufficiently high enough levels for safe vehicular and pedestrian travel.</p> <p>However, more information is needed about what kinds of safety measures will be employed around the jump span columns to prevent climbing on the support beams and to minimize hiding places.</p> <p><i>As conditioned, the proposal meets this guideline.</i></p>

<i>I. Parking Structures = Parking structures should be designed so that they appear like most other buildings in the downtown.</i>	
No parking structures are proposed as part of the Kellogg Bridge application.	<i>This guideline is not applicable.</i>

LIGHTING GUIDELINES

Applicant Information	Recommended Findings
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a. Exterior Building Lighting = Architectural lighting should be an integral component of the façade composition.

<p>There is no architectural lighting intended for the bridge overall, nor would it be appropriate in this environmentally sensitive area. However, lighting is being provided under the Lake Road jump span. The lighting fixture has a minimum profile, has been discretely placed, and is of a finish that is compatible with the surrounding materials. It is also thematically consistent with other lighting and hardware elements incorporated elsewhere in the rail project design, and is also consistent with typical Milwaukie street elements. The light will wash the textured wall in a manner that heightens the aesthetic experience of the wall at night.</p>	<p>As proposed, the area underneath the jump span at Lake Rd includes 4 Guth light fixtures mounted at or near the top of the abutment wall and each of the supporting columns. The applicant’s photometric studies indicate that the fixtures would light this area to an average level of 5.10 foot candles. The applicant’s narrative also states that the fixtures would wash the concrete wall and column surfaces, which are proposed to have horizontal bands of rock-textured surface treatments, creating both a visually interesting and safe pedestrian experience.</p> <p>The proposed lighting level creates a safe pedestrian environment from a purely technical standpoint. However, more information is needed to better understand how the proposed lighting would create a comfortable and attractive pedestrian environment including, but not limited to:</p> <ul style="list-style-type: none"> • How the light from the light fixtures interacts with the underside of the jump span. • How the light from the light fixtures enhances the proposed wall treatments. • How the light fixtures compliment the style of the proposed wall treatments. • The degree to which the light fixtures are tamper resistant. <p>No lighting is proposed on the light rail bridge or on the future pedestrian bridge at this time. Lighting on the light rail bridge is neither necessary nor appropriate, but energy-efficient and wildlife-friendly lighting on the pedestrian bridge would be desirable.</p> <p><i>As conditioned, the proposal will meet this guideline.</i></p>
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b. Parking Lot Lighting = Ornamental street lights should be used to be compatible with downtown streetlight standards identified in the Public Area Requirements.

No parking lots are proposed as part of the Kellogg Bridge application.	<i>This guideline is not applicable.</i>
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<p>c. Landscape Lighting = Lighting should be used to highlight sidewalks, street trees, and other landscape features. Landscape lighting is especially appropriate as a way to provide pedestrian safety during holiday periods.</p>	
<p>Lighting is provided under the Lake Road jump span, contributing to the comfort and safety of this street/sidewalk area. There is no other architectural or landscape lighting intended for the bridge, as it would not be appropriate in this environmentally sensitive area.</p>	<p>No landscape lighting is proposed as part of the Kellogg Bridge application. <i>This guideline is not applicable.</i></p>
<p>d. Sign Lighting = Sign lighting should be designed as an integral component of the building and sign composition.</p>	
<p>No signs are proposed as part of the Kellogg Bridge application.</p>	<p><i>This guideline is not applicable.</i></p>

SIGN GUIDELINES	
Applicant Information	Recommended Findings
a. Wall Signs	
b. Hanging or Projecting Signs	
c. Window Signs	
d. Awning Signs	
e. Information and Guide Signs	
f. Kiosks and Monument Signs	
g. Temporary Signs	
<p>No signs are proposed as part of the Kellogg Bridge application.</p>	<p><i>These guidelines are not applicable.</i></p>

Table 2: Willamette Greenway Findings

MMC Subsection 19.401.6 – APPROVAL CRITERIA		
The following shall be taken into account in the consideration of a greenway conditional use.		
	Criteria	Findings
A.	<p>Whether the land to be developed has been committed to an urban use, as defined under the State Willamette River Greenway Plan;</p>	<p>An urban use, as defined in the State Willamette Greenway Plan, is a use that is part of the built environment and that is not natural, rural, or agricultural in character. The north end of the Kellogg Bridge site is in the south downtown area, which has been committed to an urban use for over 150 years. The bridge crosses Lake Rd and parallels the existing freight rail line as it crosses Kellogg Lake and McLoughlin Blvd. Kellogg Lake is a manmade lake that is dammed further downstream where it flows underneath McLoughlin Blvd. On the south side of Kellogg Lake is Kronberg Park. Kronberg Park is an undeveloped open space area that was</p>

		<p>used as a construction dumping site in the 1950's and is currently overrun with nonnative and invasive species along its banks. The bridge continues southward where it turns to the east, leaving the freight rail corridor behind and running parallel to McLoughlin Blvd, until its terminus at Park Ave. In summary, the Kellogg Bridge site has been the location of urban transportation infrastructure and urban open spaces for quite some time.</p> <p><i>The proposal meets this criterion.</i></p>
<p>B.</p>	<p>Compatibility with the scenic, natural, historic, economic, and recreational character of the river;</p>	<p>Kellogg Bridge, its associated staging area, and the future pedestrian bridge are compatible with the character of the area as described both here and in the Design Guidelines findings in Table 1. Both bridges will create new views to the Willamette River, Kellogg Lake, and Kronberg Park. Removal of invasive species and mitigation plantings will improve the scenic and environmental qualities of the area. The light rail bridge, which is immediately adjacent to the existing historic railroad trestle, builds on the role that both the rail and the river played in the history of Milwaukie's historic development, thus referencing Milwaukie's historical connection to the Willamette River. Lastly, the new bridge is part of a regional transit system that will bring new economic, recreational, and tourist activity to Milwaukie and the river.</p> <p><i>The proposal meets this criterion.</i></p>
<p>C.</p>	<p>Protection of views both toward and away from the river;</p>	<p>Much of the bridge will not be viewable from the Willamette River, nor will it obscure views toward the river, due to the presence of the existing freight rail trestle. As proposed, steel tubs provide the main horizontal element of the light rail bridge both structurally and visually. Use of steel reduces the thickness of the structure, creating a bridge with a thin profile that minimizes the blocking of any current views. Use of weathering steel allows the bridge to blend in with the natural setting around Kellogg Lake and any views beyond.</p> <p>The light rail bridge will provide passengers with unique views of Dogwood Park, Kronberg Park, Kellogg Lake, and the Willamette River to the west that are currently not available by any other means. Additionally, the future pedestrian bridge over Kellogg Lake would provide bicyclists and pedestrians with unique views of these areas as well.</p> <p>Due to the bridge's impacts on the water quality resource and habitat conservation areas on either side of Kellogg Lake, natural resource mitigation is required and is detailed elsewhere in this document. The proposed mitigation plan includes native plantings between Kellogg Lake's ordinary high water and Kronberg Park's top of bank. In order to ensure that these mitigation plantings balance ecological restoration with future park development and the desire to maintain some views to Kellogg Lake, a more detailed tree planting plan for Kronberg Park is necessary.</p> <p><i>As conditioned, the proposal meets this criterion.</i></p>
<p>D.</p>	<p>Landscaping, aesthetic enhancement, open space, and vegetation between the activity and the river, to the maximum</p>	<p>The proposal includes revegetation of areas disturbed during construction of the Kellogg Bridge and mitigation plantings to offset the temporary and permanent impacts caused by the bridge and its associated staging area. The proposal indicates that the areas underneath the bridge between Lake Rd and McLoughlin Blvd and</p>

	extent practicable;	<p>outside of the mitigation plan area will include landscaping, but no specific landscaping plan was included in the application. A landscaping plan needs to be provided for these areas that shows how they will be landscaped to the maximum extent practicable.</p> <p><i>As conditioned, the proposal meets this criterion.</i></p>
E.	Public access to and along the river, to the greatest possible degree, by appropriate legal means;	<p>The light rail bridge will not block any access that currently exists to Kellogg Lake or the Willamette River. The light rail station in downtown Milwaukie will be located just two blocks from Riverfront Park, which provides direct legal access to the Willamette River. The light rail bridge has also been engineered to accommodate a future pedestrian bridge, which will provide additional access through and to the greenway area along Kellogg Lake and in Kronberg Park.</p> <p><i>The proposal meets this criterion.</i></p>
F.	Emphasis on water-oriented and recreational uses;	<p>The light rail bridge is restricted to light rail trains and passengers. However, new views of Kellogg Lake and the Willamette River from the light rail bridge may attract new users to the area. The future pedestrian bridge will provide residents and visitors with new recreational opportunities and connections.</p> <p><i>The proposal meets this criterion.</i></p>
G.	Maintain or increase views between the Willamette River and downtown;	<p>The light rail bridge will provide passengers with unique views of downtown Milwaukie, including Dogwood Park, Kronberg Park, Kellogg Lake, and the Willamette River to the west that are currently not available by any other means. Additionally, the future pedestrian bridge over Kellogg Lake would provide bicyclists and pedestrians with unique views of these areas as well. Neither bridge will block views between the Willamette River and downtown Milwaukie.</p> <p><i>The proposal meets this criterion.</i></p>
H.	Protection of the natural environment according to regulations in the Natural Resource overlay Zone;	<p>Kellogg Bridge, its associated staging area, and the future pedestrian bridge are all subject to the City's water quality resource and habitat conservation area regulations. See Tables 3 and 4 below for detailed findings related to compliance with these regulations.</p> <p><i>The proposal meets this criterion.</i></p>
I.	Advice and recommendations of the Design and Landmark Committee, as appropriate;	<p>The Design and Landmarks Committee (DLC) reviewed the Kellogg Bridge and future pedestrian bridge design during a series of informal advisory meetings. The proposal was substantially modified and improved in response to these meetings. Additionally, the DLC evaluated both bridges at a formal design review meeting on October 17, 2011 and recommended findings and conditions of approval that have been incorporated into the final findings and conditions of approval forwarded to the Planning Commission for their consideration on November 8, 2011.</p> <p><i>The proposal meets this criterion.</i></p>
J.	Conformance to applicable Comprehensive Plan	<p>The applicable Comprehensive Plan Policies are individually addressed below in the next section of this table.</p> <p><i>The proposal meets this criterion.</i></p>

	policies;	
K.	The request is consistent with applicable plans and programs of the Division of State Lands;	<p>The entire PMLR project was referred to the Division of State Lands (DSL), which reviewed the project and had no objections. A Joint Permit Application was submitted to DSL and US Army Corp of Engineers (USACOE) on June 30, 2010. DSL issued a Removal/Fill permit for the project on November 17, 2010, while the USACOE issued a Section 404 permit on June 17, 2011, which required DSL approval/consultation prior to issuance.</p> <p><i>The proposal meets this criterion.</i></p>
L.	A vegetation buffer plan meeting the conditions of Subsections 19.401.8.A through C.	<p>A water quality resource report and mitigation plan has been provided that satisfies the greenway vegetation buffer plan requirements.</p> <p><i>The proposal meets this criterion.</i></p>

MMC Subsection 19.401.6.J – CONFORMANCE TO APPLICABLE COMPREHENSIVE PLAN POLICIES

The following comprehensive plan policies have been found to be applicable.

	Policy	Findings
	<p>Chapter 1: Citizen Involvement</p> <ul style="list-style-type: none"> • Objective #2 (Public Participation) • Objective #3 (Communication) 	<p>This City and TriMet have provided substantial and multiple opportunities for citizen involvement, including but not limited to community meetings, stakeholder meetings, and work sessions with the Design and Landmarks Committee, Planning Commission, and City Council. All meetings have been broadly advertised and widely attended. Additionally, the City and TriMet have maintained web sites with up-to-date project information, staffed information booths at community events, and drafted press releases and newsletter articles on a regular basis.</p> <p><i>The proposal conforms with this policy and its objectives.</i></p>
	<p>Chapter 3: Environmental and Natural Resources</p> <p>Natural Hazards Element</p> <ul style="list-style-type: none"> • Objective #1 (Floodplain) • Objective #2 (Seismic Conditions) <p>Open Spaces, Scenic Resources, and Natural Resources Element</p> <ul style="list-style-type: none"> • Objective #1 (Open Space) • Objective #2 (Natural 	<p>Natural Hazards Element:</p> <p>The two sets of columns on either side of Kellogg Lake are located above ordinary high water but within the 100-year floodplain. The project has been designed to ensure elements within the floodplain have been minimized, and will be unaffected by any future inundation. The project has been engineered to meet or exceed all applicable seismic requirements.</p> <p>Open Spaces, Scenic Resources, and Natural Resources Element: Kellogg Lake is identified in Appendix 2 as Site #22 with riparian, habitat, and scenic values.</p> <p>The light rail bridge, its associated staging area, and the future pedestrian bridge have been designed to minimize impacts to Kellogg lake and the surrounding natural areas. No in-water piers are proposed, and the light rail bridge has been structurally designed</p>

<p>Resource Areas)</p> <ul style="list-style-type: none"> • Objective #3 (Scenic Areas) <p>Air, Water, and Land Resources Quality Element</p> <ul style="list-style-type: none"> • Objective #1 (Regional Air Quality) • Objective #2 (Local Air Quality) • Objective #3 (Noise) • Objective #4 (Water Quality) <p>Appendix 2: Kellogg Lake identified as Site #22 with riparian, habitat, and scenic values</p>	<p>to accommodate a pedestrian bridge without increasing the overall footprint of the bridge structure. Structural elements have been minimized as much as possible to minimize view impacts within and through the greenway area. To the extent that protected natural resource areas are affected, they will be enhanced through the removal of invasive and non-native plantings, the introduction of new appropriate riparian habitat, and the removal of approximately 12 derelict piles from Kellogg Lake. The removal of the derelict piles will restore approximately 60 square feet of Essential Fish Habitat since the piles currently provide perches for piscivorous birds, leach contaminants, and inhibit natural reclamation of shallow water habitat. In-water Best Management Practices will be utilized to prevent downstream turbidity during construction of the bridge and removal of the derelict piles. In-water work will occur only during the legally specified in-water work time period.</p> <p>Air, Water, and Land Resources Quality Element: The light rail bridge is part of a regional rail system that is a fundamental strategy for improving air quality, both regionally and locally, and is a cornerstone element of the Regional Non-Attainment and Air Quality Maintenance Plans of Metro and DEQ. Shifting transportation modes from automobile to rail has yielded significant positive air quality results elsewhere in the region. The new PMLR line is expected to build on that success.</p> <p>As a result of the project’s noise analysis, noise reduction has been integrated into the project through the introduction of sound walls on private property and on the Kellogg Bridge itself. Homes identified by the analysis will receive upgrades to windows and insulation, as necessary, to reduce noise to acceptable levels per federal guidelines for transit projects. Additionally, the anticipated reduction of vehicle traffic along this corridor will further reduce noise at the local level.</p> <p>The habitat value improvements in the vicinity of Kellogg Lake will contribute to the quality of that resource. The bridge itself has been designed to minimally impact the lake through efficient design, limitations on in-water work, the placement of permanent structural elements outside of the water resource, and the removal of 12 derelict piles.</p> <p><i>The proposal conforms with this policy and its objectives.</i></p>
<p>Chapter 4: Land Use</p> <p>Economic Base and Industrial/Commercial Land Use Element</p> <ul style="list-style-type: none"> • Objective #1 (Economic Development) • Objective #12 (Town Center) 	<p>Economic Base and Industrial/Commercial Land Use Element: Light Rail has consistently demonstrated its role in stimulating economic development in a number of ways. It increases mobility, transportation options, and capacity, without widening roads, which allows for increased economic development within station areas. It serves to define and stimulate targeted growth for populations, businesses, and industries. The PMLR line and the bridge will thus serve to help implement and actuate Milwaukie’s Town Center Plan, emphasizing downtown and contributing additional infrastructure improvements that will further the</p>

<p>Recreational Needs Element</p> <ul style="list-style-type: none"> • Objective #7 (Riverfront Recreation) <p>Willamette Greenway Element</p> <ul style="list-style-type: none"> • Objective #3 (Land Use) • Objective #5 (Public Access and View Protection) <p>Neighborhood Element</p> <ul style="list-style-type: none"> • Objective #2 (Neighborhood Needs Guideline) • Objective #4 (Community Open Space) 	<p>attractiveness and accessibility of the Town Center. This augmented urban environment is anticipated to stimulate investment in Milwaukie and contribute to its ongoing economic growth.</p> <p>Recreational Needs Element: The light rail station in downtown Milwaukie will provide convenient access to Riverfront Park and the Trolley Trail. Views of Kellogg Lake and the Willamette River from the light rail bridge may attract new users to the area, and the future pedestrian bridge will provide residents and visitors with new recreational opportunities and connections.</p> <p>Willamette Greenway Element: Refer to the Willamette Greenway findings in the first section of this table for more detailed findings that pertain to this policy. In summary, the light rail bridge is non-water dependent, does not interface directly with the river, and will contribute to the access and enjoyment of the river and the greenway. The bridge has been carefully designed to minimally impact the visual corridors to the Willamette River and Kellogg Lake through its slender profile, selection of aesthetically and visually appropriate materials, and co-location with the existing historic railroad trestle.</p> <p>Neighborhood Element: Light rail is a substantial public facility that will contribute to the economic vitality of the area. The light rail bridge and PMLR line are a part of a regional transportation strategy that is anticipated to result in increased traffic safety, improved traffic circulation, and less congestion. Mitigation for impacts caused by the light rail bridge and its associated staging area will improve the environmental quality around Kellogg Lake and within Kronberg Park. The future pedestrian bridge will provide access to, and appreciation of, these community open spaces.</p> <p><i>The proposal conforms with this policy and its objectives.</i></p>
<p>Chapter 5: Transportation, Public Facilities, and Energy Conservation</p> <p>Transportation Element (Transportation System Plan)</p> <ul style="list-style-type: none"> • Chapter 7 (Public Transit Element) <p>Energy Conservation Element</p> <ul style="list-style-type: none"> • Objective #2 (Transportation 	<p>Transportation Element (Transportation System Plan): High capacity transit (light rail) is identified as a specific system deficiency in Milwaukie along this corridor. The light rail bridge, as one element of the larger PMLR project, implements this aspect of the City's transit master plan.</p> <p>Energy Conservation Element: This fundamentally transformative contribution to mass transit in the area will result in vast increases in the use of the transit system, with associated accrued energy conservation at household, local, and regional levels.</p> <p><i>The proposal conforms with this policy and its objectives.</i></p>

System)	
<p>MMC Subsection 19.905.4 – CONDITIONAL USE APPROVAL CRITERIA</p> <p>All uses in the Willamette Greenway Zone are subject to the conditional use provisions of Section 19.905. Establishment of a conditional use shall be approved if the following criteria are met.</p>	
Criteria	Findings
<p>1. The characteristics of the lot are suitable for the proposed use considering size, shape, location, topography, existing improvements, and natural features.</p>	<p>The location of the light rail alignment through Milwaukie, including the crossing of Kellogg Lake and McLoughlin Blvd in the existing freight rail corridor, was extensively evaluated at the local and regional levels and eventually approved by Metro in 2008. As such, the characteristics of the site are considered suitable for the light rail bridge, its associated staging area, and the future pedestrian bridge.</p> <p><i>The proposal meets this criterion.</i></p>
<p>2. The operating and physical characteristics of the proposed use will be reasonably compatible with, and have minimal impact on, nearby uses.</p>	<p>The location of the light rail alignment through Milwaukie, including the crossing of Kellogg Lake and McLoughlin Blvd in the existing freight rail corridor, was extensively evaluated at the local and regional levels and eventually approved by Metro in 2008. Metro's 2008 land use final order (LUFO) extended the original alignment southward through downtown Milwaukie to a new terminus at Park Ave in Clackamas County in order to be consistent with the Locally Preferred Alternative supported by the City. In other words, light rail service to and through Milwaukie, including the location of the Kellogg Bridge, has already been approved. Mitigation measures proposed by the applicant and imposed upon the applicant by the City through conditions of approval will ensure that the operating and physical characteristics of the light rail bridge, its associated staging area, and the future pedestrian bridge will be compatible with surrounding uses to the greatest extent practicable.</p> <p><i>The proposal meets this criterion.</i></p>
<p>3. All identified impacts will be mitigated to the extent practicable.</p>	<p>Noise, vibration, lighting, visual, and natural resource impacts associated with the light rail bridge and pedestrian bridge will be mitigated to the greatest extent practicable as described in detail elsewhere in this document and as conditioned by the City. Temporary construction impacts will be minimized to the greatest extent practicable through TriMet's Conduct of Construction Plan and the City's construction and noise ordinances.</p> <p><i>As conditioned, the proposal meets this criterion.</i></p>
<p>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.</p>	<p>The light rail system does not generate odor. All potential impacts from noise and vibration identified by the project's Noise and Vibration analysis will be mitigated as much as practicable through trackbed design, sound walls, and building insulation, as required by federal law. All light rail vehicles have electric propulsion systems and are designed with "skirts" to minimize noise from metal wheels running on rails. No sound walls are proposed on the bridge structure as the tracks curve near the McLoughlin Blvd crossing; however, the 2nd floor residence at 11923 SE McLoughlin Blvd will be upgraded to mitigate for noise impacts at this location.</p>

		<p>Additionally, a lubrication system, similar to what is used on other existing light rail lines curves, will be installed on this curve to reduce wheel squeal. Finally, a sound wall is proposed on the bridge structure between Bluebird St and River Rd, which is just south of this location and outside the area of this application’s review, to abate noise impacts on nearby residences to the west.</p> <p>No lighting is proposed on the light rail bridge or future pedestrian bridge at this time. Lighting is proposed only under the jump span over Lake Rd, and no lighting impacts to nearby natural resources areas or residential uses have been identified. Analysis of lighting impacts from the train itself was not included in the application. More information is needed to understand what, if any, impacts the train light will have on nearby residential uses and drivers on McLoughlin Blvd as the train travels through the Willamette Greenway Zone.</p> <p><i>As conditioned, the proposal meets this criterion.</i></p>
5.	The proposed use will comply with all applicable development standards and requirements of the base zone, any overlay zones, and the standards in Section 19.905.	<p>The applicable development standards of the Downtown Zones, Willamette Greenway Zone, Water Quality Resource Areas, and Habitat Conservation Areas are addressed in detail elsewhere in this document.</p> <p><i>The proposal meets this criterion.</i></p>
6.	The proposed use is consistent with applicable Comprehensive Plan policies related to the proposed use.	<p>The applicable Comprehensive Plan Policies are individually addressed in the middle section of this table.</p> <p><i>The proposal meets this criterion.</i></p>
7.	Adequate public transportation facilities and public utilities will be available to serve the proposed use prior to occupancy pursuant to Chapter 19.700.	<p>The project is a public transportation facility. As such, Chapter 19.700 does not apply to this project, but required improvements to accommodate the project through downtown are subject to the City’s Public Works Standards, which include requirements for undergrounding of utilities in downtown Milwaukie. The applicant is working with PGE to ensure that necessary utility upgrades are made to accommodate the project’s electrical needs.</p> <p><i>The proposal meets this criterion.</i></p>

Table 3: Water Quality Resource Findings

MMC Subsection 19.402.9.G – ALTERNATIVES ANALYSIS		
An alternatives analysis shall be included in the application that demonstrates the following.		
	Requirement	Findings
1.	No practicable alternatives to the requested development	<p>Kellogg Bridge: The PMLR alignment has been vetted through a protracted National Environmental Policy Act (NEPA) process. No practicable</p>

	<p>exist that will not disturb the Water Quality Resource Area.</p>	<p>alternatives were identified through that process that were supported by the City of Milwaukie and that also met the Project's Purpose and Need Statement. As such, a light rail bridge crossing is needed at this location to extend the alignment through Milwaukie to its terminus at Park Ave in Clackamas County. The final alignment, site placement, and specific structural elements for this crossing have been designed to minimize all unavoidable disturbances to the WQR area in this area, including the more expensive option of placing all bridge supports above the ordinary high water level to avoid permanent in-water impacts.</p> <p>Staging Area: The temporary construction staging area for the bridge is immediately adjacent to the Kellogg Bridge site and has been minimized in size as much as possible so as not to impact the WQR area any more than necessary. A construction staging area on the north bank of Kellogg Lake was evaluated and rejected because of its more limited vehicular access and steep slopes. Off-site staging areas were also evaluated and rejected because of the number of additional vehicle trips that would be generated. The flat and accessible area within Kronberg Park adjacent to the construction site is the most logical location for construction staging. No permanent structures will be located within the Kronberg Park WQR area, and the site will be returned to an equal or better condition once construction is complete.</p> <p><i>This requirement is met.</i></p>
<p>2.</p>	<p>Development in the Water Quality Resource Area has been limited to the area necessary to allow for the proposed use.</p>	<p>Kellogg Bridge: Development in the WQR area has been limited to the area necessary for construction and placement of the light rail bridge. The bridge is located at a narrow point in Kellogg Lake, and is both perpendicular to the bank and within an existing freight rail corridor. The width of the bridge is the minimum necessary to structurally support the light rail crossing, and the use of steel has minimized the number of piers needed to support the bridge span. As a result, no in-water piers are proposed, and WQR area is minimized to the greatest extent possible.</p> <p>Staging Area: The size of the staging area has been limited as much as possible to allow for the construction of both a temporary bridge and the permanent light bridge on the east side of the existing freight rail bridge. The staging area is located immediately adjacent to the bridge site to consolidate the areas of impact.</p> <p><i>This requirement is met.</i></p>
<p>3.</p>	<p>The Water Quality Resource Area can be restored to an equal or better condition in</p>	<p>The current condition of the WQR area is degraded. A mitigation plan has been developed to compensate for the unavoidable impacts to this area pursuant to Table 19.402.9.E. The proposed mitigation plan will improve the current conditions and put the area</p>

<p>accordance with Table 19.402.9.E.</p>	<p>on a trajectory toward providing better water quality function and habitat values. Specific elements of the plan include:</p> <ul style="list-style-type: none"> • Restoration of all WQR areas temporarily impacted by construction with appropriate native plants. • Mitigation for all WQR areas permanently impacted by the Kellogg Bridge (4750 sq. ft.) at a 1:1 replacement ratio on the bank of Kronberg Park outside of the construction limits between ordinary high water and top of bank. (More information about the square footage of all the mitigation areas is needed to ensure a minimum 1:1 replacement ratio in Kronberg Park for the mitigation area outside the construction limits.) • Mitigation for all HCA areas permanently impacted by the Kellogg Bridge (3900 sq. ft.) at a 1:1 replacement ratio on the bank of Kronberg Park outside of the construction limits between ordinary high water and top of bank. (More information about the square footage of all the mitigation areas is needed to ensure a minimum 1:1 replacement ratio in Kronberg Park for the mitigation area outside the construction limits.) • Removal of invasive and nonnative species from within the construction limits and the Kronberg Park mitigation site. • Monitoring and maintaining plantings for five years with a target survival rate of 80%. <p>The mitigation plan took the need for pedestrian access through this area and future park development into consideration. However, to better balance ecological restoration with safe pedestrian access and future park redevelopment, the mitigation plan would benefit from the following refinements:</p> <ul style="list-style-type: none"> • Reduce the shrub density to 6' on center underneath the bridge structure to increase visibility. • Place lower shrubs (e.g. sword ferns and low Oregon grape) closer to areas where pedestrians are likely to walk in the future to access the future pedestrian bridge to ensure a safe pedestrian environment. • Show the existing trees on the Kronberg Park bank in the proposed mitigation area as being retained on the mitigation plan or provide an explanation for their removal. • Add some shrubs above top of bank on the Kellogg Lake north bank in the water quality resource area on the mitigation plan or provide an explanation for their exclusion. • Incorporate oaks into the mitigation plan to foster a native oak community in this area and as a means of providing views of the water, which is consistent with the Willamette Greenway view protection criterion that applies to this area. Oaks should be located in areas where they are most likely to thrive, in consultation with the City, and in consideration of recent restoration plantings in Kronberg Park. To facilitate their
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		<p>survival, oaks should also be planted with appropriate understory and ground cover plants.</p> <ul style="list-style-type: none"> • Add more flowering shrubs that provide wildlife habitat. Consider reducing the amount of common snowberry (from 100 to 40) and adding red-flowering currant (20), ocean-spray (20), and blue elderberry (20) in the Kronberg Park WQR area. • Add herbaceous plant species to the native grass species mix to provide a food source for native pollinators. Selecting species that bloom at different times throughout the growing season will provide a constant food source. <p>The approval of the application has been conditioned to ensure the mitigation plan is implemented as proposed and as altered by these findings.</p> <p><i>As conditioned, this requirement is met.</i></p>
<p>4.</p>	<p>An explanation of the rationale behind choosing the alternative selected, including how adverse impacts to resource areas will be avoided and/or minimized.</p>	<p>Kellogg Bridge:</p> <p>The proposed alignment, which includes construction of a light rail bridge over Kellogg Lake, was selected based on its ability to balance transit benefits with environmental, construction, social and economic impacts. While several alternatives may have resulted in slightly lower impacts to the WQR areas around Kellogg Lake, they were not deemed practicable when analyzing effects on the overall project and to other environmental considerations around the Kellogg Lake area.</p> <p>The project minimized impacts at Kellogg Lake by aligning the bridge as perpendicular as practicable to the shore line and placing piers above current ordinary high water (OHW). An alignment that resulted in less over-water structure was evaluated to the west of the existing railroad bridge, but it was not practicable due to constraints within the City of Milwaukie and interactions with the existing railroad alignment. The alignment through downtown Milwaukie would have to have changed to the west of the existing rail line, resulting in much higher impacts to residences, businesses, and schools; and likely impacting more water quality and habitat resources at Crystal Creek and Spring Creek.</p> <p>An alternative design placed the piers and abutments for the bridge above the top of bank (TOB) of Kellogg Lake, but the depth of the span would have been inordinately thick to support a structure so massive. It would have also had to be much taller to account for this depth, resulting in much higher visual impacts and potentially unsafe grades on the approaches. Therefore this alternative was determined to not be practicable.</p> <p>Another alternative placed a pier below the existing OHW level with the assumption that the level would be lower once the dam downstream of the bridge was removed. During advanced design, the one pier was moved to above the OHW. This change resulted in lower impacts to Kellogg Lake while changing visual and grade elements negligibly and was advanced as the proposed design</p>

		<p>option with the least impacts.</p> <p>Different construction alternatives were considered for placement of the bridge piers. It was determined that drilled shaft construction techniques conducted from a work bridge would greatly reduce hydroacoustic impacts to fish and other aquatic species.</p> <p>Staging Area: The temporary construction staging area for the bridge is immediately adjacent to the Kellogg Bridge site and has been minimized in size as much as possible so as not to impact the WQR area any more than necessary. A construction staging area on the north bank of Kellogg Lake was evaluated and rejected because of its more limited vehicular access and steep slopes. Off-site staging areas were also evaluated and rejected because of the number of additional vehicle trips that would be generated. The flat and accessible area within Kronberg Park adjacent to the construction site is the most logical location for construction staging for the bridge.</p> <p>Several measures have been employed to avoid and/or minimize impacts to the WQR by the light rail bridge and its associated staging area. They are as follows:</p> <ul style="list-style-type: none">• The bridge is proposed at a narrow point in Kellogg Lake that is both perpendicular to the bank and within an existing freight rail corridor.• The width of the bridge is the minimum necessary to structurally support the bridge span, and the use of steel has minimized the number of piers needed to support the bridge span. No in-water piers are proposed.• The width of the columns is the minimum necessary to structurally support the light rail bridge.• Over-water and in-water construction procedures will minimize turbidity and contamination.• The construction staging area is proposed immediately adjacent to the bridge site to consolidate and contain impacts.• A mitigation plan has been developed to compensate for the unavoidable temporary and permanent impacts to this area. The proposed mitigation plan will improve the current conditions and put the area on a trajectory toward providing better water quality function and habitat values. The approval of the application has been conditioned to ensure the mitigation plan is implemented as proposed and as altered by these findings.• A Construction Management Plan will be developed to ensure that existing resources are protected during construction. The approval of the application has been conditioned to ensure the protection of the existing resources during construction.
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		<i>As conditioned, this requirement is met.</i>
MMC Subsection 19.402.9.I – MITIGATION PLAN		
A mitigation plan shall be included in the application that includes the following information.		
1.	A description of adverse impacts that will be caused as a result of development.	<p>Construction of the light rail bridge will require removal of all vegetation within the defined construction limits, including the temporary staging area in Kronberg Park. The area underneath the bridge will be permanently impacted. Though it will be vegetated after construction is complete, the bridge effectively prevents this area from being restored to a natural state. No trees are proposed underneath the bridge for practical reasons. As originally proposed, bridge construction will result in:</p> <ul style="list-style-type: none"> • 4,750 sq. ft. of permanent impacts • 6,560 sq. ft. of temporary impacts • Removal of 8 trees greater than 6 inches in diameter at breast height (DBH) <p>As modified by the City Council, the proposal may have different WQR impacts in Kronberg Park pursuant to Finding 21.D and associated conditions of approval.</p> <p>Short-term impacts include a slight reduction in the shading of Kellogg Lake and loss of tree canopy habitat. These impacts will gradually diminish over time as the mitigation plantings mature.</p> <p><i>This requirement is met.</i></p>
2.	An explanation of how adverse impacts to resource areas will be avoided, minimized, and/or mitigated in accordance with, but not limited to, Table 19.402.9.E.	<p>An explanation of how adverse impacts to WQR areas will be avoided, minimized, and/or mitigated is included under Subsections 19.402.9.G.3 and 4 above.</p> <p>Though not required as mitigation for impacts to the WQR areas around Kellogg Lake, derelict piles will be removed as part of this project that will restore approximately 60 square feet of Essential Fish Habitat.</p> <p><i>This requirement is met.</i></p>
3.	A list of all responsible parties including, but not limited to, the owner, applicant, contractor, or other persons responsible for work on the development site.	<p>TriMet is the principal party responsible for work on the light rail bridge and its associated staging area. Additional detailed information will be made available to the City prior to construction as specific construction contracts are executed.</p> <p><i>This requirement is met.</i></p>
4.	A map showing where the specific mitigation activities will occur.	<p>The required map has been provided.</p> <p><i>This requirement is met.</i></p>
5.	An implementation schedule, including timeline for construction, mitigation, mitigation	<p>All in-water work is to be done in accordance with the ODFW in-water work schedule between July 15 – September 30. Bareroot plant materials will be planted between December 1 and February 28th following the completion of heavy construction. TriMet will</p>

<p>maintenance, monitoring, reporting, and a contingency plan. All in-stream work in fish-bearing streams shall be done in accordance with the Oregon Department of Fish and Wildlife in-stream timing schedule.</p>	<p>monitor and maintain the site for five years after the initial planting. Maintenance will include providing mulch rings around trees and shrubs, watering, and weeding as necessary to allow the native plant community to mature to a self-sustaining condition. The target survival rate of plantings is 80%. If plant mortality exceeds 20% of the original planting quantities at any time during the five year period, TriMet will replace with new plants to achieve an overall 80% survival rate.</p> <p>TriMet will submit an annual report to the Planning Director documenting the survival of the trees and shrubs on the mitigation site for a period of five years. The approval of the application has been conditioned to ensure the mitigation plan is implemented as proposed and as altered by these findings.</p> <p><i>As conditioned, this requirement is met.</i></p>
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Table 4: Habitat Conservation Area Findings

<p>Metro Title 13 Section 6 – DEVELOPMENT STANDARDS APPROVAL CRITERIA (KRONBERG PARK)</p>		
<p>The development standards described in this section apply to all development that occurs within Habitat Conservation Areas unless the applicant chooses to use the alternative discretionary standards in Section 7. The applicant chose to use the standards in Section 6 for the Kronberg Park site.</p>		
	<p>Standard</p>	<p>Finding</p>
<p>1.</p>	<p>Application Requirements. Applications for a building permit or development permit must provide a development plan and accompanying narrative explanation that includes the following information in addition to any other building permit or development permit requirements.</p>	<p>The required site plan has been provided. No permanent structures are proposed in the Kronberg Park HCA. A portion of the park will be used as temporary construction staging for the Kellogg Bridge. <u>As</u> originally proposed, there is a total of 1,165 sq. ft. of HCA within the construction limits. 245 sq. ft. are mapped as Low HCA and 920 sq. ft. are mapped as Moderate HCA. One 42-inch DBH Oregon white oak is within the construction limits. The oak is discussed in Finding 21.D.</p> <p>The total size of the HCA on Kronberg Park is greater than one acre. However, disturbance to the HCA will be less than one acre. Only minimal grading will be required in the HCA for access and staging.</p> <p><i>This standard is met.</i></p>
<p>2.</p>	<p>Development in HCAs. The following development standards apply to all development that occurred with the HCA except for exempted uses and conditioned activities addressed in Section 3 of this ordinance and utility facilities addressed in subsection 6(D) of this</p>	<p>Kronberg Park is about 3.5 acres in size and contains 650 sq. ft. of Low HCA and 21,600 sq.ft. of Moderate HCA. As originally proposed, use of the park for construction staging will disturb 245 sq. ft. (38% of the total Low) and 920 sq. ft. (4% of the total Moderate) of the HCA on the site.</p> <p>Council recognizes that the applicant may need to expand its area of disturbance in the Kronberg Park HCA pursuant to Finding 21.D and associated conditions of approval. Council finds that the applicant may expand its area of disturbance in this HCA up to the maximum disturbance area (MDA) allowed by right pursuant to Section 6 Table 2 of Metro Title 13. If the applicant needs to expand its area of</p>

	<p>ordinance.</p>	<p>disturbance and this disturbance exceeds the MDA for the Kronberg Park site, a new HCA application will be required that addresses Section 7 of Metro Title 13.</p> <p>The disturbance to the HCA will be temporary and will not result in a change to the HCA boundaries in the park. The mitigation plan took the need for pedestrian access through this area and future park development into consideration. Mitigation plantings are proposed between the OHW of Kellogg Lake and TOB so as not to interfere with future park development or pedestrian bridge access.</p> <p>To better balance ecological restoration with safe pedestrian access and future park redevelopment, the mitigation plan would benefit from the following refinements:</p> <ul style="list-style-type: none"> • Reduce the shrub density to 6 ft on center underneath the bridge structure to increase visibility. • Place lower shrubs (e.g. sword ferns and low Oregon grape) closer to areas where pedestrians are likely to walk in the future to access the future pedestrian bridge to ensure a safe pedestrian environment. • Add herbaceous plant species to the native grass species mix to provide a food source for native pollinators. Selecting species that bloom at different times throughout the growing season will provide a constant food source. <p><i>As conditioned, this standard is met.</i></p>
<p>3.</p>	<p>Mitigation requirements for disturbance in HCAs. In order to achieve the goal of reestablishing forested canopy that meets the ecological values and functions described in section 1(A) of this ordinance, tree replacement and vegetation planting are required when development intrudes into a HCA according to the following standards pertaining to:</p> <ul style="list-style-type: none"> • Plant types and densities • Plant size • Plant spacing • Plant diversity • On-site mitigation • Invasive vegetation removal • Tree and shrub survival • Survival Enhancement • Monitoring and reporting 	<p>As originally proposed, mitigation planting within the Kronberg Park HCA has been designed to meet the mitigation requirements of Section 6(E)(1)(b) Mitigation Option 2, as this results in more tree plantings. Since the applicant's impacts to the Kronberg Park HCA may change as a result of Finding 21.D, the applicant's mitigation requirements will need to be recalculated pursuant to Section 6.E.1 of Metro Title 13.</p> <p>All plantings will occur on Kronberg Park and contiguous to the HCA in the adjacent water quality resource area between OHW and TOB. The planting schedule includes 1-inch trees and 18 – 24-inch height shrubs. All trees and shrubs will be planted and spaced per the standards and will meet the plant diversity standards. Seven different types of trees and 12 different types of shrubs are proposed. No more than 50 of the trees are of the same genus.</p> <p>All Invasive non-native and noxious vegetation will be removed within the mitigation area prior to planting. The target survival rate of plantings is 80%. If plant mortality exceeds 20% of the original planting quantities at any time during the five-year period, TriMet will replace with new plants to achieve an overall 80% survival rate. TriMet will submit an annual report to the Planning Director documenting the survival of the trees and shrubs on the mitigation site for a period of five years. To enhance survivability:</p> <ul style="list-style-type: none"> • Mulch rings will be provided around trees and shrubs per the

		<p>standard.</p> <ul style="list-style-type: none"> • Vegetation suitable to the site, with a high probability of survivability under natural circumstances will be used and replaced as necessary. • Watering will be provided as necessary to allow the native plant community to mature to a self-sustaining condition. • Weeds will be controlled throughout the maintenance period. <p>The approval of the application has been conditioned to ensure the mitigation plan is implemented as proposed and as altered by these findings.</p> <p><i>As conditioned, this standard is met.</i></p>
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Metro Title 13 Section 7 – ALTERNATIVE DISCRETIONARY DEVELOPMENT STANDARDS APPROVAL CRITERIA (KELLOGG LAKE)

Applicants may choose to use the alternative discretionary development standards provided in Section 7 rather than the development standards provided in Section 6. The applicant chose to use the standards in Section 7 for the UPRR and ODOT rights-of-way site as they afforded the opportunity to propose off-site mitigation and more appropriate site-specific planting densities for the areas underneath and immediately adjacent to the bridge structure.

	Criteria	Finding
1.	<p>All application requirements in subsection 7(D)(1) shall be met.</p>	<p>The application contained all the required materials, including an impact evaluation, alternatives analysis, and mitigation plan.</p> <p>Three separate areas will be impacted by the Kellogg Bridge:</p> <ul style="list-style-type: none"> • Kellogg Lake North HCA is located within the UPRR right-of-way and contains 840 sq ft of Low HCA and 3,210 sq ft of Moderate HCA for a total of 4,050 sq ft of HCA within the construction limits. • Kellogg Lake South HCA is located within the UPRR right-of-way and contains 650 sq ft of Low HCA within the construction limits. • Willamette HCA is located within the ODOT right-of-way and contains 1,980 sq ft of Low HCA consisting of 410 sq ft of pavement (McLoughlin Blvd), 209 sq ft of compacted gravel sidewalk, and 1,280 sq ft of nonnative invasive groundcover. <p>Construction of the light rail bridge will require the removal of all vegetation within the defined construction limits. The area underneath the bridge is considered a permanent impact. Though it will be vegetated after construction, the bridge effectively prevents this area from being restored to a natural state. As such, no trees are proposed underneath the bridge for practical reasons.</p> <p>The impact evaluation identified both permanent and temporary impacts as a result of Kellogg Bridge construction:</p> <ul style="list-style-type: none"> • 2,620 sq. ft. of permanent impacts to the Kellogg Lake HCA. • 2,080 sq. ft. of temporary impacts to Kellogg Lake HCA. • 1,280 sq. ft. of permanent impacts to the Willamette HCA. • Removal of 8 trees greater than 6 inches in diameter at breast height (DBH).

	<p>However, no grading or bridge supports are proposed within the HCAs. Disturbed HCAs will be revegetated and additional areas outside the construction limits will receive mitigation plantings to offset permanent HCA impacts. The proposed mitigation plan compensates for unavoidable detrimental impacts to ecological functions as identified in the impacts evaluation. Specific elements of the plan include:</p> <ul style="list-style-type: none"> • Restoration of all HCA areas temporarily impacted by construction with appropriate native plants, with the exception of the Willamette HCA where no plantings are proposed. • Mitigation for all HCA areas permanently impacted by the Kellogg Bridge (3900 sq. ft.) at a 1:1 replacement ratio on the bank of Kronberg Park outside of the construction limits between ordinary high water and top of bank. (More information about the square footage of all the mitigation areas is needed to ensure a minimum 1:1 replacement ratio in Kronberg Park for the mitigation area outside the construction limits.) • Removal of invasive and nonnative species from within the construction limits and the Kronberg Park mitigation site. • Monitoring and maintaining plantings for five years with a target survival rate of 80%. <p>The approval of the application has been conditioned to ensure the mitigation plan is implemented as proposed and as altered by these findings.</p> <p>The PMLR alignment has been vetted through a protracted National Environmental Policy Act (NEPA) process. The proposed alignment was selected based on balancing its transit benefits with its environmental, construction, social, and economic impacts. No practicable alternatives were identified through that process that were supported by the City of Milwaukie and that also met the Project's Purpose and Need Statement. As such, a light rail bridge crossing is needed at this location to extend the alignment through Milwaukie to its terminus at Park Ave in Clackamas County. The final alignment, site placement, and specific structural elements for this crossing have been designed to minimize all unavoidable disturbances to this area, including the more expensive option of placing all bridge supports above the ordinary high water level to avoid permanent in-water impacts.</p> <p>An alignment that resulted in less over-water structure was evaluated to the west of the existing railroad bridge, but it was not practicable due to constraints within the City of Milwaukie and interactions with the existing railroad alignment. An alignment through downtown Milwaukie would have to have moved to the west of the existing rail line, resulting in much higher impacts to residences, businesses, and schools; and likely impacting more water quality and habitat resources at Crystal Creek and Spring Creek.</p>
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		<p>An alternative design placed the piers and abutments for the bridge above the top of bank (TOB) of Kellogg Lake, but the depth of the span would have to have been inordinately thick to support a structure so massive. It would have also had to be much taller to account for this depth, resulting in greater visual impacts and potentially unsafe grades on the approaches. Therefore this alternative was determined to not be practicable.</p> <p>Another alternative placed a pier below the existing OHW level with the assumption that the level would be lower once the dam downstream of the bridge was removed. During advanced design, the one pier was moved to above the OHW level. This change resulted in lower impacts to Kellogg Lake while changing visual and grade elements negligibly and was advanced as the proposed design option with the least impacts.</p> <p><i>As conditioned, this criterion is met.</i></p>
<p>2.</p>	<p>Avoid. An applicant shall first avoid the intrusion of development into the HCA to the extent practicable.</p>	<p>Other alignments that did not include a crossing of Kellogg Lake at this location were considered but not advanced. The resource area is avoided to the extent that the footprint of the bridge structure is as small as possible for its intended purpose of carrying light rail trains and does not include any bridge support within the HCAs.</p> <p><i>This criterion is met.</i></p>
<p>3.</p>	<p>Minimize. If the applicant demonstrates that there is no practicable alternative that will not avoid disturbance of the HCA, then the development proposed by the applicant within the HCA shall minimize detrimental impacts to the extent practicable.</p>	<p>The project has minimized intrusion of the light rail bridge into the HCAs to the extent practicable. All bridge supports are located outside of the HCAs. The HCAs will be disturbed during bridge construction but will be revegetated once construction is complete with appropriate plants from the Milwaukie Plant List.</p> <p><i>This criterion is met.</i></p>
<p>4.</p>	<p>Mitigate. If the applicant demonstrates that there is no practicable alternative that will not avoid disturbance of the HCA, then development must mitigate for adverse impacts to the HCA. All proposed mitigation plans must meet the following standards.</p> <ul style="list-style-type: none"> • The mitigation plan shall demonstrate that it compensates for detrimental impacts to 	<p>The proposed mitigation plan compensates for unavoidable detrimental impacts to ecological functions as identified in the impacts evaluation. It takes into consideration the resource values that require mitigation, the specific growing conditions under and near the bridge, pedestrian access through the site to the future pedestrian bridge, and the redevelopment potential of Kronberg Park. Specific elements of the plan include:</p> <ul style="list-style-type: none"> • No grading or bridge supports within the HCAs. • Restoration of all HCA areas temporarily impacted by construction with appropriate native plants, with the exception of the Willamette HCA where no plantings are proposed. • Mitigation for all HCA areas permanently impacted by the Kellogg Bridge (3900 sq. ft.) at a 1:1 replacement ratio on the bank of Kronberg Park outside of the construction limits between ordinary high water and top of bank.

<p>ecological functions provided by HCAs.</p> <ul style="list-style-type: none"> • Mitigation shall occur on the site of the disturbance, to the extent practicable. Off-site mitigation shall be approved if the applicant has demonstrated that it is not practicable to complete the mitigation on-site. • All re-vegetation plantings shall be with native plants listed on the Metro Native Plant List. • All in-stream work in fish-bearing streams shall be done in accordance with the Oregon Department of Fish and Wildlife in-stream work-timing schedule. • A mitigation maintenance plan shall be included and shall be sufficient to ensure the success of the planting, and compliance with the plan shall be a condition of development approval. 	<ul style="list-style-type: none"> • Removal of invasive and nonnative species from within the construction limits and the Kronberg Park mitigation site. • Monitoring and maintaining plantings for five years with a target survival rate of 80%. <p>The mitigation plan took the need for pedestrian access through this area and future park development into consideration. However, to better balance ecological restoration with safe pedestrian access and future park redevelopment, the mitigation plan would benefit from the following refinements:</p> <ul style="list-style-type: none"> • Reduce the shrub density to 6' on center underneath the bridge structure to increase visibility. • Place lower shrubs (e.g. sword ferns and low Oregon grape) closer to areas where pedestrians are likely to walk in the future to access the future pedestrian bridge to ensure a safe pedestrian environment. • Add herbaceous plant species to the native grass species mix to provide a food source for native pollinators. Selecting species that bloom at different times throughout the growing season will provide a constant food source. <p>Off-site mitigation is proposed for permanent impacts to the HCAs because it was not possible to mitigate for all ecological impacts on site. Kronberg Park, Kellogg North, and Kellogg South HCAs are in the same subwatershed. Therefore, the off-site mitigation proposed in Kronberg Park for the impacts to the Kellogg North and Kellogg South HCAs are in the same subwatershed.</p> <p>Kronberg Park and the Willamette River HCA are not within the same subwatersheds even though they are located within approximately 375 feet of each other. The Willamette HCA is dominated by nonnative invasive ground cover. The overall tree canopy cover is sparse and is provided by one 24-inch DBH Norway maple tree (Norway maple is a Rank B Nuisance by the City of Portland). The HCA is not connected to water, and although part of the mapped Willamette River floodplain, it is over 700 feet from the Willamette River. The HCA is not connected to other habitats. It is completely surrounded by development. TriMet does not have ownership interest outside of its easements. There are no feasible areas that TriMet has the authority to provide mitigation that would effectively mitigate for this area within the subwatershed. Mitigation plantings in this area are neither beneficial nor feasible.</p> <p>The goal of the proposed off-site mitigation is to ensure the successful establishment of a native riparian community along Kellogg Lake in Kronberg Park that will provide a higher ecological function than treeless plantings under the bridge structure and an isolated and shaded roadside planting adjacent to McLoughlin Blvd.</p> <p>The mitigation site will be permanently revegetated during the first planting season following the completion of bridge construction.</p>
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		<p>Bareroot plant materials will be planted between Dec 1 – Feb 28 following the completion of heavy construction. All in-water work will be done in accordance with the ODFW in-water work schedule between July 15 – Sep 30. TriMet will monitor and maintain the site for five years after the initial planting. Maintenance will include providing mulch rings around trees and shrubs, watering, and weeding as necessary to allow the native plant community to mature to a self-sustaining condition. The target survival rate of plantings is 80%. If plant mortality exceeds 20% of the original planting quantities at any time during the five year period, TriMet will replace with new plants to achieve an overall 80% survival rate. TriMet will submit an annual report to the Planning Director documenting the survival of the trees and shrubs on the mitigation site for a period of five years.</p> <p>The approval of the application has been conditioned to ensure the mitigation plan is implemented as proposed and as altered by these findings.</p> <p><i>As conditioned, this criterion is met.</i></p>
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CONDITIONS OF APPROVAL

1. The plans submitted to the City of Milwaukie for construction of the Portland Milwaukie Light Rail bridge over Kellogg Lake and McLoughlin Blvd (“Kellogg Bridge”) shall be in substantial conformance with the plans reviewed by the Design and Landmarks Committee (DLC), Planning Commission (PC), and City Council (CC) that were date stamped by the City on September 20, 2011. The plans shall be modified only as described in these conditions of approval or through a future land use application or formal modification process.
2. The plans submitted to the City of Milwaukie for construction of the pedestrian bridge underneath the Kellogg Bridge shall be in substantial conformance with the plans reviewed by the DLC, PC, and CC that were date stamped by the City on September 20, 2011. The plans shall be modified only as described in these conditions of approval or through a future land use application or formal modification process.
3. Prior to approval of development permits for any proposed pathways to the pedestrian bridge underneath the Kellogg Bridge, the applicant or other authorized entity shall obtain all required land use approvals including, but not limited to, natural resource review.
4. Prior to approval of development permits for the pedestrian bridge, the applicant or other authorized entity shall propose pedestrian scale lighting for the pedestrian bridge. The Planning Director shall consult with the DLC about the proposed lighting prior to approving any development permits for the pedestrian bridge.
 - A. Propose energy-efficient and wildlife-friendly lighting, preferably LED lighting.
 - B. Shield lights from shining directly into windows on residential properties.
5. The development permit submission for the Kellogg Bridge shall include a detailed written and/or graphic description of any plan changes that are not part of these conditions of approval or that were not specified by the final decision-making authority.

6. The DLC requested more information and different light fixture options for lighting underneath the jump span than what was presented by the applicant at the Oct 17 DLC design review meeting. The applicant shall resubmit this design item for consideration during the land use proceedings for the Milwaukie Light Rail Station. A summary of the DLC's design direction to the applicant is as follows:
- A. Provide more detailed information about the underside of the jump span (the "ceiling" of the room) and the light from the light fixtures that demonstrates how the light interacts with the ceiling to make for a comfortable, attractive, and safe pedestrian environment.
 - B. Provide more detailed information about the light from the light fixtures that demonstrates how the location, output, and angle of the light enhances the proposed wall treatments and provides for a comfortable, attractive, and safe pedestrian environment.
 - C. Provide a less modern and utilitarian light fixture option. Specifically, provide detailed information that demonstrates how the style and color of the light fixture and the method of mounting compliments the style of the proposed wall treatments and provides for a comfortable, attractive, and safe pedestrian environment.
 - D. Provide illustrations and analysis demonstrating that the proposed lighting achieves the following during both daytime and nighttime conditions:
 - Uniform lighting of the sidewalk
 - Minimal glare
 - Minimal deep shadows beneath the structure
 - E. Explore other energy efficient and low-pollutant lighting options with a focus on comparing fluorescent lighting with LED and other feasible lighting options. Provide a memo that summarizes key findings and includes a rationale for the final lighting selection.
7. The development permit submission for the Kellogg Bridge shall include the following items to demonstrate conformance with the Milwaukie Downtown Design Guidelines, specifically those that address Milwaukie character, the pedestrian environment, wall design, sustainability, safety, and lighting. Development permits shall not be issued until the Planning Director is satisfied that the following conditions of approval are met.
- A. Wall Treatments on the Northernmost Bridge Abutment and Jump Span Columns:
 1. Provide specifications and photos that accurately depict the scale and surface finish of the final wall and column treatments. The final wall treatments should have the appearance of stacked ashlar stone with: (a) formliner seams hidden as much as possible, and (b) individual stone dimensions that are proportionally appropriate for the wall surface areas and the pedestrian environment.
 2. Demonstrate how the wall will be articulated and light in color throughout the pedestrian zone (6 ft and below), particularly on the north side of Lake Rd where the grade change could leave more smooth concrete exposed.
 - B. Column Treatments:
 1. Provide illustrations and/or material samples for the surface treatment of the remaining bridge columns outside of the jump span area that demonstrates how these columns provide visual interest at the pedestrian level and architectural interest at a distance.
 - Vertical reveals shall have a rough-sawn wood textured surface for visual contrast and interest.

- Vertical reveals shall taper in depth at the top edge to soften the transition to the column face.
 - Vertical reveals shall randomly vary from each other in both height and width and shall also be randomly spaced around the column so as to soften the hard edges and verticality and regularity of the overall design.
- C. Provide a memo that describes how crime prevention through environmental design (CPTED) principles were applied to the area behind and between the jump span columns on the south side of Lake Rd. CPTED solutions could include plantings, fencing, and/or lighting.
8. The development permit submission for the Kellogg Bridge shall include the following items to demonstrate conformance with the Downtown Open Space Zone development standards. Development permits shall not be issued until the Planning Director is satisfied that the following conditions of approval are met.
- A. Demonstrate that at least 20% of the Kellogg Bridge site will be landscaped pursuant to Milwaukie Municipal Code (MMC) Section 19.310.4.11. The proposed mitigation plan shows how some of the site underneath the Kellogg Bridge will be landscaped. However, it is unclear whether these plantings meet or exceed the 20% landscaping standard. If they do not meet the standard, a landscaping plan will be required that demonstrates how the landscaping standard will be met.
9. The development permit submission for the Kellogg Bridge shall include the following items to demonstrate conformance with the Willamette Greenway criteria. Development permits shall not be issued until the Planning Director is satisfied that the following conditions of approval are met.
- A. Provide a landscaping plan for the area underneath the Kellogg Bridge between Lake Rd and McLoughlin Blvd that demonstrates conformance with MMC Subsection 19.401.6.D.
- B. Provide a detailed tree planting plan for Kronberg Park that is consistent with the approved mitigation plan and that balances ecological restoration with the desire to maintain some views to Kellogg Lake. Consider clustering trees to allow for gaps in the tree canopies and/or planting 12 ft on center instead of 10 ft on center where proposed on the Kronberg Park bank.
- C. Provide a memo that describes the lighting impacts, if any, from the train light on drivers traveling on McLoughlin Blvd and on nearby residential uses as the train travels through the Willamette Greenway Zone on the Kellogg Bridge. If there are any such lighting impacts, provide a mitigation plan that demonstrates conformance with MMC Subsection 19.905.4.A.3 and 4.
10. The development permit submission for the Kellogg Bridge shall include the following items to demonstrate conformance with the Water Quality Resource and Habitat Conservation Area regulations and to balance ecological restoration with safe pedestrian access and future park redevelopment. Development permits shall not be issued until the Planning Director is satisfied that the following conditions of approval are met.
- A. Revise the mitigation plan as follows:
1. Provide the square footage of all mitigation areas to ensure appropriate plant densities and a minimum 1:1 replacement ratio in Kronberg Park for the mitigation area outside the construction limits.
 2. Reduce the shrub density to 6 ft on center underneath the bridge structure to increase visibility.

3. Place lower shrubs (e.g. sword ferns and low Oregon grape) closer to areas where pedestrians are likely to walk in the future to access the future pedestrian bridge to ensure a safe pedestrian environment.
 4. Show the existing trees on the Kronberg Park bank in the proposed mitigation area as being retained on the mitigation plan or provide an explanation for their removal.
 5. Add some shrubs above top of bank on the Kellogg Lake north bank in the water quality resource area on the mitigation plan or provide an explanation for their exclusion.
 6. Incorporate oaks into the mitigation plan to foster a native oak community in this area and as a means of providing views to the water, which is consistent with the Willamette Greenway view protection criterion that applies to this area. Oaks should be located in areas where they are most likely to thrive, in consultation with the City, and in consideration of recent restoration plantings in Kronberg Park. To facilitate their survival, oaks should also be planted with appropriate understory and ground cover plants.
 7. Add more flowering shrubs that provide wildlife habitat. Reduce the amount of common snowberry (decrease from 100 to 40) and add red-flowering currant (add 20), ocean-spray (add 20), and blue elderberry (add 20) in the Kronberg Park WQR area.
 8. Add herbaceous plant species to the native grass species mix to provide a food source for native pollinators. Selecting species that bloom at different times throughout the growing season will provide a constant food source.
11. The following conditions of approval ensure compliance with the Community Service Use criteria.
- A. The development permit submission for the Kellogg Bridge shall include a relocated construction staging area access so that it is physically located within the easement area or the applicant shall negotiate for a larger easement area to accommodate the location of the existing access. Development permits shall not be issued until the Planning Director is satisfied that this condition of approval is met.
 - B. The applicant shall preserve the Oregon white oak in Kronberg Park pursuant to the following:
 1. Modification of the staging area described on Page 3 of the applicant's Nov 8, 2011 PowerPoint presentation and Exhibit P1 of the applicant's Sep 20, 2011 application submittal is permitted to the minimum extent necessary to comply with this condition. To preserve the tree, the applicant may need to alter the staging area. To ensure compliance with applicable code sections, the applicant shall submit:
 - a. A modified site plan showing the newly proposed staging area.
 - b. An updated HCA mitigation requirement calculation pursuant to Section 6.E.1 of Metro Title 13.
 - c. A modified mitigation plan, if required, pursuant to Section 6.E of Metro Title 13 and Section 19.402.9.I of the Milwaukie Municipal Code.
 - d. An updated HCA disturbance calculation pursuant to Section 6, Table 2 of Metro Title 13, demonstrating that the maximum disturbance area limitation is not exceeded.

2. The City shall expeditiously hire an ISA Board Certified Arborist or an ASCA Member or Registered Consulting Arborist ("Certified Arborist") to complete routine maintenance on the tree, confirm the condition of the tree and any existing safety issues described in the existing arborist report in the record, and complete work to address any safety issues that presently exist. If the work outlined in the City's arborist report is not completed within 30 days prior to the start of construction of the light rail bridge, or if the tree condition is such that preserving it is not recommended considering the construction staging for and construction of the light rail bridge, the tree will be removed by the applicant. If the City's arborist recommends removal of the tree, the applicant will do the following:
 - a. Repurpose the oak remnant for use in the pedestrian pathways throughout the area and/or in Kronberg Park.
 - b. Provide double the amount of mitigation as required by the City's HCA regulations.
 - c. Do not grind the stump so as to allow for the possibility that a new tree may grow from the stump.
3. If the City's arborist recommends preserving the tree and is able to address all existing safety issues, the applicant shall take measures to reasonably ensure the protection of the Oregon white oak from all potentially detrimental impacts resulting from the construction staging for and construction of the light rail bridge. After the City's arborist has addressed safety issues and prior to the issuance of a development permit, the applicant shall submit a tree protection plan to be incorporated into the construction management plan. The tree protection plan shall be prepared by a Certified Arborist. This will include pruning of the tree to accommodate the construction staging for and construction of the light rail bridge, and a root protection plan.

Upon completion of the applicant's use of the site for construction staging and construction of the light rail bridge, and performance of required mitigation, this condition of approval shall expire.

12. Ongoing conditions of approval:

- A. Maintain and monitor the water quality resource and habitat conservation area plantings for five years per the approved mitigation plan prepared by Vigil Agrimis and subsequently modified by these conditions of approval. Provide a copy of the annual monitoring report to the City of Milwaukie Planning Director no later than the end of each calendar year during the five years in which the plantings are monitored.
- B. Construct the pedestrian bridge beneath the light rail bridge if funding becomes available on or before Feb 1, 2013 for construction before Sep 30, 2013. TriMet shall actively seek funding for the construction of the pedestrian bridge in partnership with the City of Milwaukie up until Feb 1, 2013. The pedestrian bridge must connect to each bank but need not include pedestrian walkway connections through Kronberg Park or to nearby streets.
- C. Allow the construction of the pedestrian bridge by any entity.
- D. Pursuant to Subsection 19.1001.7.E.2, the time period within which the applicant must obtain development permits for the Kellogg Bridge and future pedestrian bridge over Kellogg Lake is extended from 2 years to 4 years, and the time period within which the

applicant must pass all final inspections is extended from 4 years to 6 years, from the date of the land use decision on this application.

ADDITIONAL REQUIREMENTS

The following items are not conditions of approval necessary to meet applicable land use review criteria. They relate to other development standards and permitting requirements contained in the Milwaukie Municipal Code and Public Works Standards that are required at various points in the development and permitting process.

1. The development permit submission for the Kellogg Bridge shall include the following items to demonstrate conformance with the Milwaukie Public Works Standards. Development permits shall not be issued until the Engineering Director has reviewed and approved the following items.
 - A. Submit a storm water management plan prepared by a qualified professional engineer that conforms to Section 2 – Stormwater Design Standards of the City of Milwaukie Public Works Standards. All stormwater from the Kellogg Bridge shall be treated and infiltrated on private property unless otherwise approved by the Engineering Director.
 1. The storm water management plan shall demonstrate that the post-development runoff does not exceed pre-development runoff, including any existing storm water management facilities serving the development site.
 2. The storm water management plan shall demonstrate compliance with water quality standards in accordance with the City of Portland Stormwater Management Manual.
 - B. In the event the storm management system contains underground injection control devices, the applicant shall submit proof of acceptance of the storm system design from the Department of Environmental Quality. The storm water management plan must also be designed to meet water quality resource development standards contained in MMC Subsection 19.402.10, specifically:
 1. Storm water flows as a result of the proposed development within and to water quality resource areas shall not exceed pre-development flows.
 2. Storm water outfalls shall be appropriately designed to avoid erosion to stream banks or water quality resource area slopes.
2. The development permit submission for the Kellogg Bridge shall include the following items to demonstrate conformance with Milwaukie Title 18 Flood Hazard Regulations. Development permits shall not be issued until the Engineering Director has reviewed and approved the following items.
 - A. Provide the following information with the development permit application:
 1. Scaled plans showing nature, location, dimensions, and elevations of the development property, including existing and proposed structures, fill, storage of materials, and drainage facilities. Include both the floodplain and floodway boundaries.
 2. Elevation in relation to mean sea level of all structures.
 3. Description of the extent to which any watercourse will be altered or relocated as a result of the proposed development.
 - B. Provide an anchor design by a registered professional engineer, such that all new construction within the 100-year floodplain is anchored to prevent flotation, collapse, or

lateral movement of the structure(s). Include a written summary that describes how the design of the structure(s) meets this requirement.

- C. Construct all structures within the 100-year floodplain utilizing materials resistant to flood damage. Include a written summary that describes how the design of the structure(s) meets this requirement.
 - D. Placement of fill or structures that displaces more than ten cubic yards of flood storage area shall comply with the following standards.
 - 1. No net fill in any floodplain is allowed, including the volume of structures within the floodplain.
 - 2. All fill placed in a floodplain shall be balanced with at least an equal amount of soil material removed.
 - 3. Any excavation below bankful 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.
 - E. Placement of fill or structures within the floodway shall comply with flood storage area requirements and the following additional requirements.
 - 1. The proposed encroachments into the floodway shall result in no rise above the Base Flood Elevation as determined through hydrologic and hydraulic analysis in a No-Rise Certification. The No-Rise Certification must be supported by technical data and signed by a registered professional engineer, including a step-backwater analysis and conveyance compensation analysis resulting in a 0.00 foot increase at every cross section in the "with floodway" profile.
 - 2. If an increase in the base flood elevation is unavoidable, a conditional approval of such increase is required from the FEMA regional office prior to development permit approval.
3. Prior to commencement of any earth disturbing activities, the applicant shall:
- A. Submit a Construction Management Plan pursuant to Metro Title 13 Section 5.
 - B. Obtain an erosion control permit pursuant to MMC Title 16 Erosion Control.
 - C. Flag, fence, or otherwise mark the extent of the construction limits.
 - D. Flag, fence, or otherwise mark the water quality resource and habitat conservation areas not proposed to be disturbed pursuant to MMC Subsection 19.402.10 and Metro Title 13 Section 6.C.2. These natural resource areas must be identified in the field by a qualified professional.
4. During site development, the applicant shall:
- A. Limit development activity from 7 a.m. to 7 p.m. Monday through Friday and 8 a.m. to 5 p.m. Saturday and Sunday pursuant to Milwaukie Public Works Standards Division 105.13, unless otherwise approved by the Engineering Director, and abide by MMC Chapter 8.08 regarding construction noise. Variances to maximum permitted noise levels or prohibited noises as identified in MMC Chapter 8.08 may be granted by the Police Department pursuant to MMC Subsection 8.08.110.
 - B. Safeguard the water quality resource and habitat conservation areas pursuant to MMC Subsection 19.402.10 and Metro Title 13 Section 6.C.2 as follows:

1. All site development activities shall conform to the Construction Management Plan.
 2. Protection fencing shall be maintained around areas not proposed to be disturbed until site development is complete. Trees shall not be used as anchors to stabilize construction equipment or activities.
 3. Appropriate site preparation and construction practices shall be followed to prevent erosion, pollution, sedimentation, or drainage of hazardous materials to the water quality resource area.
 4. Native soils disturbed during development shall not be removed from the site.
 5. The water quality resource and habitat conservation areas shall be re-vegetated per the approved mitigation plan and as soon as practicable after the approved development activity in the resource area is complete.
5. Prior to final inspection of the Kellogg Bridge, the applicant shall complete the following items to the satisfaction of the Planning Director:
- A. Restore and improve the water quality resource and habitat conservation areas per the approved mitigation plan prepared by Vigil Agrimis and subsequently modified by these conditions of approval pursuant to MMC Subsection 19.402.10.A. Submit a letter from the project's natural resource consultant attesting that all required restoration and mitigation work has been completed in conformance with the approved mitigation plan.
6. Prior to final inspection of the Kellogg Bridge, the applicant shall complete the following items to the satisfaction of the Engineering Director:
- A. Construct a private storm management system to accommodate stormwater runoff from the bridge. The private storm management system shall be constructed according to the approved storm water management plan.

The above-listed conditions of approval and additional requirements shall not be interpreted or applied by themselves or cumulatively in a manner that would prevent implementation of a land use final order, significantly negatively impact the operations of the South North MAX Light Rail Project or Project extension, significantly delay the completion or prevent the timely implementation of the South North MAX Light Rail Project or Project extension, or require funding beyond the project budget.

DATE OF COUNCIL ACTION: January 17, 2012

Greg Chaimov, Council President



Agenda Item: 2.
Meeting Date: 1/17/12

To: Mr. Mayor and City Council

Through: Bill Monahan, City Manager

From: Teri Bankhead, Asst. to the City Manager

Date: January 3, 2012

**Subject: Boards, Commissions and Committee 2012 Meetings with City Council;
Recruitment and Outreach Efforts**

ACTION REQUESTED

No action requested at this time. This report and schedule are informational.

HISTORY OF PRIOR ACTIONS AND DISCUSSIONS

One of Council's 2011-2012 goals was to improve collaboration between Council and members of the City's boards. During 2011, City Council met with each board, commission or committee ("board") at least once during a work session. These work sessions served as a mechanism to establish that open line of communication and to allow the boards to provide updates to Council.

BACKGROUND

The City has eight (8) boards, commissions and committees and two task forces (Library and Riverfront). In an effort to continue to improve communications and collaboration between Council and board members, staff has scheduled each board for work sessions for 2012. Staff has distributed this schedule to board chairs and staff liaisons and has received concurrence. The schedule follows for your consideration.

Staff and Council were also successful in filling all board vacancies through 2011. There are a number of vacancies coming up in March and June of 2012. Staff has already been advertising the March 2012 vacancies. A schedule of outreach efforts has also been included with this report.

CONCURRENCE

The attached schedule was approved by the board chairs and staff liaisons.

FISCAL IMPACT

N/A

WORK LOAD IMPACTS

N/A

ALTERNATIVES

Council may decide to change the schedule or to not meet regularly with the BCC's.

ATTACHMENTS

1. 2012 Proposed Meeting Schedule
2. Recruitment and Outreach Efforts

ATTACHMENT 1

Proposed 2012 Meetings with Council and Boards, Commissions and Committees	
Board, Commission, Committee or Task Force	2012 Work Session Update to Council
Library Board	2/21
Planning Commission	3/6
CUAB	4/17
Budget Committee	5/1
PARB	5/15
DLC	6/19
Arts	7/17
PSAC	9/18
Library Expansion Task Force	10/16
Riverfront Task Force	11/20

ATTCHMENT 2

Recruitment and Outreach Efforts for Vacancies

Newsletter Outreach

Jan. 2012	Revised tri-fold brochure to be placed on Council sign-in table and distributed to NDAs. Emails of vacancies to be sent to NDAs for distribution.
Dec. 2011	Scheduled all BCC's to meet with Council during 2012
Dec. 2011	Pilot Newsletter article – Vacancies advertised for the Arts Committee (5), CUAB (3), DLC (2), Library (1), and the Planning Commission (2),
Nov. 2011	All vacancies filled to date by end of November
Nov. 2011	Pilot Newsletter article – Riverfront Board
Sept. 2011	Pilot Newsletter article – PSAC, general call for All Boards, Commissions, and Committees
Aug. 2011	Pilot Newsletter article – Budget Committee
May 2011	Pilot Newsletter article – Milwaukie Center
March 2011	Pilot Newsletter article – All Boards, Commissions, and Committees

Web Site

Dec. 2011	Home Page, Key City Topics - <u>Boards, Commissions and Committee Vacancies</u>
Oct. 2011	Enhanced Volunteer presence on Home Page

Social Media

Nov. 2, 2011	Facebook– Arts Committee
Aug. 9, 2011	Twitter – Budget Committee
June 23, 2011	Twitter, Facebook – Library Expansion Task Force

Press Release

July 2011	Budget Committee
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Periodic Mayor's Announcements at Council Meetings



Agenda Item: 3.
Meeting Date: 1/17/12

To: Mayor and City Councilors
Through: Bill Monahan, City Manager
From: Pat DuVal, City Recorder
Subject: Proposals to Provide Legal Services as City Prosecutor
Date: January 10, 2012 for January 17, 2012 Work Session

ACTION REQUESTED

Review process, discuss final applicants, and provide direction on acceptance of proposal and negotiation of contract.

HISTORY OF PRIOR ACTIONS AND DISCUSSIONS

October 18, 2011 – In work session, Mayor and Council concurred with Mr. Monahan's proposal to review the City Prosecutor contract and consider options for better ways to manage that function. With this structure the hiring function would be with the City Council. City staff worked with the Office of Jordan Ramis to prepare the Request for Proposal.

November 1 – December 1, 2011 – The City published a Request for Proposals for City Prosecutor Services in *The Daily Journal of Commerce* on the City and Oregon State Bar websites. Seventeen proposals were submitted for the position by the December 1 deadline.

December 6, 2011 – Panel convened to review and evaluate the proposals, and five applicants were selected to advance to the next step of the process. The panel consisted of Councilors Hedges and Miller, Ted Naemura of Jordan Ramis, Police Chief Bob Jordan, Court Clerk Carla Bantz, and City Recorder Pat DuVal.

January 6, 2012 – Panel convened to interview five applicants. The panel consisted of Councilors Hedges and Miller, Police Chief Bob Jordan, Court Clerk Carla Bantz, Code Compliance Coordinator Tim Salyers, and City Recorder Pat DuVal.

BACKGROUND

In its efforts to identify more effective methods to manage the City Prosecutor function, at the direction of City Council staff initiated the request for proposal process. Technical guidance was provided by Ted Naemura with the firm of Jordan Ramis PC. Municipal Court and key staff felt the City had received a sufficient number of qualified applicants to move forward in the process and make a recommendation to the City Council for a final decision.

In the interview process two attorneys, who for discussion purposes are referred to as Candidate A and Candidate B, were identified as the top contenders by all members of the panel. The group, however, did not come to an agreement on the top candidate. Councilor Miller, Mr. Salyers, and Ms. DuVal concurred on Candidate A, and Councilor Hedges and Chief Jordan agreed on Candidate B. Ms. Bantz was undecided at the end of the interview process.

This work session provides an opportunity for Councilors to discuss their preferences with the full City Council. The goal is to obtain direction to accept one of the proposals and negotiate a one-year contract at a fixed price and to execute the transition to a new City Prosecutor on February 1, 2012. A resolution has been prepared and is in the agenda packet for action by the Council to appoint a City Prosecutor during the regular Council meeting,

FISCAL IMPACT

Currently \$72,000 is budgeted annually for City Prosecutor Services plus an hourly rate for code enforcement cases. Based on the fixed rates submitted by Candidates A and B, the City would reduce its expenses for this line item by \$30,000 - \$48,000 annually.

WORK LOAD IMPACTS

Staff time would be spent in orientation of the new attorney, and the City Recorder would be responsible for supervision and contract administration. According to the contract the attorney would discuss statistical information and submit a report each 6 months to the City Recorder and key code enforcement, police, and municipal court staff members for evaluation. That information would be compiled for the City Council for its review.

ALTERNATIVES

The City Council may wish to award the contract to either Candidate A or Candidate B, or award no new contract at this time and continue with current City Prosecutor services.



Agenda Item: 4.
Meeting Date: 1/17/12

COUNCIL AGENDA ITEM SUMMARY

Issue/Agenda Title: Bag Ban Report

Prepared By: JoAnn Herrigel
Dept. Head Approval: JoAnn Herrigel
City Manager Approval:
Reviewed by City Manager:

ISSUE BEFORE THE COUNCIL

Staff will report back on information Council requested in August on a bag ban for Milwaukie.

STAFF RECOMMENDATION

None.

KEY FACTS & INFORMATION SUMMARY

At the August 19, 2011 work session, Council discussed the concept of a bag ban for Milwaukie. Staff was asked to report back to Council on specific questions raised.

OTHER ALTERNATIVES CONSIDERED

NA

CITY COUNCIL GOALS

This issue is not related to any current Council Goal.

ATTACHMENT LIST

None

FISCAL NOTES

None.



To: Mayor and City Council
Through: Bill Monahan, City Manager
From: JoAnn Herrigel, Community Services Director
Subject: Report back on Bag Ban
Date: January 17, 2012

ACTION REQUESTED

Council input and direction is requested regarding whether staff time should be dedicated to a bag ban effort and if so, what actions Council suggests.

HISTORY OF PRIOR ACTIONS AND DISCUSSIONS

The Community Services Director met with Council at their August 19, 2011 work session to discuss the concept of a bag ban. Council requested additional information from staff on this issue.

BACKGROUND

At the August 19, 2011 work session at which the concept of a bag ban was discussed, Council requested staff to report back to them with specific information. A summary of the answers to Council questions is presented here but additional information will be shared at the January 17 work session.

Council asked the following questions:

- **Would like more information on Twin Cities program – is there some promise in that?**

This is not a comparable policy. The bags that are banned in the Twin Cities are only those plastic bags that were previously used to set out curbside yard debris. This ban covers seven counties in the Minneapolis – St. Paul area. The City of Minneapolis is excluded at this time. As of Jan 1, 2010 if yard debris is set out in bags, it must be set out in compostable plastic bags or brown paper lawn and leaf bags.

<http://www.rethinkrecycling.com/compostablebags>.

Note: Milwaukie has never allowed yard debris to be set out in plastic bags.

- **How does PDX enforce the ban? Would we need another layer of bureaucracy to enforce here?**

In a 1/4/2012 conversation with Amanda Romero, 503-823-7069, City of Portland Bureau of Planning and Sustainability, she noted that any enforcement of the bag ban is complaint-driven. The City must receive a complaint and then it will be handled by existing enforcement staff. They have received very few, if any complaints.

- **How does Portland determine if businesses have gross annual sales of \$2 million?**

Business tax registration is required of all those doing business within Multnomah County and/or the City of Portland. Exemptions include most non-profit agencies and businesses whose total gross receipts for all business everywhere are less than \$50,000 annually. Businesses are required to submit tax returns as part of the requirements under the business tax code.

Note: Milwaukie's business registration program does not currently require this information from businesses.

- **Would like to know which stores the Portland model ban would affect here in Milwaukie**

Under the Portland ban model – any stores in Milwaukie of 10,000 square feet or more and over \$2 million in sales per year would be required to comply. Staff has determined that, based on square footage alone, Safeway, Albertsons, Rite Aid and Walgreens would be required to comply. Estimates for annual sales revenue for City retailers have not been generated by staff as of this date.

- **Why are plastic bags needed for pharmaceuticals? (Why is that exempt in PDX?)**

Staff is attempting to contact Portland staff that can provide this information and will report to Council at the January 17th work session.

- **Could we put compostable bags in our compost if we had a curbside organics program?**

If Milwaukie established a curbside organics collection program similar to that in place in Portland, the only bags that would be allowed in the organics

collection bins would be those used to line organics collection bins. (That is, residents would not be allowed to save up bags and place them in their compost bins for organics collection.) Further, the type of bags used to line bins would be restricted to specific types of bags. Portland has allowed the use of only five approved brands of compostable bags for lining collection bins. These approved compostable bags are designed to break down quickly and safely at local composting facilities. Other compostable bags and regular plastic bags are NOT allowed.

At the August 19, 2011 work session, Mayor Ferguson volunteered to coordinate a summit with local retailers (Safeway, Alberston's and Bob's Red Mill) regarding bag ban concerns. Staff is not aware of any action that the Mayor may have taken regarding such a summit.

CONCURRENCE

NA

FISCAL IMPACT

NA

WORK LOAD IMPACTS

Any further work on a potential bag ban in Milwaukie would impact the Community Services Director's existing work load.

ALTERNATIVES

NA