

MILWAUKIE PLANNING COMMISSION

MILWAUKIE CITY HALL
10722 SE MAIN STREET

AGENDA TUESDAY, JUNE 14, 2005 6:30 PM

		ACTION REQUIRED
1.0	Call to Order	
2.0	Procedural Matters	
3.0	Planning Commission Minutes No minutes were available for this packet. Approved PC Minutes can be found on the City web site at: www.cityofmilwaukie.org	Motion Needed
4.0	Information Items – City Council Minutes City Council Minutes can be found on the City web site at: www.cityofmilwaukie.org	Information Only
5.0	Public Comment This is an opportunity for the public to comment on any item not on the agenda	
6.0	Public Hearings	Discussion and Motion Needed For These Items
6.1	This hearing is continued from the April 12 and May 24, 2005 meetings. Type of Hearing: Minor Quasi-Judicial Applicant: PDX Land LLC Owner: PDX Land LLC Location: 2540 SE Lark Street Proposal: Applicant is appealing a Director's Determination and seeking a Commission ruling recognizing four dwelling units for zoning purposes. File Numbers: AP-05-01 NDA: Island Station Staff Person: John Gessner	
6.2	This hearing is continued from April 24, May 10, and May 24, 2005 meetings. Type of Hearing: Minor Quasi-Judicial Applicant: North Clackamas Parks and Recreation District Owner: City of Milwaukie Location: 5440 SE Kellogg Creek Drive Proposal: Applicant is requesting approval of a Community Service Overlay; Transportation Plan Review; and Water Quality Resource Review to develop 4 baseball/softball fields and relocate the soccer field at the North Clackamas Community Park. The proposal includes a Water Quality Resource Review for the enhancement of natural resource areas and the construction of bio swales within the WQR area. File Numbers: CSO-05-02 / TPR-05-02 / WQR-05-01 NDA: Lake Road Staff Person: Lindsey Nesbitt	
7.0	Worksession Items	
8.0	Discussion Items This is an opportunity for comment or discussion by the Planning Commission for items not on the agenda.	Review and Decision
9.0	Old Business	
10.0	Other Business/Updates	Information Only Review and Comment
10.1	Matters from the Planning Director	
10.2	Design and Landmark Committee Report	
11.0	Next Meeting: June 28, 2005 • North Main Final Plat Extension • Norm Scott – 8555 SE 28 th Avenue – S-04-04/TPR-04-10/VR-04-12/WQR-04-04 The above items are tentatively scheduled, but may be rescheduled prior to the meeting date. Please contact staff with any questions you may have.	

Milwaukie Planning Commission Statement

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

Public Hearing Procedure

1. **STAFF REPORT.** Each hearing starts with a brief review of the staff report by staff. The report lists the criteria for the land use action being considered, as well as a recommended decision with reasons for that recommendation.
2. **CORRESPONDENCE.** The staff report is followed by any verbal or written correspondence that has been received since the Commission was presented with its packets.
3. **APPLICANT'S PRESENTATION.** We will then have the applicant make a presentation, followed by:
4. **PUBLIC TESTIMONY IN SUPPORT.** Testimony from those in favor of the application.
5. **COMMENTS OR QUESTIONS.** Comments or questions from interested persons who are neither in favor of nor opposed to the application.
6. **PUBLIC TESTIMONY IN OPPOSITION.** We will then take testimony from those in opposition to the application.
7. **QUESTIONS FROM COMMISSIONERS.** When you testify, we will ask you to come to the front podium and give your name and address for the recorded minutes. Please remain at the podium until the Chairperson has asked if there are any questions for you from the Commissioners.
8. **REBUTTAL TESTIMONY FROM APPLICANT.** After all testimony, we will take rebuttal testimony from the applicant.
9. **CLOSING OF PUBLIC HEARING.** The Chairperson will close the public portion of the hearing. We will then enter into deliberation among the Planning Commissioners. From this point in the hearing we will not receive any additional testimony from the audience, but we may ask questions of anyone who has testified.
10. **COMMISSION DISCUSSION/ACTION.** It is our intention to make a decision this evening on each issue before us. Decisions of the Planning Commission may be appealed to the City Council. If you desire to appeal a decision, please contact the Planning Department during normal office hours for information on the procedures and fees involved.
11. **MEETING CONTINUANCE.** The Planning Commission may, if requested by any party, allow a continuance or leave the record open for the presentation of additional evidence, testimony or argument. Any such continuance or extension requested by the applicant shall result in an extension of the 120-day time period for making a decision.

The Planning Commission's decision on these matters may be subject to further review or may be appealed to the City Council. For further information, contact the Milwaukie Planning Department office at 786-7600.

Milwaukie Planning Commission:

Donald Hammang, Chair
Brent Carter, Vice Chair
Lisa Batey
Teresa Bresaw
Catherine Brinkman
Jeff Klein
Dick Newman

Planning Department Staff:

John Gessner, Planning Director
Lindsey Nesbitt, Associate Planner
Keith Jones, Associate Planner
Jeanne Garst, Office Supervisor
Marcia Hamley, Office Assistant
Shirley Richardson, Hearings Reporter



To: Planning Commission

From: Jeanne Garst, Office Supervisor

Subject: Agenda Item 6.1 - Michael Hamersly Appeal

Date: June 7, 2005

Please bring your staff report from your May 24, 2005 packet for Agenda Item 6.1 – AP-05-01 – PDX Land LLC/Michael Hamersly. This item is continued from April 12 and May 24 and there is no change in the application information supplied to you in the April 12 and May 24 packets. If you need a copy of this staff report please contact Planning at 503-786-7600.



To: Planning Commission
Through: John Gessner, Planning Director
From: Lindsey Nesbitt, Associate Planner
Date: June 14, 2005
File: CSO-05-02, TPR-05-01, and WQR-05-01
Applicant: North Clackamas Parks and Recreation District
Site Address: 5440 SE Kellogg Creek Drive
NDA: Lake Road

Action Requested

Approve applications CSO-05-02, TPR-05-01, and WQR-05-01, authorizing development at North Clackamas Park, and adopt the recommended findings and conditions in support of approval.

Key Issues

Additional public comments were received after the May 24, 2005, Planning Commission meeting. The following key issues are not new material or to be considered new information. The information below provides a written staff response to issues raised through written public comment, which closed Tuesday, May 31, 2005.

1. Statements in the Winterbrook Planning letter and in Susan Shawn's letter regarding Vigil Agrimis are inaccurate conclusions that indicate Vigil Agrimis terminated their services based upon disagreements with city staff.

Staff hired Vigil Agrimis to complete a technical review of the WQR application. Vigil Agrimis provided a memorandum to city staff on April 27, 2005. Rather than directly forwarding the April 27 memo on to the applicant, at the request of Vigil Agrimis, staff incorporated comments into a letter to the applicant dated April 28, 2005. This letter was discussed in the May 10, 2005, staff report. The April 28, 2005, letter was also included as an attachment to the May 10, 2005, staff report.

On Friday, May 13, 2005, Vigil Agrimis notified city staff by telephone of their intent to terminate services. Vigil Agrimis then drafted two letters to

city staff: one was a notification of termination of services, and the other provided comments on the applicant's hydrological report. Though the letters are dated May 13 and May 16, both were faxed to city staff on Monday, May 16, 2005.

When Vigil Agrimis notified staff of their intent to terminate services, the city hired Kelly Grover P.E. with LDC Design Group to review the applicant's proposed hydrological report and WQR application. The City provided all correspondence from Vigil Agrimis to Ms. Grover. Ms. Grover has provided a memorandum detailing materials received from the city as well as her review of the proposal (See Attachment 2). Ms. Grover incorporated the concerns raised by Vigil Agrimis in her memorandum dated May 20, 2005, with her discussion of the Curve Number (CN) value. Staff has recommended a condition of approval to ensure additional review of the CN value, which affects postdevelopment stormwater runoff. Final staff review will ensure that postdevelopment stormwater flows do not exceed predevelopment flows.

2. After the May 24, 2005, Commission meeting, staff met with city consultant LDC Design Group to discuss environmental impacts that may be associated with the proposed parking lot retention. Based upon this meeting, staff recommends that the stormwater management plan be redesigned to omit the parking lot retention and that stormwater retention be provided elsewhere on the site. Staff has revised the recommended conditions of approval to reflect this change.
3. Comments were submitted regarding handicapped accessibility requirements. Tom Larsen, Milwaukie Building Official, reviews land use applications and building permit applications for compliance with ADA requirements based upon the Oregon Structural Specialty Code. Based upon Mr. Larsen's review of the Oregon Structural Specialty Code, all buildings on the site are required to be fully accessible to persons with disabilities. Accessible parking and an accessible route must be provided from the parking lot and to and between all buildings (including the on-site concession stand, restrooms, bleachers, dugouts, maintenance shed, and picnic shelter).

The May 24, 2005, staff report Attachment 1, Recommended Conditions in Support of Approval, addresses the Building Official's conditions regarding accessibility requirements. A condition is recommended, at the time of building permit submittal, requiring the applicant to show sufficient detail (slope, surface materials, striping, etc) to show compliance with Chapter 11 of the Oregon Structural Specialty Code.

Attachments

1. Recommended Findings and Conditions in Support of Approval
2. Memo from Kelli Grover P.E. LDC Design Group (Scope of work memo)
3. Letter From Oregon Department of Fish and Wildlife
4. Written Public Comment in Opposition

Attachment 1

Recommended Findings in Support of Approval

1. The majority of the proposed development area is located within the southern portion of the site. Application materials submitted February 24, 2005 and revised materials submitted March 21, 2005, describe a proposal to construct the following:
 - a. Four youth softball/baseball fields.

Fields 1, 3, and 4 will each have a 225-foot foul line with a 225-foot radius outfield fence. Field #2 will have a 200- to 210-foot foul line and outfield radius to reduce impacts to the natural resource area and prevent encroachment into a required 50-foot buffer around the WQR area. Due to the proposed size fields 1, 3, and 4, will accommodate play for youth up to 19 years of age.

The fields will include the following:

▪ Full back stops ▪ Perimeter fencing ▪ Option for foul ball netting ▪ Maintenance access gates ▪ Bleachers (mobile 5 rows accommodating 35 persons per field)	▪ Bicycle parking and drinking fountains at the inner concourse ▪ Dugouts ▪ Skinned infields and turf outfields ▪ Optional electronic scoreboards ▪ Pole mounted lighting ▪ Irrigation
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 - b. A drop-off plaza located at the walkway entrance into the 4 fields.
 - c. Pedestrian concourse between fields with concession and restroom facilities.
 - d. Full-size soccer field (360 feet by 230 feet) to be relocated near the west end of the site. A trail system will connect the soccer field to the parking area and the ball fields.
 - e. New 230-space, landscaped parking area that will bring the total on-site parking spaces to 352.¹ The parking area will also accommodate truck and horse-trailer parking.

¹ The March 21, 2005, Development Plans demonstrate a 233-space parking lot. The applicant indicated at the May 10, 2005, hearing that in order to preserve an existing tree, 3 spaces will need to be removed.

- f. Enhanced pedestrian crossing from the existing parking area (adjacent to Rose Garden) to the Milwaukie Center. The crosswalk will be raised to allow for better delineation of pedestrian areas and to slow vehicles entering and exiting the park.
 - g. Water quality resource area enhancements. Vegetation will be planted to create and enhance a 50-foot buffer around an existing drainage swale.² All enhancement areas will be planted with native plant species and seed mixes as shown on the applicant's site plan and vegetation plan in Attachment 2 Development Plans.
 - h. The horse arena will remain.
 - i. The picnic area near the west end of the site will be enhanced with new picnic tables on concrete pads.
 - j. Construction of maintenance facility shed.
 - k. Other park amenities such as trash receptacles, benches, and fencing will be provided.
 - l. Tot lot playground structure located in the western portion of the park.
 - m. Improvements to Kellogg Creek Drive that include widening the street and the construction of a sidewalk along the north side of the street. The applicant will also reconstruct the intersection of Kellogg Creek Drive and Rusk Road to increase vehicle safety.
 - n. An eight-to-twelve-foot-wide perimeter trail system.
2. The applicant has submitted the following technical studies:
- a. Traffic Impact Study prepared by Lancaster Engineering, submitted February 24, 2005.
 - b. Two traffic addendums prepared by Lancaster Engineering, submitted April 4, 2005, and April 11, 2005.
 - c. Wetland delineation report prepared by Pacific Habitat Services, submitted February 24, 2005.
 - d. Hydrology Analysis Report prepared by W&H Pacific, submitted April 15, 2005.
 - e. Revised Hydrological Analysis Report prepared by W&H Pacific and submitted May 6, 2005.
3. Applications CSO-05-02, WQR-05-01, and TPR-05-01 have been processed and public notice has been provided in accordance with requirements of Milwaukie Municipal Code Section 19.1011.3 Minor Quasi-Judicial Review. Public hearings were held on April 26, 2005, May 10, 2005, and May 24, 2005.

² The drainage swale is identified on the City's water quality resource map.

4. The North Clackamas Park has a comprehensive plan designation of Public. The proposed development for North Clackamas Park is consistent with the Comprehensive Plan. The plan designates North Clackamas Park as a community park and states that a community park should be as follows:

- a. A large citywide facility.
- b. Serve a special function.
- c. Located on arterials or other major routes.
- d. Have major structured recreational facilities such as lighted baseball and soccer fields.

The Comprehensive Plan also states that the City will strive to develop appropriate facilities, improve access to the existing parks, and enlarge existing parks when feasible.

5. The site is located in the Residential R-10 Zone. Parks are listed as Community Service Overlay uses (CSO) and are permitted in residential zones subject to CSO review and approval. Parks are subject to development standards of MMC Section 19.301 – Residential R-10 Zone and MMC Section 19.321 – Community Service Overlay Zone. The proposal is consistent with MMC Section 19.301- Residential R-10 Zone.

6. MMC Section 19.321.4 (D) Public Benefits Test

The applicant has demonstrated that the proposal is in the interest of the general public and that, as conditioned, benefits to the public outweigh any potential negative impacts.

a. Public Benefits

The applicant identified the following public benefits:

- 1) The horse arena will remain.
- 2) The large oak tree, located at the west end of the park near the loop drive, will be preserved.
- 3) A new full-size soccer field will be provided.
- 4) Access to adjacent properties will be preserved.
- 5) The North Clackamas Park is the District's largest community park. Community parks are intended to serve the entire community with a variety of recreational uses and are specifically intended to be utilized for sport field purposes.³
- 6) New 230-space parking area that will also accommodate horse trailer parking.
- 7) Improvements to pedestrian crossing will be provided.

³ Milwaukie Comprehensive Plan Objective 5, Policy #4.

- 8) Approximately 57,760 square feet of environmental enhancements and mitigation will be provided, including the establishment of a 50-foot buffer around the drainage swale, as shown in the Development Plans submitted March 21, 2005. Approximately 10,300 square feet of upland oak and ash plantings will be provided adjacent to the vegetative buffer.
- 9) The development will provide needed sports facilities. Currently, the NCPD only provides 3 baseball fields and 3 soccer fields (2 of which are not regular size). Approximately 2,500 youth play organized baseball or softball in the North Clackamas area and there are currently more than 62 youth soccer teams. As population of the area increases, it is anticipated that participation levels in youth sports will also rise, creating the need for additional facilities.
- 10) The proposed project will create new and safe ball fields. It has been noted by users of the current ball fields that the existing condition of the fields are unsafe for play due to poor drainage and lack of irrigation. It has been stated by some park users that the existing fields have outlived their lives.
- 11) The proposed fields will provide opportunities for youth sports. Public schools have had to scale back on sports programs due to budget constraints. The ability to provide needed facilities for youth is a key component of providing constructive opportunities for leisure time, promoting a sense of community, development of "team" skills, and a foundation for the development of healthy lifestyles.
- 12) The existing picnic area on the knoll in the western portion of the park will be enhanced.
- 13) A new integrated, accessible trail system will enhance recreational walking and jogging opportunities for all ages.
- 14) New restroom facilities will replace existing portable restrooms.
- 15) Currently vehicular traffic has unrestricted access to the entire project area. Each year hundreds of vehicles park on turf areas where leaking petroleum products are either absorbed into the soil or washed away into adjacent water resources. The proposed plan creates a parking area that includes oil and sediment traps and a bio-swale system to clean the stormwater.
- 16) The proposal includes the creation of a 50-foot buffer along the drainage swale. Currently the turf extends to the edge of the resource area.
- 17) The applicant notes that the proposed uses are consistent with the intended purpose of a "community park" and collectively provide countless public benefits that include:

- a. Efficient use of limited land and financial resources.
 - b. Provision of desperately needed facilities that promote constructive use of leisure time and healthy lifestyles.
 - c. Improved player safety, park maintenance, park aesthetics.
 - d. Maintenance/enhancement of existing uses and addition of new recreation opportunities and facilities.
 - e. Improved stormwater and parking management.
 - f. Improved habitat value.
 - g. Improved park security.
- 18) At the April 26, 2005, hearing, the Planning Commission heard testimony about shortage of adequate facilities and the community need for the ball fields.

b. Potential Negative Impacts

The applicant modified the proposed plan, where practicable, to mitigate potential negative impacts. Impacts that were identified during the public meeting process are addressed below. The following demonstrates how the applicant modified the proposal to limit potential negative impacts.

- 1) Increased traffic.
To mitigate traffic impacts, the applicant will improve Kellogg Creek Drive by widening the road and providing a sidewalk along the north side of the roadway. The applicant will provide improvements to the Kellogg Creek/Rusk Road intersection by widening Kellogg Creek drive to 28 feet, constructing a sidewalk along the northern side of the road, and reconfiguring the intersection of Kellogg Creek Drive and Rusk Road (see also Section 1400 Recommended Findings).
- 2) Noise from sound system and ball field use.
To mitigate noise impacts, the applicant revised the proposal to omit the permanent sound system and drafted an amplified sound policy. The MMC 8.08.10 exempts sounds caused by organized sporting events. Applicant believes this applies to all sound (amplified and unamplified) created by organized athletic events. The opponents believe the exemption of sound for organized athletic events only applies to unamplified sound. The code does not specify whether or not amplified sound is exempt from the noise ordinance per MMC 8.08.100. The Planning Commission may interpret the code and condition the application based upon their interpretation.
- 3) Ball field and parking lot lighting impacts to adjacent properties.

MMC Section 321.4 authorizes the Planning Commission to adopt conditions to limit hours and levels of operation. The Commission has adopted a condition requiring the following:

- a) A photometric plan, demonstrating .5 foot-candles at the property line, shall be submitted.
- b) A lighting test shall be conducted between the hours of 9:00 p.m. and 10:30 p.m. to ensure that there is no light trespass from the ball field and parking lot lighting onto adjacent residential properties.
- c) If the lighting test does not demonstrate .5 foot-candles at the property line, measures such as adjusting cut-off lighting fixtures shall be taken to prevent light trespass onto adjacent properties.

- 4) Public concerns were raised that the proposed plan will create a single-use ball field park.

This is not a Municipal Code issue, but rather a Parks District issue. In response to this concern, the applicant reduced ball field size and reorganized the proposed layout to keep the horse arena and dog run. The soccer field will be relocated. A walking trail around the site, existing picnic facilities, and new playground equipment will accommodate passive recreation.

- 5) Concerns were expressed about impacts to environmental areas.

Two wetlands will be filled to construct a drive and one of the ball fields will be constructed adjacent to another; however, these 2 wetlands are not subject to water quality resource review. Identified water quality resource (WQR) are Mt. Scott Creek, drainage swale bisecting the site, and a wetland located in the northern portion of the site. A 50-foot buffer will be established around all three resources and approximately 57,760 square feet of resource enhancement will be provided.

- 6) Concerns were raised about adequacy of on-site parking.

The proposal includes construction of a 230-space parking area, bringing the total on-site parking spaces to 352. The proposal will provide 43 spaces per field, which is comparable to similar facilities within the region. The City's traffic consultant, DKS Associates, has reviewed the proposed parking ratio and has advised the city that it is adequate.

As conditioned, benefits to the public exceed potential negative impacts, and the application complies with MMC Section 19.321.4 (D) Public Benefits Test.

7. MMC Section 19.321.10 establishes specific standards for public/private institutions and other facilities not covered by other standards. This section addresses development standards such as setback, height, lighting, noise limitations, and hours and level of operation. The maximum height limitation for all structures under CSO criteria is 50 feet. The applicant's proposal includes lighting poles for the ball fields that are 70 to 80 feet in height. Prior to erecting the lighting poles, the applicant must:
- Revise the application to reduce the lighting poles to 50 feet.
 - Apply for a zoning text amendment to permit structures such as lighting poles to exceed the 50-foot height limitation.
 - Apply for a variance to exceed the 50-foot height limitation.

As conditioned, the application complies with MMC Section 19.321 Community Service Overlay Criteria.

8. MMC 19.500 – Off-street parking and loading. As conditioned, the application complies with MMC 19.500 Off-Street Parking and Loading.

- 19.503.3 Minimum and maximum number of required parking spaces. Community parks are not listed in Table 503.9, which provides minimum and maximum number of required off-street parking spaces; therefore, community parks are classified as unlisted uses.
- 19.503.6 states that the Planning Commission shall determine the minimum required parking spaces for all uses not listed in table 503.9. The applicant submitted technical information about the park use, parking demand, and traffic generation. The applicant proposes to provide 43 spaces per field and will construct a 230-space parking area to accommodate parking demand of the proposed development.

The City's traffic consultant, DKS Associates, reviewed the technical data provided by the applicant and found that the proposed ratio of 43 spaces per field will adequately accommodate parking demands of the proposed development. The Planning Commission approved the proposed ratio of 43 spaces per field. To ensure the parking will function at the site, a condition was adopted requiring the applicant to provide a detailed management plan that includes schedule management, signing, and remote parking management.

- 19.502 states that the standards and procedures apply to uses with nonconforming parking and loading facilities, in an attempt to bring them into conformance with current standards when remodeling or a change in use occurs.

The existing parking facilities are nonconforming in regards to landscaping and drainage. The applicant will provide a new 230-

space parking area to accommodate the proposed development. The Commission has approved the applicant's parking ratio of 43 spaces per field; therefore, parking demand for the development is satisfied with the construction of the 230-space parking lot. Existing parking areas are not needed to accommodate parking for the proposed development; therefore are not required to be brought into conformance with development standards of MMC Section 19.500.

- d. 19.503.2 Shared parking is permitted when required parking cannot be provided on the site, when the shared parking is located within 300 feet of the principal structure or use, and when there is no conflict of use between the two uses. The Planning Commission approved the applicant's proposed ratio of 43-spaces per field. With the construction of the 230-space parking area, required parking for the development is provided on-site and shared parking is not required, therefore, the provisions of 19.503.2 are not applicable. The applicant's parking management plan includes use of the Clackamas Christian Center's parking lot to accommodate over-flow parking.
- e. 19.503.4, the applicant is not requesting special exemption from maximum allowable parking standards.
- f. 19.503.5, the site is classified as Zone B.
- g. 19.503.7, the applicant is not requesting a reduction of required parking.
- h. 19.503.8, the applicant is not requesting a modification of minimum and maximum parking.
- i. As conditioned, the application is consistent with MMC 19.503.10 parking space standards.
- j. As conditioned, the new parking facility complies with MMC 19.503.11 paving and striping standards.
- k. The applicant is not proposing to create additional curb cuts into the public right-of-way. The application complies with MMC 19.503.12.
- l. As conditioned, the application complies with MMC 19.503.13 minimum width requirements of drive aisles.
- m. The applicant's proposal provides on site vehicular connections as shown on the development plans and complies with MMC 19.503.14.
- n. MMC 19.503.16 – Drainage Standards. Staff consultant LDC Design Group has reviewed the proposed stormwater management plan and found the calculations presented in the report adequately model stormwater run off preliminary design level analysis. As

conditioned, the application complies with parking area drainage standards.

- o. The applicant has proposed on-site pedestrian walkways through the parking areas that are separate from vehicular circulation and parking. The application complies with MMC 19.503.17 pedestrian access.
- p. MMC 19.503.18 is not applicable, the application does not include a park-and-ride facility.
- q. MMC 503.19 establishes provisions for landscaping and screening. The applicant will provide parking area landscaping as required per MMC Section 19.503.19. As conditioned the proposal is consistent with MMC Section 19.503.19 – Landscaping.

MMC Section 19.503.19(G) authorizes alternative landscaping plans. The applicant has requested to omit 4 landscape islands in the southern portion of the parking area. The omission of the 4 landscape islands results in the loss of approximately 528 square feet of landscaping. The landscaping along the southern property line exceeds the minimum width required by 17 feet creating a total of 4,930 square feet of additional area of landscaping.

- r. The applicant submitted a parking plan consistent with MMC 19.503.20.
- s. MMC Section 19.503.21 off-street parking in residential zones is applicable for residential development, such as construction of residential dwellings and home based businesses. This section is not applicable to the proposed development of a community service use.
- t. MMC 19.504, off-street loading is not applicable.
- u. 19.505, bicycle parking requires the applicant to provide on-site bicycle parking. As conditioned the proposal is consistent with MMC Section 19.505.
- v. MMC 19.506, carpool and vanpool parking is not required.
- w. MMC 19.507, Structure parking is not proposed or required.

9. MMC Section 19.322 Water Quality Resource Review

- a. The application includes the construction of 2 bio-swales/storm detention facilities, paved and gravel walking trails, repaving of an existing drive, and water quality resource (WQR) area enhancements within the WQR. All other activity will take place outside of the WQR area. All proposed activity within the WQR area is permitted per MMC Section 19.322.7. As conditioned, the application is consistent with MMC 19.322.7 – Activities Permitted Under Minor Quasi-Judicial Review.

- b. MMC Section 19.322.9 specifies application requirements which include the submission of an alternatives analysis. Only development within the WQR area is subject to the alternatives analysis requirement. The proposed bio-swales are permitted per Section 19.322.10 (E) provided an equal area to the WQR is replaced. The applicant will replace resource area for the bio-swales at a 1.4 to 1 mitigation ratio. The applicant will also provide enhancements to off-set the walking trails at a 1.4 to 1 ratio. Total enhancements for the bio-swales and walking trails will be approximately 10,320 square feet. Walking trails will localize foot traffic and reduce trampling associated with foot traffic within the WQR areas. As conditioned, the application is consistent with 19.322.9 – Application Materials.
 - c. 19.322.9 (I) requires submission of a WQR area mitigation plan addressing adverse impacts and ways in which impacts will be minimized. Adverse impacts may occur during the construction phase of the walking trails and bio-swales. The applicant will install erosion and sediment controls to prevent runoff into WQR areas and construction fencing around protected areas to prevent damage to natural areas. The fencing and erosion controls must remain installed until all on-site construction work has been completed. City staff must inspect construction fencing and erosion controls prior to commencement of any earth-disturbing activities.
10. MMC 19.322.10 – Water Quality Resource Development Standards
- a. Restoration of WQR area
- The applicant has submitted a preliminary WQR restoration/enhancement plan. A condition has been adopted requiring submission of a WQR planting plan that demonstrates location, type, and quantity of plant materials to be reviewed by the City's environmental consultant.
- The mitigation plan must also address how the bio-swales have been designed to integrate the WQR area in such a way that the habitat structure will not be negatively impacted. Design considerations should include planting the swale with diverse native vegetation, and creating an alignment that assimilates with the existing terrain and trees. The design should demonstrate how riparian area enhancements have been incorporated into the final swale design to ensure that functions of the WQR area remain intact.
- As conditioned the proposal is consistent with MMC Section 19.322.10 (A).

b. Protection of existing vegetation.

Existing vegetation within the WQR area will not be removed. A condition has been adopted requiring construction fencing around existing vegetation and areas to be preserved. As conditioned, the proposal is consistent with MMC Section 19.322.10 (B).

Removal of some vegetation for the walking trails will occur, but significant vegetation, such as mature trees, will not be disturbed. The applicant will provide native plantings within the WQR area at a 1.4 (plantings) to 1 (trails) ratio to offset the vegetation to be removed for the walking trails.

c. Removal of existing vegetation shall be replanted.

Removal of some vegetation for the walking trails will occur, but significant vegetation, such as mature trees, will not be disturbed. The applicant will provide native plantings within the WQR area at a 1.4 (plantings) to 1 (trails) ratio to offset the vegetation to be removed for the walking trails.

d. WQR area shall be marked prior to construction.

The applicant will provide sediment and erosion control and construction fencing around WQR areas prior to commencement of any earth-disturbing activities. As conditioned, the application is consistent with MMC Section 19.322.10 (D).

e. Stormwater pretreatment facilities.

The applicant will construct 2 bio-swales within the WQR area. The bio-swales will encroach no more than 25 feet into the required 50-foot buffer. The approximate area of the bio-swales is 4,440 square feet. The applicant will provide approximately 6,250 square feet of WQR enhancements to mitigate the bio-swales.

Staff consultant LDC Design Group reviewed the storm water report and found that placement of water quality facilities in a buffer area is consistent with similar practices around the region. As conditioned, the proposed facilities will be designed to integrate in the WQR area in such a way that the habitat structure will not be negatively impacted.

f. The applicant is not proposing additions or alterations to existing structures within the WQR area. Section 19.322.10 (F) is not applicable.

g. Off-site mitigation.

The proposal does not include off-site mitigation. Section 19.322.10 (G) is not applicable.

h. Site preparation and construction practices.

The applicant will install erosion and sediment controls to prevent runoff into WQR areas and construction fencing around protected areas to prevent damage to natural areas. The fencing and erosion controls must remain installed until all on-site construction work has been completed. City staff must inspect construction fencing and erosion controls, prior to commencement of any earth disturbing activities. As conditioned, the application complies with MMC Section 19.322.10 (H).

i. Lights shall be placed so that they do not shine directly into the natural resource locations.

Lighting is proposed adjacent to WQR area. The lighting plan demonstrates spillage onto the WQR areas. A condition has been adopted requiring cut-off lighting fixtures to prevent lighting impacts on WQR areas. As conditioned, the proposal complies with MMC Section 19.322.10 (I).

j. Trails must be placed in locations to reduce impacts to WQR areas.

The applicant will install erosion and sediment controls to prevent run off into WQR areas and construction fencing around protected areas to prevent damage to natural areas. The fencing and erosion controls must remain installed until all on-site construction work has been completed. City staff must inspect construction fencing and erosion controls, prior to commencement of any earth-disturbing activities. As conditioned, the application is consistent with MMC Section 19.322.10 (J).

k. Trees and vegetation must remain and connected along drainage courses.

The applicant will provide approximately 57,760 square feet of enhancements to WQR areas. Existing vegetation will remain. As conditioned, the application complies with MMC Section 19.322.10 (K).

l. MMC 19.322.10 (I) - Stormwater flows as a result of proposed development within and to natural drainage courses shall not exceed predevelopment flows.

Site stormwater will be collected and piped to bio-swales within WQR areas. Staff consultant LDC Design group found that the calculations adequately model the storm water runoff for a preliminary design level analysis and found the post development flows for Basin 1 will be at predevelopment rates and the estimated post development flows for Basin 2 will be released at slightly less than predevelopment flows. The runoff curve number (CN) value affects the rate of post development flows. A slight alteration in the CN value can alter stormwater flows. A condition has been

adopted requiring staff review of the final hydrological report. The report shall specifically address the CN value to ensure adequacy.

- m. 19.322.10 (m) - Drainage course crossings.

New drainage course crossings are not proposed. MMC Section 19.322.10 (M) is not applicable.

- n. MMC 19.322.10(N) - Construction must be done in such a manner as to safeguard resources that have not been approved for development.

The applicant will install erosion and sediment controls to prevent runoff into WQR areas and construction fencing around protected areas to prevent damage to natural areas. The fencing and erosion controls must remain installed until all on-site construction work has been completed. City staff must inspect construction fencing and erosion controls prior to commencement of any earth-disturbing activities. As conditioned the proposal is consistent with 19.322.10(N).

- 11. The applicant submitted a Transportation Plan Review application.

- a. MMC Section 19.1406 requires that any non-residential development adding more than 25 trips per day to an adjacent residential local street requires mitigation of impacts.

The traffic study, prepared by Lancaster Engineering, demonstrates conservative trip generation estimates that the new site will add approximately 400 weekday and 850 weekend daily trips (depending upon activity) and 70 trips during the weekday evening peak hour and weekend peak hour. The trip generation data, as provided by the applicant's amended traffic impact study, is an adequate representation of the proposed park development. The development will increase trips on Kellogg Creek Drive, which is a local street. The applicant will provide improvements to Kellogg Creek Drive to improve safety for vehicles and pedestrians. The improvements include:

- 1) Widening Kellogg Creek Drive to 28 feet.
- 2) Pedestrian sidewalk along northern side of Kellogg Creek Drive.
- 3) Creation of a 90-degree intersection at Kellogg Creek Drive and Rusk Road.

- b. MMC Section 19.1407 ensures that streets, sidewalks, and other transportation facility design elements are safe, convenient, and adequate to accommodate impacts of the new development. Rights-of-way shall be made adequate at time of development, but are moderated by proportional mitigation.

The applicant will provide improvements to Kellogg Creek Drive to improve safety for vehicles and pedestrians. The improvements include:

- 1) Widening Kellogg Creek Drive to 28 feet.
- 2) Pedestrian sidewalk along northern side of Kellogg Creek Drive.
- 3) Creation of 90-degree intersection at Kellogg Creek Drive and Rusk Road.

- c. MMC Section 19.1408.1 requires the submission of a transportation impact analysis (TIA) that demonstrates the impact of development on the surrounding transportation system. The TIA provides a framework to evaluate transportation impacts and the basis to assess reasonable and proportionate mitigation of impacts.

A transportation impact analysis was prepared by Lancaster Engineering and submitted by the applicant. The City's traffic consultant, DKS Associates, reviewed the TIA. The data and methodology used in Lancaster's TIA are adequate, based on comparison to standard traffic engineering practices.

- d. 1408.3 (B) requires the applicant to demonstrate proportional impacts to motor vehicle, pedestrian, bicycle, and transit facilities related to the development proposal. The applicant has demonstrated their proportionality of providing improvements to mitigate traffic impacts of the development. The applicant has stated they will pay for and build 100% of the improvements along Kellogg Creek Drive and the intersection of Rusk Road and Kellogg Creek Drive. As conditioned, the application complies with 19.1408.3(B).

- 1) Widening of Kellogg Creek Drive to obtain an overall width of 28 feet. Cost estimate \$90,000. Applicant's proportional share, 24% (\$9,100).
- 2) Constructing a pedestrian walkway along northern portion of Kellogg Creek Drive. Cost estimate \$50,000. Applicant's proportional share, 24% (\$12,000).
- 3) Reconfiguration of Rusk Road/Kellogg Creek Drive intersection to improve safety. Cost estimate \$70,000. Applicant's proportional share 13% (\$9,000).

The applicant's traffic memorandum states that the improvements are planned to be constructed, rather than providing a monetary contribution based upon proportional share.⁴

⁴ Lancaster Engineering Addendum dated April 11, 2005.

- e. MMC Section 1409 requires that all streets and necessary rights-of-way shall be dedicated to the public for street purposes in accordance with Table 1409.3.

The North Clackamas Park is located at the end of Kellogg Creek Drive and abuts the road for approximately 58 feet. It is not practicable for the applicant to obtain (purchase) needed right-of-way along Kellogg Creek Drive. The applicant will provide improvements within the existing right-of-way.

- f. MMC Section 19.1410 establishes standards for pedestrian facilities. As conditioned, the application complies with 19.1410 – Pedestrian Requirements and Standards.
- g. MMC Section 19.1411 establishes standards for bicycle requirements. As conditioned, the application complies with 19.1411 Bicycle Requirements.
- h. MMC Section 19.1412 – establishes transit requirements and standards. The proposal does not include development of a multifamily, commercial, office, or industrial use; therefore, MMC 19.1412 is not applicable.

12. Flood Hazard Regulations

Staff reviewed the park location and elevation data in conjunction with the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map (FIRM) Community-Panel #415588 0036A dated August 4, 1987, and the March 1, 2001, revision. The applicant's submitted plans appear to reflect the 1987 FEMA map and do not appear to reflect the 2001 revision of the FEMA maps. The net difference in the two FEMA maps results in a very small section of the 100-year flood boundary (about 100 square feet) is present in the middle of the south side of the park boundary. This is just outside of the ball field #2 area. Staff relies on industry standards based on conclusive evidence, such as the March 1, 2001, FEMA map.

The modification to the FEMA map based on the March 1, 2001, data affects a small portion of the development. MMC 19.18.04.150 (F) requires balanced cut-and-fill for development within the flood plain. The applicant must submit revised cut-and-fill calculations demonstrating balanced cut-and-fill.

MMC 18.04.100 (B) states that proposed structures within the 100-year flood plain will require certification by a professional engineer or architect verifying adequate flood proofing.

As conditioned, the application complies with MMC Title 18, Flood Hazard Regulations.

- 13 Title 16 of the Milwaukie Municipal Code requires that the applicant obtain an erosion control permit prior to construction or commencement of any earth-disturbing activities. As conditioned, the application complies with MMC Title 16 – Erosion Control.
14. The City and Clackamas County have an intergovernmental agreement (IGA) stating that the North Clackamas Park shall be maintained and operated by North Clackamas Parks District. Testimony regarding poor maintenance of the park or concerns regarding future maintenance is not applicable to relevant code criteria and is therefore not part of the decision-making process for the proposed development.

Recommended Conditions in Support of Approval

1. Final site and architectural plans shall be in substantial conformance with the plans approved by this action. Reference is made to plans submitted with the application submission materials dated February 24, 2005, and March 21, 2005; technical reports listed in Recommended Findings; and minutes of the Planning Commission's public hearings held April 26, 2005, May 10, 2005, and May 24, 2005. Any inconsistency must comply with the most recently submitted application materials.
2. Grading, erosion control, and plumbing permits shall be obtained prior to commencement of any earth-disturbing activities.
3. An electrical permit shall be obtained from Clackamas County prior to conducting any electrical work on site.
4. Prior to issuance of an erosion control or grading permit, and prior to commencement of any earth-disturbing activity, the applicant shall submit to the City or complete the following:
 - a. A narrative of all actions taken to comply with these conditions of approval.
 - b. A narrative description of all changes made to the plans but not required by these conditions or approval.
 - c. Water quality resource areas shall be flagged and construction fencing shall be installed around all protected areas. Construction fencing shall be inspected by the City and shall remain erected until all activity on the site has been completed.
 - d. Erosion and sediment controls shall be installed around water quality resource areas and shall be inspected by the City.
 - e. The applicant shall submit a revised photometric plan demonstrating .5 foot-candles at the property line and at the outer boundary of water quality resource areas.
 - f. Submit a water quality resource mitigation planting plan that demonstrates plant type, quantity, and location.
 - g. Provide a vegetation and tree preservation plan to ensure that the water quality resource buffer areas and proposed trees to be preserved will not be disturbed during construction. Tree and vegetation preservation measures shall be installed prior to commencement of any earth-disturbing activity. The vegetation and tree preservation measures shall be inspected by the city.
 - h. Request and receive approval from U.S. Army Corps of Engineers and DSL to fill the two unmapped wetlands.

- i. Submit a parking management plan to the satisfaction of the Engineering Director.
 - j. Submit revised cut-and-fill calculations for all development within the 100-year floodplain. The calculations shall reflect the March 2001 FEMA map and shall demonstrate balanced cut-and-fill.
 - k. A final hydrological report shall be submitted to the Engineering Director for review and approval. The report shall specifically address the CN value to ensure accuracy.
 - l. Submit a vegetative mitigation plant that addresses how the bio-swales have been designed to integrate the WQR area in such a way that the habitat structure will not be negatively impacted. Design considerations should include planting the swale with diverse native vegetation and creating an alignment that assimilates with the existing terrain and trees. The design should demonstrate how riparian area enhancements have been incorporated into the final swale design to ensure that functions of the WQR area remain.
 - m. The applicant shall submit for City review a revised hydrological report demonstrating the omission of parking lot stormwater retention. The revised report must also demonstrate that post development stormwater flows do not exceed predevelopment stormwater flows.
5. Prior to erecting lighting poles for the ball fields, the applicant shall complete one of the following:
 - a. Reduce lighting pole height to 50 feet.
 - b. Apply for a variance to increase pole height to exceed the maximum 50-foot height limitation.
 - c. Apply for a zone text amendment to allow structures such as ball field lighting poles to exceed the maximum height limitation of the Community Service Overlay zone, subject to limitations.
 6. Prior to commencement of any recreational activity of the proposed development, the applicant shall complete the following:
 - a. The 230 space parking area shall be constructed and landscaping shall be installed. Staff shall conduct an inspection of the parking area and landscaping.
 - b. Improvements along Kellogg Creek Drive shall be completed. The roadway shall be widened to create two 14-foot travel lanes and intersection improvements to create a 90-degree intersection at Kellogg Creek Drive and Rusk Road per MMC Section 19.1400.
 - c. All Water Quality Resource vegetative planting and mitigation shall be completed and inspected by the City.

- d. Bicycle parking shall be installed per MMC Section 19.505.
- 7. Building permits are required for all structures including the concession stand, restrooms, bleachers, dugouts, maintenance shed, and picnic shelter. Accessible route is required from the parking lot to all structures (as mentioned above) on the site. At the time of building permit submittal, the applicant shall show sufficient detail (slope, surface materials, striping, etc.) to show compliance with Chapter 11 of the Oregon Structural Specialty Code. The proposed dropoff area must comply with Section 1105 - Passenger Loading Zones.
- 8. For all proposed structures to be located within the 100-year floodplain, submit certification by a professional engineer or architect verifying adequate flood-proofing (MMC 18.04.100 (B)). All proposed work in the 100-year floodplain will require calculations that demonstrate balanced cut-and-fill (18.04.150 (F)).
- 9. Per MMC Section 19.322.10(L), stormwater flows shall not exceed predevelopment flows.
- 10. The applicant must complete the following activities as part of Phase 1 construction. The site cannot be used until all activities listed below have been completed and inspected to the satisfaction of the Planning Director.
 - a. Development of environmental enhancements, including implementing and planting the vegetation plan.
 - b. Construction of public improvements along Kellogg Creek Drive (sidewalk construction, repaving Kellogg Creek Drive, and the realignment of the Kellogg Creek Drive/Rusk Road intersection).
 - c. Construction of the 230-space parking area and installation of required landscaping.
 - d. Construction of the proposed trail/walkway system.
 - e. Construction of the ball fields (4 softball/baseball fields, and 1 soccer field).
 - f. Construction of the stormwater treatment facilities and bio-swales.

June 6, 2005

Ms. Lindsey Nesblitt, Associate Planner
City of Milwaukie Community Development Department
6101 SE Johnson Creek Blvd.
Milwaukie, OR 97206



RE: Comments submitted by Susan Shawn dated May 30th, 2005

Dear Ms. Nesblitt:

Per your request LDC Design Group is pleased to submit this letter as a matter of clarifying and hopefully easing any concerns from Ms. Shawn regarding the information reviewed concerning the North Clackamas Park Application. The letter dated May 30th, 2005 from Ms. Shawn states a concern as to whether LDC Design Group was provided the "same materials" and "asked the same questions" as that of Vigil Agrimis, Inc. whom reviewed the application prior to LDC.

The City of Milwaukie provided LDC Design Group the following materials to review with consideration of the applicant's submittal and proposed detention and treatment of the stormwater runoff:

- o North Clackamas Park 50% submittal prepared by W&H Pacific
- o Preliminary Hydrologic Analysis Report prepared by W&H Pacific dated April 15, 2005
- o Revised Preliminary Hydrologic Analysis Report prepared by W&H Pacific dated May 6th, 2005
- o Memo from WinterBrook Planning dated May 10, 2005
- o Flood Plain Evaluation letter from Maul Foster & Alongi, Inc. dated May 6th, 2005
- o WQR-05-01 Water Quality Resource and Flood Plain Review prepared by Vigil-Agrimis, Inc. dated May 13th, 2005.
- o City of Milwaukie Water Quality Resource Regulations Section 19.322

Specifically, LDC Design Group was requested to review the hydrological reports to insure that the analysis adequately evaluated the proposed site improvements, and to provide comment on the swale facility locations within the water quality resource area.

The letter from Vigil- Agrimis, Inc. stated some concerns regarding the assumed alteration of the ball field permeability from adding sand and the associated Curve Number used in the hydrologic analysis. LDC Design Group payed particular attention to this in our review of the preliminary hydrologic analysis information provided by the applicant.

The results of our evaluation, as stated in our letter to the city dated May 20th, 2005, found that indeed the Curve Number is a point of potential variation in the runoff volumes from fields #2,3 and 4 (basin 2). The quantity is relatively small but staff should pay particular attention to this in the review of the final design submittals. The variation is small enough that should detention be necessary for basin 2 it can be easily incorporated into the design.

8513 NE Hazel Dell Avenue
Suite 202
Vancouver, WA 98665
P 360.573.0370
F 360.573.0390
E vancouver@ldcdesign.com
www.ldcdesign.com

Hillsboro, OR
Tillamook, OR
Vancouver, WA
Bellevue, WA
Coeur d'Alene, ID
Rocklin, CA
Clermont, FL

The letter from Vigil-Agrimis comments that the flood plain "need (ed) to be investigated further", the flood plain determination was outside the scope of our review requested by the City and as such LDC Design Group did not review this portion of the submittal.

I hope that this clarifies the application materials and scope of review provided by LDC Design Group and eases any concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "Kelli A. Grover", with a long horizontal flourish extending to the right.

Kelli A. Grover, P.E.
Environmental Engineer

ATTACHMENT 3



Oregon

Theodore R. Kulongoski, Governor

Department of Fish and Wildlife

Northwest Region
17330 SE Evelyn Street
Clackamas, OR 97015-9514
(503) 657-2000
FAX (503) 657-2050

June 3, 2005

Lindsay Nesbitt
City of Milwaukie
Planning Department
6101 SE Johnson Creek Blvd.
Milwaukie, OR 97206

Charles Ciecko
North Clackamas Parks and Recreation District
9101 SE Sunnybrook Blvd.
Clackamas, OR 97015



Project: North Clackamas Community Park Development

Dear Ms. Nesbitt and Mr. Ciecko,

The Oregon Department of Fish and Wildlife (ODFW) apologizes for any confusion that occurred due to multiple submissions of comments on the North Clackamas Community Park Development project. ODFW does not object to the project as it is proposed and believes that several actions in the current plan may benefit fish and wildlife.

ODFW recommended several actions to further enhance benefits to fish and wildlife within the project area, including possible consideration of a 100-foot riparian area along a portion of Mt. Scott Creek. This recommendation was intended as a suggestion to the North Clackamas Parks and Recreation District if they wish to maximize future benefits to fish and wildlife through active restoration (planting) of riparian vegetation within this zone.

Again, we apologize for any confusion that may have been created and appreciate the opportunity to make comments on the project. If you have any questions about these comments or recommendations please contact me at (503) 657-2000, ext. 230.

Sincerely,

Susan P. Barnes

Susan P. Barnes
NW Region Wildlife Diversity Biologist

Cc: Jeff Boechler, ODFW

ATTACHMENT 4

COMMENTS IN OPPOSITION

6.2 Page 26

To: Milwaukie Planning Commission
From: Laurey Cook
Date: May 31, 2005

I have several concerns with issues discussed at the May 24 Planning Commission hearing.

Use of the Park – as part of its land use application the North Clackamas Park District is asking to install a paved walkway connecting the new play area to the proposed tournament fields. The park district indicates that its new play equipment is quite popular; however, it has not accounted for this usage in its application or planning. In fact the district has stated that it does not need to include planning for any other area than the tournament fields. The walkway connection must consider increased use from the new play structure. This use should be reflected in proposed parking increase and for parking lot improvements to the area near the Milwaukie Center, as well as in overall planning for the park.

Wetlands – wetland mitigation with upland trees is not wetland mitigation. The Commission stated it would address this issue when it decided not to map two wetlands in the park. This issue has not been properly addressed.

Water treatment – the engineer/consultant hired by the City of Milwaukie indicated that stormwater would be treated to regulatory standards. There are no regulatory standards, therefore this statement is misleading. The engineer also stated that pesticides, which include herbicides, would be treated in a vegetative swale. This appears to me to be a contradiction of terms. As I stated, I am concerned with the hydraulic analysis performed for the park, as this apparently occurred in February during a drought. I would like you to note according to the national weather service - 835 AM PDT FRI MAR 25 2005
...OREGON WATER SUPPLY OUTLOOK AS OF MARCH 25TH 2005...

THIS HAS BEEN ONE OF THE DRIEST WINTERS IN OREGON'S RECORDED WEATHER HISTORY. CONDITIONS THUS FAR IN MARCH HAVE NOT PROVIDED ANY RELIEF TO THE THREAT OF SUMMER WATER SHORTAGES. FEBRUARY 2005 CLIMATOLOGICAL REPORT FOR PORTLAND OREGON total rainfall 1.30 inches OR 2.88 INCHES BELOW NORMAL.

The attorney for the park district's comments – the attorney misspoke in several instances. Most opponents of the park district's current plan are not advocating no improvements to the park, they are opposed to this particular plan. This plan will result in a massive paved area (picture the ballfield you see when you drive up – as a parking lot and add that to the existing parking lot), beyond that you will see a fence that covers your field of vision (stretching from that former ballfield across the what was a road over to the wetlands) on top of that there will be lights for five fields towering 80 feet tall. The opponents are not advocating contradictory plans. I am not for increasing the parking lots to make a giant paved park. I am saying, this park is not suitable for the use proposed, and the plan is not adequate. Yes, you can over use this park, this resource that we are trying to ensure is developed responsibly.

Nesbitt, Lindsey

From: David Carley [dcarley@maverickwelding.com]
Sent: Tuesday, May 31, 2005 2:45 PM
To: nesbittl@ci.milwaukie.or.us
Subject: FW: N.Clackamas Park

-----Original Message-----

From: David Carley [mailto:dcarley@maverickwelding.com]
Sent: Tuesday, May 31, 2005 1:27 PM
To: 'nesbiyyl@ci.milwaukie.or.us'
Subject: N.Clackamas Park

Hello;

There is a huge difference between providing practice and game ball fields and an tournament ballpark. A tournament ballpark needs to be a destination facility, Delta Park is a good example of a well placed sports facility.

North Clackamas Park is and should remain a Multi-Use community park.

If the four ball fields are built, and a weekend tournament is being held I could see the park effectively closed for any other use.

Consider you and your family have held your annual family get together at N.Clackams Park for the last fifteen years, always reserved the covered picnic area, and reserved the small ball field for a family softball game. Now the park has been changed, this is how your reservation will change.

First the ball field will not be available, second you will not be able to park anywhere close to the park to unload Grandma or any of your picnic supplies. The parking needs are grossly underestimated, (4-fields 8-teams arriving and departing, umpires, parents, grandparents, friends, neighbors, etc, etc.) I walked by a regular league game recently on a weeknight in Gladstone, looked like 7-9 year old boys, I counted 96 cars, not a tournament. Back to the family reunion, If you decide to go ahead with your reunion, and you family members are not turned away by the lack of parking, you will next get to compete with the noise , congestion and confusion of a sports complex. Did I mention that the dog people, equestrians, picnickers, kite flyers, radio controlled airplane flyers, bicyclist, walkers, joggers, soccer players, Frisbee throwers, will also like to use the PARK at the same time. The baseball complex will dominate the use of the Park. A Tournament baseball complex needs to be in a non-residential setting, a designation park, NOT in a multi-use Community park.

Upgrade and properly maintain this park, upgrade the two existing *practice, league* play ball fields, upgrade the soccer field, add parking, add parking back at the equestrian center, put in a walking trail, close the park to all other vehicle traffic, make the park a true user friendly community park. If you have money left over, buy industrial property for a tournament facility, this is no place for tournament play, don't ruin this park.

David Carley
6135 SE Eastbrook Dr.
Milwaukie, OR 97222

05/31/2005

RECEIVED

MAY 31 2005

CITY OF MILWAUKIE
PLANNING DEPARTMENT

May 28, 2005

Milwaukie Planning Dept
6101 SE Johnson Creek Bv.
Milwaukie, OR 97222

Re: North Clackamas Park

Schoolyards and small parks, that could easily accommodate sports, abound in the county. Large parks, including sufficient parking and off of major arterials, exist elsewhere in the County and in neighboring counties. Why take the one nature park available in the Milwaukie-Clackamas area, spend a fortune, and cram it with cars and crowds, while overwhelming the neighborhood with traffic and noise? Turning the North Clackamas Park into a sports Mecca is not in the best interest of most of the County's residents and is unfair to nature loving citizens that now enjoy its tranquility. Ten years from now there will be plenty of places to play ball. How many tranquil nature reserves will be located in the suburban County area?

Have all other options been fully explored?



Pam Leverett

7323 SE Webster Lane
Milwaukie, Oregon 97267

Nesbitt, Lindsey

From: Shelby Davis [d56villages@yahoo.com]
Sent: Monday, May 30, 2005 10:51 PM
To: city
Subject: North Clackamas Park concerns

Planning Commission

I live on the crest of the park between Kellogg creek.
During the winter months and severe rains the water
level of Kellogg creek rises into the park area and
onto my land.

After review of the flood plain and the plans for the
park district to add berms around the kellogg creek
area.

I'm concerned if the berms are added to the park area
how this will effect my land with erosion since the
overflow that would go into the park will now go into
my land. Will the city of Milwaukie and the county be
liable for any damage due to flooding?

I remain concerned how wetlands can be done away with
in one area but must remain in other area's.

Thank You
Melvin L. Davis
4855 S.E. Casa Del Rey Dr.
Milwaukie, Oregon 97222

Do you Yahoo!?
Yahoo! Small Business - Try our new Resources site
<http://smallbusiness.yahoo.com/resources/>

Nesbitt, Lindsey

From: lbonstein [lbonstein@msn.com]
Sent: Monday, May 30, 2005 6:14 PM
To: nesbittl@ci.milwaukie.or.us
Subject: North Clackamas Park

T whom it May Concern,

I have had some serious thoughts about the County wanting to develop North Clackamas Park in the way that is currently on the agenda.

I have seen the park flooded a couple of times in the last 14 years that I have lived here on Kellogg Creek Drive. The worst was in the flood of 1996, when the creek flooded up and over the road in the park. At that time the creek had overflowed the banks and had breached the road totally across and leaving the knoll the only thing uncovered on the north side of the knoll not covered with water. Also the small rill, that have the small walking bridges, were overflowing. At this same time there was a news footage of me sand bagging across Hwy 224 to try to keep the water away from the tri plex that is over there near the creek. It was on channel 8 news and then was played on CNN. You may be able to get into the channel 8 archives and find some of this footage as they were here in the neighborhood filming.

Respectfully,
LoAnn Bonstein
lbonstein@msn.com

Nesbitt, Lindsey

From: beefelber@comcast.net
Sent: Tuesday, May 31, 2005 7:55 AM
To: nesbittl@ci.milwaukie.or.us
Subject: concerns about the plan for North Clackamas Park

Hello,

I understand that you are taking public comment until 5 pm today. I thank you for allowing concerned citizens and neighbors of the park to comment. I am truly not in support of changing the park to a place that will be dominated by ball players 10 months out of the year. I believe that it is not a community-based plan for the park and we will all lose when you change this green space forever.

I strongly urge denying the application and requesting that the park district go back to the community as a whole and redo their plans in a collaborative, mediated process overseen by the Oregon Consensus Program. This is very important to reestablish and maintain working relationships within the community.

If you feel you cannot deny the application then at minimum require a complete list of what will be completed in Phase I. Then consider requiring that the park district come back to the planning commission for Phase II. The Park District does not have enough funds for the whole plan; there should be details about what the plan for completion is.

Consider severe consequences for the Park District if they do not meet the conditions of approval. Make sure that the City of Milwaukie provides someone to inspect the work to ensure that the conditions are being met!

Support the condition of approval that requires all native and non-invasive plants be used, and that they will be named and drawn into a planting plan. This is prudent for any landscaping plan and especially for the park where it has already had problems with this issue! We have already seen mistakes been made.

I hope you will consider my comments. It was unfortunate that the Park District's attorney and staff were permitted so much time to make their case at the public hearing. If I were on your board/commission I would have wanted to hear more of both sides of the argument. Citizens don't spend their own money on issues that do not have any basis. We are concerned!

Thank you.

Sincerely,

Brenda Felber

6135 SE Eastbrook Drive

Milwaukie, Or 97222

05/31/2005

Nesbitt, Lindsey

From: Bill Keefer [kefcal@comcast.net]
Sent: Tuesday, May 31, 2005 9:25 AM
To: nesbittl@ci.milwaukie.or.us
Subject: DOWN TREES IN MT SCOTT CREEK

I wrote before about this issue which I have been pushing for almost a year. At first it was completely ignored but the last one was about saving the small fish that lives there. Where did these fish live before the tree fell down?

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[Click here to protect your inbox from Spam.](#)

Nesbitt, Lindsey

From: Thekochs2@aol.com
Sent: Tuesday, May 31, 2005 2:07 PM
To: nesbittl@ci.milwaukie.or.us
Subject: North Clackamas Park Proposal - WQR, Flooding Issues

We are sending this message to the City of Milwaukie Planning Commission through Lindsey Nesbitt.

We would like the commission to know that we have been residents of the Rusk Road area for over 50 years and we have seen the area around the Center flooded and across the road. We did not drive across the flooded road to see how much further the flooding extended into the park.

We have also seen the area directly east of the park flooded and that flood water was also across Kellogg Creek Drive. It was several inches deep.

**Gloria and Alan Koch
6030 SE Eric Street
Milwaukie, Oregon**

May 31, 2005

CITY OF MILWAUKIE
PLANNING DEPARTMENT

MAY 31 2005

RECEIVED

Attn: Milwaukie Planning Commission

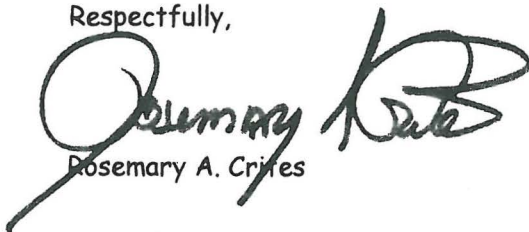
**North Clackamas Park Application
CSO-05-02/TPR-05-02/WQR 05-01**

This has been a huge undertaking on a decision on a major piece of real estate owned by Milwaukie. What your decision is will effect the population for decades. I am impressed with how seriously you take this and the line of questions you are bringing forward. I know that improvements will be made on North Clackamas Park and should be made. I do implore you to consider the environmental impact that will affect the neighborhood surrounding this park, which not only consists of residential but also assisted living and churches. The rally to provide ball fields for our youth is not what is in dispute. It is how the development takes place without regard for residents and the livability of the Park.

Yes! We do not trust the Park District's ability or desire to follow through on the conditions placed on them in the development of the park. This was touched on at the last Planning Commission meeting. The fact that they did not follow through on what they were supposed to do on the playground was an example of disregard of rules and regulations. Charlie Cieko said that he took his playground contractor over to look at the new playground and that the play equipment in fact would pass warrant disputes. That was not the question. The concern was the development of the land before placing the equipment on the ground. There was a permit signed by Alice Rouyer. That permit was issued on the condition that the playground was built on the conditions according to specifications. The Parks District blatantly ignored these conditions and proceeded with the development the way they wanted to.

With this in mind, I ask you what assurance do we have that this won't happen in the future? At the last Planning Commission meeting, Charlie Cieko was quick to agree with anything that was asked of him. In the business world it is said, "words are cheap" that is why everything is in writing. In the business world there are strong penalties for not following through on an agreement. When it comes to the Parks District I see no penalties.

Respectfully,



Rosemary A. Crites

RECEIVED

May 30, 2005

MAY 31 2005

Ms. Lindsey Nesbitt, Associate Planner
City of Milwaukie Community Development Department
6101 SE Johnson Creek Blvd.
Milwaukie, Oregon 97206

CITY OF MILWAUKIE
PLANNING DEPARTMENT

Re: North Clackamas Park Applications CSO-05-02, TPR-05-01 and WQR-05-01

Comments for Milwaukie Planning Commission, submitted by Susan Shawn

Thank you for all of your hard work. May this experience enrich us all.

Vigil Agrimis, Inc. Report

On April 27, Vigil Agrimis, Inc, as requested by the City of Milwaukie Planning Department, reviewed the water quality resource and Flood Hazard Review materials for the North Clackamas Park application. I'm attaching a copy for your review. Basically, they asked for additional specific and detailed information from the Park District.

On May 13, 3 days after your second hearing, they submitted a second report, also attached. Keys points are as follows:

- 1) "The proposed design does not appear to fully meet applicable standards for hydrology, floodplains, water quality, and wetlands based on our review of the various submittals."
- 2) "potential issues regarding the true extent of the floodplain that need to be investigated further"
- 3) "Vigil-Agrimis Inc recommends that the City slow down this approval process and ask the applicant to make a more complete submittal with consideration of water resources and wetlands issues raised in the public process to date."

On May 16, 3 days later, they say so long, it's been good to know you. Also attached.

As far as I know, this material was not submitted to you for the 24th of May hearing. If this is correct, I would like to know why. It seems to me that their recommendations and observations reflect sound stewardship and good governance. Please think hard and deep about this one. The ramifications here could be profound for the wellbeing not only of the City of Milwaukie, the park users and folks who live downstream, but also for the county as a whole, in terms of how we are functioning as a larger community.

LDC recommendation regarding parking lot detention pond.

The City of Milwaukie then hired a second engineering consultant, LDC Design Group, who reviewed the May 6, 2005 preliminary storm water report. I am not clear whether they were given all the same materials that Agrimis was given, nor am I clear whether or not they were asked the same questions. However, I understand that they are not recommending using the parking lot for storm water retention. Staff, on the other hand, disagrees, and recommends approval.

Frankly, I do not understand how this could be. Why pay an engineering consultant, if you just want them to say what you want to hear? Planning staff are not engineers. It's that simple, to me at least. I strongly urge you to recommend denial of using the parking lot for a detention pond. My thinking goes like this. Please bear with me.

We were told at the hearing that the rainy months are not when the ball fields will be used, so it's not a problem. But that statement is at the heart of the problem. What about the seniors who use the Milwaukie Center year round? What about the folks who use the park year round? Don't they count? Based on this comment and many others, apparently not.

My guess is that this ball field complex will change the park from a Community Mixed Use Park to a Special Use Park. If the soccer field is not constructed, the dog park is removed as has been threatened many times, the horse arena not brought up to safety standards and therefore not used sufficiently to warrant retaining, thus ultimately removed, NCP will no longer be a mixed use park. Unless you count the picnic facilities and the playground. I do not.

According to the Park District's own 2004 Master Plan, question #11, Appendix E, Random Household Survey Results (which were deemed statistically accurate and therefore representative of the entire District) **"How should sport fields be developed in the future?"** The highest response was 27.9% "develop a multi-sport complex for several sports." Only 5.3% said "develop a sport complex dedicated to one sport".

Question #14 is more complex, but also more revealing: **"If funds were available, what type of parks or facilities should the District develop for the future?"** Results were ranked from 1 to 7. Overall support for neighborhood parks and large multi-use community parks is almost equal:

- 1513 Small neighborhood parks within one-half mile of most neighborhoods.
- 1500 Large multi-use community parks for active and passive play.
- 1440 Linear parks or trails
- 1361 Natural open space with very limited development, such as trails and viewpoints
- 1292 Riverfront parks and river access
- 951 Large special use facility with regional interest
- 187 Other.

Now here is where it gets interesting to me. Under "Other"

- 60 Skateboard/BMX facilities
- 32 Off-leash areas for dogs
- 30 Sport facility / more athletic fields.

Getting back to using the parking lot as a detention pond, it is a matter of principle to me. First of all, engineers seem to agree that it's not a good idea for a range of reasons. **Secondly, if this is to be truly a multi-use park, we have to design it so it can be used all year around, safely.** If it is to be a special use park, then I recommend denial based on the District Master Plan. **Three million dollars spent on what ranks as "30"? I don't think so.**

For me, using the parking lot as a detention pond is not an engineering issue, but a safety issue. The Rose Garden and the Senior Center attract people who are not necessarily sturdy on their feet. Anyone knows that when water stays on asphalt for a length of time in Oregon, moss grows. Add in the oils, and this lot will be slick. I have osteoporosis badly. No way will I walk there. No way. If the lot in front of the Center is full, and it routinely is, where will I park?

Conditions for approval

I heard recently from a gentleman over on McLaughlin Blvd. who fought the county on a development that went in near him some years back. There were over 20 conditions for approval in that application. The development went in, and **not one of the conditions were met.** Even the playground at the park had conditions for approval, namely that it be built

according to spec, and it wasn't. It was built anyway, and there were no consequences. Some of our concerns with the playground are still in the hands of our attorney, waiting our next step. It's not fair to ask citizens to be the watchdogs and drag off a public body to court in order to make them do something that they agreed to do in the first place. It's a terrible waste of time and money, both private and public. Not to mention what happens to the body politic.

I am asking for something unusual, daring and perhaps earth shaking. I am asking that you build in some type of accountability for this project, such as a fine of \$150,000 for each condition of approval which is not met. That money could be earmarked for something that the City wants or needs, such as library funding or the emergency fund. Anything less than a substantial fine will not have an affect, in my opinion. Here's another funding source!

Another option might be to require them to come back and reargue their application. The problem with that is the thing would already be built. So what, at that point. I suppose you could force them to dig it up and build it correctly or according to your conditions, but will you? Or can you? I even hate to bring this up, actually, but it's like the elephant in the kitchen. A fine would be the easiest and least difficult. Inspections by the City will be essential.

Reconcile the difference between the FEMA map and David Gorman's map.

We didn't hire Dave Gorman and say to him, "Go and prove that the whole park is in the flood plain". We said, "We think there may be a problem here, and we want to make sure because of the folks downstream. Please do whatever you have to do to double check the FEMA map". And he did. And there is a huge difference in terms of cut and fill between what he arrived at, as a registered civil engineer, and what the FEMA map shows. You have other testimony on this issue. I urge you to require the County to slow down this process, **do due diligence** and make sure that the FEMA map is up to date and accurate. I believe they need to have a registered civil engineer do a hydraulic model of the park.

We don't really want the Park District to have another Aquatic Center on its hands, if they are wrong on this. That would be the end of the Park District, in all probability, which would be a nuisance for everyone, to say the least.

One last comment about the playground.

At the May 24 hearing, Charlie Ceicko made the false claim that all allegations about the playground have been refuted and that the playground is internally ADA accessible. In fact, the case remains open and the file is currently in the hands of an attorney. The functionality of an internal ADA accessible route has not been verified.

The inspection report Charlie mentioned addressed the CPSC and ASTM standards for the play structure. The play structure has **never** been an issue. Never. It's fine. The problem is with the fall safe system underneath, which was not built according to spec. They didn't put in the 4 inches of drainage rock that was called for underneath the "stuff". In a flood plain, no less. Not to mention tree protection. The inspector's report did not comment on ADA standards or requirements. Just for the record.

Parking needs

According to Chapter Four of the District Master Plan,"parking requirements are dependent upon facilities provided, for example 50 parking spaces are required per sport field plus five space per acre of active use area." Copy attached. They don't provide enough parking. Don't.

Tournaments vs. regular play

If I heard testimony correctly on the 24th, I heard someone say "tournaments can be played on only one field". If that's true, and it must be because it was either the Park District attorney or Charlie himself who said this, then it seems to me that 3 fields would be sufficient for their purposes in North Clackamas Park. This would give them enough parking, reduce the density of use which has been a major concern, give them a place to put the dreaded detention pond, reduce potential degradation of the natural resources area such as light spill, and still provide the kids a really super place to play. The 1994 Master Plan for the park seems to me to be the best solution all way round. It is way more than "just a sketch", but a plan that was worked on collaboratively for months by park users and neighbors and the Park District and the neighbors involved voted to approve it. It actually provides up to 6 sports fields, instead of 5.

I don't appreciate it when that plan is dismissed in this fashion. Why would anyone in the City or the County ever again want to participate in any Master Plan process, if all their work is just ignored and tossed aside? Does anyone think that people aren't paying attention and that they won't know about this? Think again. This is not good governance. It leads to apathy and rage. Let's turn things around!

Oregon Fish and Wildlife recommendation

I assume these folks know what they are talking about. Please consider carefully their recommendations. Thank you. In particular, I understand that they have some control over when certain activities can occur, which was written into their statement. Conditions?

Chemicals

Just because every school on the face of the earth is allegedly using the chemicals proposed by the Park District doesn't mean it's the right thing to do. Schools are also selling soft drinks by the gallon. Doesn't make it right. Leads to childhood obesity, I've heard.

Not all the facilities mentioned by the applicant have water quality resource areas, either. Why can't this facility be a leader, in the way that Oregon has often been the leader in the nation? No chemicals, please. If they just can't stand it and have to spray, then at the very least, put up signs around the area warning that spraying will occur. People who have cancer, for example, have no immunity during the time they are on chemotherapy. I had a friend who was on chemo, some folks sprayed a facility near where she was, and she not only got incredibly sick from the spray, it actually helped to end her life earlier than was necessary.

Don't forget this park is adjacent to Deerfield, which is a facility for folks who are old, sick, and infirm in a variety of ways. The fields will be primarily used by children. The Milwaukie Center also has a respite care program. Some of those seniors are quite infirm.

No chemicals, please. They are not necessary.

Investment in our park

This "cork" design will only give Milwaukie at best 5 sports fields, and the baseball complex will sit unused for about six months of the year. It's very possible they won't build the soccer field, because they can't afford to. That would leave 4 fields. This is not a good investment, in my mind. The 1994 Master Plan would provide up to 6 fields, and they could afford them all.

Recommendations

I recommend temporary denial or a "stay" to send the Park District back to do the following:

- 1) Have an engineer provide a hydraulic model of the park, to determine the accuracy of the FEMA map. Make any changes required to the FEMA map as a result of that work, before any construction begins. Meanwhile,
- 2) Enter into a collaborative Master Plan process with all the park users, current and potential, and ask the Oregon Consensus Program to facilitate this process. Include the north end of the park, so that the resultant CSO application will actually include the entire park.. Staff says it's now included, but we have no idea what's planned. That makes NO sense to me.
- 3) Ask the Park District to continue to work on the design factors having to do with hydrology, floodplains, water quality and wetlands, as requested by Vigil Agrimis Inc.
- 4) Develop a very clear Phasing Plan, showing what they plan to do in Phase I, and whether or not they actually have the money available to do whatever is on that Plan. This would be done in conjunction with item 2 above.

Meanwhile, I would ask the Planning Commission to consider building in some consequences to your approval process, perhaps including some significant fines if conditions are not met.

During the hearing on May 24th, I felt as though our neighborhood concerns had been heard, respected and understood for the first time since last August when we first got wind of this project. That means a lot to me and to many of us who were present. I know that this is a very complex situation, and appreciate your efforts to get up to speed. I've been working on this almost 24/7 for many, many months, and I don't claim to understand it all, by any means.

Thank you.

April 27, 2005

Ms. Lindsey Nesbitt
Associate Planner
City of Milwaukie - Community Development
6101 SE Johnson Creek Blvd.
Milwaukie, OR 97206
503.786.7658

RE: WQR-05-01 Water Quality Resource and Flood Hazard Review of the Proposed North Clackamas Community Park, Youth Sports Fields, Milwaukie, Oregon

Dear Ms. Nesbitt:

We were asked by the City of Milwaukie to provide peer review of materials submitted for the Water Quality Resource and Flood Hazard Review of the Proposed North Clackamas Community Park Youth Sports Fields, Milwaukie, Oregon. The purpose of the peer review was to provide City staff with information on where the project documentation may be lacking for protection of water resources and natural resources at or adjacent to the proposed park development.

The project materials presented to us included:

- a. North Clackamas Park District *Youth Sports Fields at North Clackamas Community Park Application for Land Use Approval* dated February 25, 2005,
- b. *Youth Sports Fields at North Clackamas Community Park - Preliminary Hydrologic Analysis Report* dated April 15, 2005
- c. *Design team email presenting hydrology results* dated April 20, 2005
- d. North Clackamas Park District *Response* dated March 14, 2005
- e. *Geotechnical Investigation North Clackamas Park Sports Field Complex* dated March 16, 2005
- f. *Wetland Determination and Delineation for North Clackamas Park in Milwaukie, Oregon* Prepared by Pacific Habitat Services, Inc. revised March 10, 2004
- g. *Wetland Delineation Verification for North Clackamas Park Master Plan by Department of State Lands* dated February 17, 2005
- h. *50% Submittal Set* Received February 24, 2005

The submittal materials were reviewed for consistency with City of Milwaukie development standards, or other appropriate regional standards where the City of Milwaukie does not have existing standards. The review had two parts:

- a. Examining where water quality, wetlands, or stream impacts may result from the proposed development,
- b. Commenting on potential means to address any perceived shortcomings in minimizing and mitigating impacts.

The following comments are based on review of plans, review of all available supporting documentation, and preliminary calculations as available.

Generally, the plans are more developed than supporting calculations. In many instances, supporting calculations for the proposed stormwater facilities are very preliminary and did not allow us to provide a complete and informative review. Following is an assessment of the submittal.

1. The hydrologic analysis appears consistent with the approach used by many of the surrounding jurisdictions. The hydrologic analysis appears to cover the water quality design storm event

through the 100-year design storm event (one half of the 2-year, 25-year, and 100-year), but appears incomplete. *The analysis needs a detailed summary of the two drainage basins for pre- and post- development conditions, including a breakdown of pervious and impervious areas and their corresponding runoff curve numbers to fully document runoff volumes and rates.*

2. The proposed detention criteria appears consistent with detention design:
"The post-developed storm water discharge rate shall not exceed 1/2 of the 2-year pre-developed discharge rate"
The design team needs to provide a more detailed summary of the detention facilities including:
 - a. Size of orifices
 - b. Elevation of the orifices
 - c. Detained volume
 - d. Elevation of the water surface
 - e. The head acting on each orifice
 - f. Calculations of the release rate for each orifice
3. Additionally, the analysis needs to show how the detention system works for the larger design storms (10-year and 25-year events). This analysis should include the area of parking lot inundation, the depths of inundation, and the duration that the parking lot will be inundated.
4. The design does not appear to provide for high flow by-pass; therefore all storm events are directed through the flow-control manhole or over the curb. It is not clear if the overflow past the curb will pass as sheet flow or as concentrated flows with the potential for erosion in the water quality buffer.
5. The curb elevation on the proposed grading plan appears to be lower than the detained water elevation during a two-year storm. This would appear to introduce untreated stormwater directly into the tributary during a two-year or greater storm event. *This could create an effect; clarification would be helpful to determine if water quality mitigation is advisable.*
6. There appears to be no high flow by-pass around the bio-swales. *An analysis should be prepared indicating that the integrity of the bio-swales will not be affected by the larger design storms. A summary of the hydrology and hydraulics for each bio-swale as well as the calculated flow velocity, water depth, and retention time should also be prepared. Appendix F of the application states that bio-swales will be designed for a residence time of 9 minutes, which is consistent with codes throughout the region.*
7. Details are lacking for the proposed stormwater outfalls into the unnamed tributary, including outfall velocities and slope protection and erosion control measures. *Pipe flow calculations should be prepared indicating exit velocities for 25-year and lower recurrence interval storm events. Slope protection and erosion control measures can then be evaluated for effectiveness.*
8. The calculation results presented in the email from the design team on April 20th are consistent with expectations for modeling the 2-year, 25-year, and 100-years storms independently of each other. However, the calculations do not indicate what will happen when a 25-year or 100-year storm is routed through the detention facility that is designed, sized, and built for the 2-year release rate. *Water surface elevation, depth and duration of inundation calculations are needed for the larger storm events, to assess performance of the detention facility*

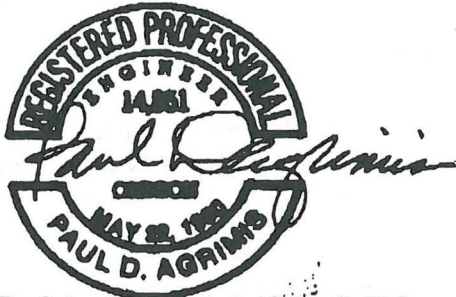
6.2 Page 42

9. The proposed plans route stormwater from new ball fields to an existing ditch draining directly to Mt. Scott Creek. *There is a potential missed opportunity to run through a bioswale, but this is not required by regulation.*
10. The proposed plant list looks fine conceptually with the exception of the cattail, which can be weedy. *Plant quantity and spacing of plant materials proposed for buffer mitigation should be provided to clarify what the implemented design might look like.*

Vigil-Agrimis, Inc. recommends that the applicant submit the items noted above to the City of Milwaukee to assist in review and development of a recommendation for the Parks Commission.

Sincerely,

VIGIL-AGRIMIS, INC.



Paul Agrimis, R.L.A., P.E., P.W.S.
Vice President

May 13, 2005

Ms. Lindsey Nesbitt
Associate Planner
City of Milwaukie – Community Development
6101 SE Johnson Creek Blvd.
Milwaukie, OR 97206
503.786.7658

RE: WQR-05-01 Water Quality Resource and Flood Hazard Review of the Proposed North Clackamas Community Park, Youth Sports Fields, Milwaukie, Oregon

Dear Ms. Nesbitt:

We have recently received and reviewed the Preliminary Hydrologic Analysis Report dated May 6, 2005 by WH Pacific, two letters to the Planning Commission by WinterBrook Planning dated May 10, 2005, and a Floodplain Evaluation letter from Maul, Foster, Alongi, Inc. dated May 6, 2005; and attended the Planning Commission meeting on May 10, 2005.

The project materials presented to us included:

- a. North Clackamas Park District *Youth Sports Fields at North Clackamas Community Park Application for Land Use Approval* dated February 25, 2005,
- b. *Youth Sports Fields at North Clackamas Community Park – Preliminary Hydrologic Analysis Report* dated April 15, 2005, and revised May 6, 2005.
- c. *Design team email presenting hydrology results* dated April 20, 2005
- d. North Clackamas Park District *Response* dated March 14, 2005
- e. *Geotechnical Investigation North Clackamas Park Sports Field Complex* dated March 16, 2005
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Prepared by Pacific Habitat Services, Inc. revised March 10, 2004
- g. *Wetland Delineation Verification for North Clackamas Park Master Plan by Department of State Lands* dated February 17, 2005
- h. *50% Submittal Set* Received February 24, 2005
- i. *Parking and Transportation Objections letter from WinterBrook Planning* dated May 10, 2005
- j. *Water Quality and Flooding Objections letter from WinterBrook Planning* dated May 10, 2005
- k. *Floodplain Evaluation letter from Maul, Foster, Alongi* dated May 6, 2005.

The submittal materials were reviewed for consistency with City of Milwaukie development standards, or other appropriate regional standards where the City of Milwaukie does not have existing standards. The review had two parts:

- a. Examining where water quality, wetlands, or stream impacts may result from the proposed development,
- b. Commenting on potential means to address any perceived shortcomings in minimizing and mitigating impacts.

6.2 Page 44

The proposed design does not appear to fully meet applicable standards for hydrology, floodplains, water quality, and wetlands based on our review of the various submittals. Prior requests for clarification have only partially been met.

For example, the revised Preliminary Hydrologic Analysis includes major assumptions that need to be supported by additional calculations/analysis. Adding sand to the fields would not typically change field permeability and thereby reduce the Curve Number and future runoff as presented in the report. The wetland delineation report documents that Wapato and Cove soils found on-site are hydric soils, and the Woodburn soil has hydric inclusions, making them generally poorly drained. These are soils described by the Soil Survey of Clackamas County as prone to flooding and ponding. The Salem silt loam, a moderately well drained soil, is mapped in the vicinity of the proposed parking lot. Typically, soil survey mapping is not accurate at the project scale, but the point is most of the site soils are shown as poorly drained, but the geotechnical report confirms that the silty soils found on-site have potential for high groundwater levels. The applicant needs to clearly demonstrate how adding sand, and in what quantity to the proposed fields, would improve permeability to achieve reduced runoff presented in the revised Preliminary Hydrologic Analysis.

There are potential issues regarding the true extent of the floodplain that need to be investigated further. There are questions about how the two jurisdictional wetlands identified for the site, and verified by DSL, are being addressed in the Removal/Fill application process.

Vigil-Agrimis, Inc. recommends that the City slow down this approval process and ask the applicant to make a more complete submittal with consideration of water resources and wetlands issues raised in the public process to date.

Sincerely,

VIGIL-AGRIMIS, INC.



Paul Agrimis, R.L.A., P.E., P.W.S.
Vice President

May 16, 2005

Ms. Lindsey Nesbitt
Associate Planner
City of Milwaukie – Community Development
6101 SE Johnson Creek Blvd.
Milwaukie, OR 97206
503.786.7658

RE: WQR-05-01 Water Quality Resource and Flood Hazard Review of the Proposed North Clackamas Community Park, Youth Sports Fields, Milwaukie, Oregon

Dear Ms. Nesbitt:

We have been pleased to assist the City of Milwaukie with peer review of this project. With our recent recommendation to the City to slow down the approval process, we believe this is an appropriate time for Vigil-Agrimis, Inc. to conclude our involvement in the project. We thank you for the opportunity to assist you and wish you the best with moving forward with this project.

Sincerely,

VIGIL-AGRIMIS, INC.



Paul Agrimis, R.L.A., P.E., P.W.S.
Vice President

Appendix E: Random Household Survey Results

9. On a scale of 1 to 10 with 1 being **poor** and 10 being **excellent**, please rate the Aquatic Park in the following areas.

N = 263

All elements of the Aquatic Park were in the range of good to very good. The average rating for each element is shown below:

■ Safe Environment	7.76
■ Facility Maintenance	7.69
■ Water Activities	7.41
■ Hours of Operation	7.15
■ Swim Lessons	7.13
■ Customer Service	7.00
■ Party Packages	6.99
■ Value for the Dollar	6.09

10. If you have not visited the Aquatic Park at all in the last 12 months, what are your **reasons**?

N = 262

Participants were asked to write in their reasons for not visiting the Aquatic Park. The top answers, and the number of times mentioned are:

- Not interested / don't swim (36%)
- No time / too busy (16%)
- Cost (11%)
- Swim in private facility (home, private club) (8%)
- Don't know where it is / don't know about it (6%)

Several of the top reasons are outside the District's control (not interested, no time). However, exploring ways to make the experience more affordable, and improving

publicity and marketing are things the District can address.

11. How should **sport fields** be developed in the future? Please check all that apply.

N=396

- 27.9% Develop a multi-sport complex for several sports
- 25.9% Partner with School District to upgrade existing sport fields on school property
- 20.7% Partner with School District to increase the number of sport fields on school property
- 20.1% Locate fields throughout the District
- 5.3% Develop a sport complex dedicated to one sport

Out of five different options, the top two choices were to develop a multi-sport complex for *several sports* (27.9%) and to partner with the North Clackamas School District to *upgrade existing* sport fields on school property (25.9%).

More than 20% of respondents favored partnering with the School District to *increase* the number of sport fields on school property.

The support for locating fields throughout the District is consistent with support for partnering with the School District since schools are distributed throughout the District.

12. Do you believe a **community center** is needed in the District?

N=441 73.0 Yes 27.0% No

73% of survey participants believe a community center is needed.

Chapter Seven: Action Plan

Table 7.2 Suggested Capital Projects
PRIORITY 1

Priority 1 (2003- 2013)		Neighborhood	Project Type
Neighborhood Parks			
N-31	Pfeifer Property	Sunnyside	Develop
N-21	Justice Park Site	Sunnyside	Develop
N-20	James Abele Park Site	Sunnyside	Develop
N-5	Mt. Scott Elementary School	Sunnyside	Develop
N-4	Altamont Park Site (Phase 2)	Sunnyside	Develop
N-26	Stringfield Family Park	Oak Grove/Jennings Lodge*	Develop
N-16	Jennings Lodge Elementary School	Oak Grove/Jennings Lodge	Develop
N-15	Candy Lane Elementary School	Oatfield/Jennings Lodge*	Develop
N-13	View Acres Elementary School	Oatfield	Develop
N-12	Concord Elementary School	Oatfield	Develop
N-7	Stanley Property	Milwaukie	Develop
N-3	New Neighborhood Park (Fuller Area)	Southgate	Acquire & Dev
	Mill Park	Southgate	Acquire & Dev.
Community Parks			
C-25	New Community Park	Sunnyside	Acquire & Dev.
	<u>North Clackamas Park</u>	Milwaukie	<u>Renovate</u>
Natural Resource Areas			
NR-33	North Clackamas District Park (Three Creeks)	Southgate	Develop
	Mt. Talbert	Sunnyside	Develop
NR-30	Spring Park	Milwaukie	Develop
Special Use			
SU-8	Milwaukie Riverfront Park	Milwaukie	Develop
SU-17	<u>Multi-sports Complex west of I-205</u>	<u>Oatfield</u>	Develop
Linear Parks			
L-3	Trolley Trail	Milwaukie	Acquire & Dev.
L-9	Trolley Trail	Milwaukie/Oak Grove	Develop
L-10	Trolley Trail	Oak Lodge	Develop
L-11	Trolley Trail	Oak Grove/Jennings Lodge/Oatfield	Develop
L-32	Mount Scott Trail	Sunnyside	Acquire & Dev.
Other Facilities			
	25 Additional Sports Fields (located on NCSD #12 property)	District-wide	Develop
	Community Recreation Center (east of I-205)	District-wide	Develop
	Maxdcom	District-wide	Install

* The Oak Grove and Jennings Lodge neighborhoods make up the NCPRD planning neighborhood called "Oak Lodge". A portion of the Jennings Lodge neighborhood also falls in part of the Oatfield planning neighborhood.

changing NCP Community Park to Special Use.

Appendix E: Random Household Survey Results

SUBGROUP RESULTS

The majority of survey participants in each planning area said they believe a community center is needed in the District. The highest level of support came from Milwaukie respondents (78.8%) and the lowest level was in Oak Lodge (66.3%).

13. If you answered yes to question 12, what **facilities** would you like to have included in a community center? *Please check your top 3 choices.*

N=328

- 13.6% Multi-use gymnasium
- 10.9% Teen activity area
- 10.3% Exercise and aerobics room
- 10.0% Outdoor swimming pool
- 9.1% Children's play area
- 8.6% After-school program area
- 7.8% Meeting space, kitchen and classrooms
- 6.6% Senior activity area
- 5.9% Tennis courts
- 5.8% Performance stage
- 5.1% Soccer courts
- 4.5% Racquetball/squash courts
- 1.8% Other

SUBGROUP RESULTS

A teen activity area was supported most highly by respondents from Milwaukie and Southgate/Town Center. Southgate/Town Center respondents also indicated above average support for an exercise and aerobics room.

14. If funds were available, what type of parks or facilities should the District develop for the future?
Please rank each choice from 1 to 7 using 1 for your highest priority and 7 for your lowest priority.

N=370

Weighted responses were totaled for each choice to determine which facilities have the highest level of support.

*Example: 5 people rating neighborhood parks the top priority would result in a score of $5 * 8$ or 40. 4 people rating neighborhood parks second priority would result in a score of $4 * 7$ or 28, and so on. The total of those scores is the weighted response.*

Overall support for neighborhood parks and large multi-use community parks is almost equal. The weighted responses are as follows:

- 1513 Small neighborhood parks within one-half mile of most neighborhoods
- 1500 Large multi-use community parks for active and passive play, located within one to two miles of most neighborhoods
- 1440 Linear parks or greenways with trails for hiking and biking
- 1361 Natural open space with very limited development such as trails and viewpoints
- 1292 Riverfront parks and river access
- 951 Large special use facility (such as a stadium or amphitheater) with regional interest
- 187 Other

In addition to the choices given, survey respondents wrote in other responses. "Other" facilities mentioned more than

Appendix E: Random Household Survey Results

once, along with their weighted results, include:

- 60 Skateboard / BMX facilities
- 32 Off-leash areas for dogs
- 30 Sport facility / more athletic fields
- 23 Community / recreation center
- 17 Develop sport fields in partnership with the School District
- 9 Swimming pool

SUBGROUP RESULTS

The number one priority for the highest percentage of Southgate/ Town Center (41.4%) and Oatfield (38.9%) respondents was a large multi-use community park.

The number one priority for the highest percentage of respondents from Milwaukie (38.0%) was neighborhood parks.

Oak Lodge and Sunnyside respondents were almost equally divided between neighborhood parks and a large community park for their number one priority.

OPERATING LEVY ASSESSMENT SURVEY

In this survey, 50% of participants said there were too few neighborhood parks. 44% said there were too few regional parks.

15. How many times *in one month (30 days)* do you participate in the following activities when they are in season?

The 20 recreational activities people participate in the most frequently, and the average number of times they participate, are shown below. Also shown for purposes of comparison is the average participation for that activity in the Northwest (the Northwest Average). Activities with higher than average participation rates are indicated in **bold**.

Table 3
Recreation Participation

	Average Monthly Participation	Northwest Average
Recreational computer use	5.89	5.28
<u>Walking</u>	<u>5.68</u>	5.91
Gardening	3.54	4.34
<u>Exercising a dog on leash</u>	<u>3.52</u>	3.52
Family activities	3.38	3.64
Playing instruments/singing	3.14	2.21
Exercise/weight training	2.57	1.94
Exercise/aerobics	2.39	3.32
Jogging/running	2.33	2.34
Swim, outdoors	2.11	2.46
Swim, indoors	1.93	2.39
Basketball	1.85	2.19
Exercise dog off leash	1.79	1.79
<u>Sporting event – attend</u>	<u>1.67</u>	2.50
Bicycling for pleasure	1.66	2.99
Playground – visit/use	1.57	2.81
Bicycling for exercise	1.56	1.56
Nature walks	1.54	2.71
Soccer	1.34	1.70
Arts & crafts	1.33	1.53

Chapter Four: Parks and Facilities

DESIGN AND DEVELOPMENT POLICIES

The following design and development policies are recommended for community parks.

General Land Use Guidelines

- Because of their size, the acquisition of community parkland should occur far in advance of its need.
- A community park should be constructed when the area it will serve reaches about 50% development (measured by either acreage developed, or population accommodated).
- Wherever feasible, community parks should be developed adjacent to middle school or high school sites.

Site Selection Criteria

- Minimum size should ideally be no less than 20 acres.
- At least two-thirds of the site should be available for active recreation use. Adequate open space buffers should be used to separate active use areas from nearby homes.
- The site should be visible from adjoining streets and have a minimum 300 to 400 feet of street frontage.
- Access should be via a collector or arterial street.

Design and Development Standards

- Appropriate facilities include:
 - Children's play areas
 - Basketball courts
 - Multi-purpose paved court
 - Tennis courts
 - Volleyball courts (sand or grass)
 - Sport fields
 - Open multi-use grass area / natural open space
 - Picnic area
 - Group picnic facilities

- Picnic shelters (various sizes)
- Restrooms (permanent)
- Site amenities (picnic tables, benches, bike racks, drinking fountains, trash receptacles, etc.)
- Trails/pathway systems
- Parking requirements are dependent upon facilities provided. Applicable local codes should be followed, for example, 50 parking spaces are required per sport field plus five spaces per acre of active use area.
- Permanent restrooms are appropriate for this type of park but should be located in highly visible areas and near public streets.
- Children's play areas should be universally accessible and responsive to developmental needs of children from infancy through early teens.



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Milwaukie Planning Commission
City of Milwaukie
6101 SE Johnson Creek Blvd.
Milwaukie, OR 97206

CITY OF MILWAUKIE
PLANNING DEPARTMENT

Re: North Clackamas Community Park Floodplain Issues

Dear Planning Commissioners:

A number of comments have been submitted to the North Clackamas Community Park application (CSO 05-02, TPR 05-01, WQR 05-01) record regarding floodplain issues. Many of the comments have been directed at work that Maul Foster & Alongi, Inc. (MFA) has done in representing the Friends of North Clackamas Park. This letter is intended to provide clarification on those issues and rebuttal to those comments. MFA continues to represent the Friends of North Clackamas Park.

According to the comments of Rick Maxwell of the Clackamas County Department of Transportation and Development (DTD), as late as January 2005 the floodplain boundary being used by the Applicant was prepared by him. In his May 19, 2005 memo he states that *"this map represented my best guess of the boundary based on "eye-balling" the line shown on the 2001 FEMA map. The flood plain boundary was not drawn using existing site topography, or using the elevations shown on the FEMA map. This map was never intended to serve as an accurate or final depiction of the flood plain boundary."* Notes on the Applicant's plans indicated that the graphical depiction of the floodplain boundary was based on the FEMA map. MFA conducted a comparison of the Applicant's map and the FEMA map and found that the Applicant's map depicted the floodplain nearly identically to the FEMA graphical presentation, except that the Applicant's floodplain was slightly smaller. The important point is that the Applicant apparently relied on the graphical information on the FEMA maps and did not examine the predicted water surface elevations at FEMA cross sections "A", "B", and "C" and the relationship of those water surface elevations to the revised topography south of the drainage swale.

David Poulson of W&H Pacific also provided comments on the floodplain issue. His comments focused on FEMA-provided criteria and observed flooding conditions. His

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most important point is that FEMA "... information is provided both graphically and numerically. In general terms numerical values are more reliable but both function together to provide a complete picture of flooding conditions. With this information small graphical adjustments are sometimes required so the information is consistent with actual conditions that were unavailable to FEMA." This is the same point MFA was making in its report and with the floodplain map that we prepared.

The existing FEMA map was based on very old topographic information with a resolution of ten feet. This means that FEMA mapping was done using ten-foot contour intervals. The revised topographic mapping completed by the County Surveyor's Office was done using contour intervals of one half of a foot, which is a resolution twenty times greater than the topographic information upon which the FEMA map is based. The reason the Applicant's floodplain map is not valid is that the Applicant did not follow through with the revised topography and make the graphical adjustments to the map that would be necessary to show the actual condition as described by Mr. Poulson.

MFA's floodplain map was created through the process that Mr. Poulson described. MFA applied the numerical values provided by FEMA to the revised topographic information to create a revised graphical presentation of the floodplain. Ideally, the floodplain map would be revised by creating a new hydraulic model that accurately represents the topography. MFA did not attempt to revise the hydraulic model because it would have required additional surveying and a substantial level of hydraulic modeling. It is reasonable to expect that the Applicant bears the burden of proof and should conduct the hydraulic modeling to support their case.

In his comments, Mr. Poulson states that one of the City's criteria to measure flood plain issues is observed flooding. Observed flooding is a valuable piece of information in determining flood levels. But for observed flooding to be of value in determining the 100-year event, the peak water surface elevation must be surveyed and documented and the return interval of the peak stream flow that caused the high water must be known. Mr. Poulson relies on the aerial photographs from February 1996 and the assumption that they represent the 100-year flood on Mt. Scott Creek as a basis for determining that the floodplain could not be as extensive as is shown on the MFA floodplain map. There are two flaws in this logic.

The first flaw is the assumption that the February 1996 storm was the 100-year event for all drainage basins in the Portland metropolitan area, including Mt. Scott Creek. This is

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not necessarily true. Each drainage basin is different and responds differently to the same rainfall pattern. Rainfall does not fall evenly, and rainfall patterns may vary from one drainage basin to another within the same area. The 1996 event was close to the 100-year event for the larger drainages such as the Willamette River, Clackamas River, and Tualatin River due to persistent rainfall and the long time period over which rain fell. Unless Mr. Poulson has a long record of stream gage information for Mt. Scott Creek and has conducted statistical analysis on it, the return interval of the peak flow in Mt. Scott Creek in February of 1996 is just conjecture.

The second flaw is that Mr. Poulson indicated in his comments that examination of aerial photographs of flooding during the 1996 event provides evidence that flooding as extensive as shown on the MFA floodplain map did not occur. He also states that *"...the flooding shown, or lack thereof, is quite consistent with the FEMA flood information and with that shown on the applicant's maps and exhibits."* There are two problems with his analysis of aerial photographs of the flooding that occurred during the February 1996 event.

First, the aerial photographs were taken when the larger rivers were flooding. The time it takes for rainfall falling on a drainage basin to contribute to the mainstream river flow from every part of the drainage basin (known as the time of concentration) is measured in days on the Willamette River. The time of concentration in Mt. Scott Creek is probably measured in minutes or hours. It is highly probable that the peak flow or flood on Mt. Scott Creek occurred long before those aerial photographs of flooding in the Willamette River were taken. Mr. Poulson does not indicate that he knows precisely when the peak flows on Mt. Scott occurred and that he has aerial photographs that were taken at that moment, or close to it. Without that information, those aerial photographs have little value in determining the 100-year floodplain on Mt. Scott Creek.

Second, there is a question regarding Mr. Poulson's statement that the flooding shown in the aerial photographs is consistent with both the FEMA mapping and the Applicant's mapping of the floodplain. We know that the FEMA mapping and the Applicant's mapping match because the Applicant essentially transferred the graphical FEMA data to their base map. It should be of great concern to the Planning Commission that, as Mr. Poulson has stated, the flooding in the aerial photograph is consistent with the Applicant's map. As stated above, the flooding on Mt. Scott creek in February of 1996 may not have been the 100-year event and the photograph was not likely taken during the peak flow of Mt. Scott Creek. Given that information, it is highly likely that the flooding shown in the

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photograph represents a flow that is substantially less than the 100-year event. If a peak flow that is less than the 100-year event produces flooding consistent with that shown on the Applicant's plans, then it is highly probable that the 100-year event will produce flooding in excess of what is shown on the Applicant's plans.

The Clackamas County Park District's Attorney suggested that the floodplain map prepared by MFA is not "substantial evidence" because, in his opinion, it cannot be relied upon. The basis for their opinion appears to be that the map has been presented with qualifications and limitations. It should be noted that nearly all engineering work comes with qualifications and limitations. MFA presented the material to the Planning Commission because we believed it to be "substantial evidence". MFA provided qualifications and limitations with that evidence because we understand that there are methods of analysis that can be employed to refine the floodplain delineation. MFA did not want to imply to the Planning Commission that the floodplain map we prepared was the final word on the floodplain on the site, only that there is a substantial discrepancy when more accurate topographic data is considered.

The intent of the work presented by MFA was to provide the Planning Commission with another source of information that could and should have some bearing on whether or not the project is approved as presented. MFA believes that there is a reasonable probability that the floodplain is more extensive than the Applicant has indicated. This is our professional engineering opinion. The probability is high enough that this qualifies as "substantial evidence". The Attorney's argument fails to address the significant technical issues at hand.

The Attorney stated that *"The FEMA/FIRM map is the gold standard and opponents offer no reason why it is defective"*. MFA does not believe the FEMA/FIRM map is defective. MFA believes that, with the preparation of the higher resolution topographic mapping by the County, the existing FEMA/FIRM map is outdated. The existence of the new topographic mapping alone would not be sufficient reason to update the FEMA mapping. But the existence of the new topographic information combined with the Applicant's proposal to place a large amount of fill in what may be the floodplain is a very good reason to update the floodplain mapping.

In their discussion of the MFA floodplain map, the Attorney states that *"A reasonable decision-maker could make no decisions based on this 'map'."* This is not true. A reasonable decision maker could make the decision, based on the MFA floodplain map,

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that there is some reasonable doubt about whether the floodplain is accurately depicted by the Applicant. A reasonable decision maker could question what the implications are of relying on the Applicant's map versus the potential problems illustrated by the MFA map. The decision maker could decide that allowing a substantial amount of fill in what might be the floodplain would violate City Code regarding balanced cuts and fills within the floodplain. The reasonable decision maker might also decide that if the Applicant is wrong, and the floodplain does extend into the area proposed for fill, then the frequency and magnitude of flooding downstream may increase and cause property damage as a result of that fill. The decision maker could decide that they do not know which expert is correct, and that a reasonable resolution to the matter is to require the Applicant to conduct additional survey work and prepare a revised hydraulic model to help resolve the issue and prove their case. Many decisions can be made based on the information provided in the MFA map.

MFA has established that there is some uncertainty as to the boundary of the 100-year floodplain within the North Clackamas Community Park. There is some risk to the City in approving the Applicant's proposed fill in an area that might be within the floodplain. The risk can be reduced significantly by requiring that the FEMA hydraulic model through the park reach of Mt. Scott Creek be revised using one half foot contour interval topographic mapping. The mapping should extend throughout the park to an elevation that is higher than the expected water surface elevation of the 100-year event. The hydraulic model should contain additional cross sections to accurately represent the channel geometry of Mt. Scott Creek, the drainage swale, the split flows, and potentially Kellogg Creek. We have added Kellogg Creek to the list because it appears that the western edge of the park may be within Kellogg Creek floodplain.

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May 28, 2005

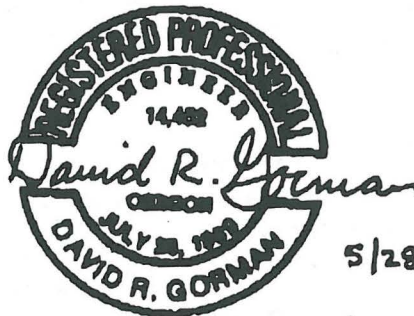
Page 6

The hydraulic modeling work should be completed by the Applicant prior to obtaining approval for the project because it will be difficult for the Planning Commission to assess the potential merit and impacts of the project without knowing where the floodplain boundary is. Until the floodplain revision work has been completed, Friends of North Clackamas Park respectfully requests that the Planning Commission deny this application.

Sincerely,

Maul Foster & Alongi, Inc.

David Gorman, P.E.



5/28/05

Expires: 6/30/05

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 7221 NW Hazel Dell Avenue, Suite B, Vancouver, WA 98665
 Phone 360.694.2691 | Fax 360.906.1968 | www.MFAlongi.org

FAX TRANSMITTAL

TO: City of Milwaukie Planning Commission DATE: May 28, 2005
Milwaukie, Oregon FAX #: 503-774-8236
 RE: North Clackamas Community Park PAGES: 7, INCLUDING COVER SHEET
 FROM: David Gorman, P.E., Maul Foster & Alongi, Inc. - Vancouver

Unless otherwise indicated or obvious from the nature of the transmitted, the information contained in this facsimile message is confidential information intended for the use of the individual or entity named above. If the reader of this message is not the intended recipient, or the employee or agent responsible to deliver it to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us at the telephone number listed above.

COMMENTS:

Please provide the attached letter to the Planning Commission and enter it into the record for the North Clackamas Community Park project.

CITY OF MILWAUKIE
 PLANNING DEPARTMENT

MAY 31 2005

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Lindsey Nesbitt, Associate Planner
Community Development Department
6101 SE Johnson Creek Blvd.
Milwaukie, Oregon 97206

Letter One

May 28, 2005

6.2 Page 58

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CITY OF MILWAUKIE
PLANNING DEPARTMENT

RE: North Clackamas Park Applications CSO-05-02, TPR-05-01 and WQR-05-01

Comments for Milwaukie Planning Commission, submitted by:
Steve Berliner, 4455 SE Aldercrest Rd., Milwaukie, OR 97222 tel.503-653-7875

Dear Commissioners:

Thank you for allowing me to testify at the May 24th Hearing for the above referenced Application. I would like to make some further testimony in response to comments made on the Record that evening.

You'll find these points made, and well supported below:

- **Applicant's Plan sacrifices quality** for all Park users. They tried to do too much, pushing the Parks' best features to the brink. Their Plan is "fatally balanced." I offer a solution.
- **There are better Plans** to incorporate four competitive fields and preserve the environment, and I present one for you.
- **Applicant has used aggression and smears** to divert you from its own failed Burden of Proof, bringing in private citizen/employer confidentiality, and false "EPA" assurances of safety.
- **Flood Plain issues are serious**, especially downstream flood liability, and parking lot flooding. (These two issues were best served in a separate "Letter Two.")
- **Native Oak/Ash/Camas Lily stands threatened**, not explained/mitigated along Kellogg Crk. Dr.
- **Private Developer of Eagle Landing** used far more inclusive process- better end result.
- **Not your job to "fix" a clearly bad Plan** – for good reason: you can't "condition" everything. You'll see there are better ways to do the project, but that you can't "legislate" individual fixes.

But first, I want to commend the Commission; I can't believe how patient and focused you've been, and the myriad thoughtful questions you asked the Applicant. I could truly see that you've heard and understood many opposition concerns, and take them seriously. Your questions targeted some serious problems that "opponents" see with these Applications.

Before I go on, please note I've written a separate letter to you about the Flood Plain issue and storm water management design problems **with solutions**. Both letters have some very practical sample design-solutions that would make me feel a whole lot better as a downstream Creek-front property owner, and a long time stream steward in the watershed, as well as long-time Surface Water Citizen Advisory Board Member for WES.

I am optimistic that the number of Baseball Fields Applicant desires could be placed within North Clackamas Park, and done in an environmentally sensitive manner. However the proposed Plan has sacrificed too much quality by trying to fit in everything everyone wants, and in the end, all will suffer for it, especially the wonderful natural resources within the WQR's of this special property, long an interest of mine. I could describe for you diverse species of birds, dragonflies and plants that live there, like the District's symbol, native Camas Lily, or the Autumn Meadowhawk dragonfly, or birds like the White-breasted Nuthatch pair that nested in a tree cavity by the playground just a month ago, or the Pileated Woodpecker seen on a stump across Mt. Scott Creek from the bench at the west end beyond the Oak on the knoll, in the past few weeks. That the Pileated still flourishes in our urban setting is a real testament to the quality of habitat here. Our majestic Pileated was long said to be North America's largest Woodpecker, but has recently been bumped to second largest by the re-discovery of its cousin, the Ivory-billed of Arkansas' deep, marshy forests.

Regarding the valuable Camas Lily stand adjacent to Kellogg Creek Drive; the widening project eats it. The impacts should be determined, and the plant community portion affected should be relocated to appropriate habitat within the Park. Will Oak or Ash trees be felled there also, and what is

the mitigation for that? Portland for example has a tree removal ordinance that requires replacement on a trunk diameter basis.

It has been unfortunate and a poor reflection on Applicant, that they've smeared well-intentioned citizens. Not only Applicant, but also proponents have written such comments to you. In the May 24th Hearing, the Applicant stated a citizen opposed to the Plan "didn't respond" to Applicant's requests for his personal job description, with his private employer's proprietary information on fertilizer and pesticide use. How silly and vicious this was. The burden of proof is on the Applicant, not individual citizens singled out by Applicant to respond to their requests.

I didn't hear him say that this private citizen managed a WQR area, streamside or other natural area, nor a public park, nor public facility of any kind. Not only did their request intrude in a private matter, confidential between employer and employee, but also an employee is obligated to operate within the instructions, programs and expectations of the employer, if allowed by law. Having been an employer myself for decades, this is a "no-brainer." Is Applicant implying that because their intrusive attempts were unsuccessful, that pesticides are safe for wildlife, frequent Park users, or the Creeks? Instead, the citizen-employee's professional expertise should be respected when it comes to concerns about the use (and misuse) of chemicals. As a long-time member of Northwest Coalition for Alternatives to Pesticides myself, I can vouch for the validity of those concerns. Unlike EPA they rely on independent research for their conclusions.

Reference to EPA approval by Applicant is to be taken with a large dose of skepticism. I've done some research on EPA approvals of zinc-based roof-moss pesticides; an issue we had over at Water Environment Services (who offered alternatives to the use of zinc products in published materials), and EPA approval is basically the same process as Tobacco Companies providing health-effects data on cigarette smoking... exactly the same issue: non-independently-verified health and safety testing. Manufacturer-provided research allowed only!

Recently it was discovered by independent University studies that Round-up appears to kill amphibians when used according to application instructions. A memo describing the following was circulated among Portland BES offices: The researchers feared that the herbicide might kill algae, and thus starve amphibians like frogs; and so they were doing some research. What they found instead was even more startling, according to the Journal Nature. The algae flourished, but the amphibians were dying from the herbicide applications anyway!

One intriguing aspect of such chemicals is that low doses in the environment may actually be more harmful to some organisms than larger doses! Amphibians exposed to larger doses generated immune responses that protected them. But the lower doses acted as though undetected, getting "under the radar" of the immune system, and so caused genetic mutations.

Applicant made another derogatory accusation of Plan opponents at 10:35 p.m. stating that opponents simply don't want any change in the park. While this could be true for a small number of opponents, it's certainly not indicative of the majority, as was implied, who are reasonable and progressive toward youth baseball opportunities, and a Park we can all enjoy. So many times we sought, and offered alternate layout sketches and concepts to staff, but they weren't open to discussion. Again, no discussion of alternatives within the DAB! To make their falsehood ("opponents want no changes") convincing, Applicant's attorney stated that issues of concern by some opponents, were "opposite" to views of other opponents. Again, just silliness and diversion away from Applicant's own burden of proof. Divergent views are expected and normal in a diverse community like ours. It's Applicant's Plan that showed no diversity, no divergence from their one-track thinking.

Look, if you want a red car, and your spouse says it should be yellow, does that mean orange would be just the right color?? More to the point, does it mean you and your spouse really don't want a new car? Of course not, but Applicant's attorney tried to make you think so... that in spite of our numerous "opposing" requests, Applicant somehow managed to create the perfect "orange car." Shame on them for thinking you can't apply logic. And we're out there in the cheap seats (the ones with no voice) saying "wait, that's not a good solution!" In many ways it looks like Applicant's Plan is fatally "balanced," if we must all use their preferred term.

For example they want all of: soccer and their preferred number of baseball fields, and storm water detention, and the equestrian facility and the Oak tree and knoll, and walking trails, and this drove them to “innovate” a flooded parking lot complete with polluted water and barricades (& a man in waders, I contend!)

What they should be proposing, is the modern answer to the need for both open spaces and detention in urban parks... what many new parks are doing: Grading a large “cut” area, to balance their fill, in a large and gentle depression that can be used by people for casual recreation most of the year, and which can hold so much storm water, that in unusually rainy times it would simply be wet, and which in the 100-year event may actually accumulate standing water, but not to a dangerous level.

Included in this practical solution would be horse-trailer parking adjacent to the arena where it’s supposed to be! The lone soccer field that was buried behind baseball fields and which won’t be served by a reasonably situated parking area to haul nets, cones, bags of gear and soccer balls, can be relocated east of the I-205 Freeway, as Mr. Cieccko stated soccer fields were going to be developed anyway!

Another solution they’ve never asked for help with is that they have the Restroom/Concession building in the wrong place!! It should be easily reached for services, and accessible to multiple-use park users when it’s open, like Rose Garden guests and picnickers, without walking the “foul-ball” gauntlet, or feeling like we’re encroaching on ball game attendees-only facilities. It should be low-profile line of sight, and not stuck out in the middle of the “park.” Wouldn’t you think this would occur to them? It needs to be somewhere closer to the lot and Rose Garden, and out of the visual line of sight to the baseball and equestrian facilities. As you read on you’ll see why Applicant has failed to get this kind of input whereas other projects have succeeded.

Apparently Applicant has relied on one basic “rote” plan for ball field layout (probably taken from a stand-alone baseball park design). But who’s? This would not be W & H Pacific, the professional engineers who told you the concept came to them “in its present form” (and who didn’t applaud it, you may have noticed). Neither would it be the community who also saw the same Plan from inception through Application. Neither would it be the District Advisory Board, who was allowed to consider only the so-called pinwheel field-layout with it’s fences and paved concourse. How odd. I don’t understand the Plan’s genesis, or Applicant’s dogged adherence to only one design. Please consider whether you understand this, whether Applicant has justified it. The DAB was afforded the luxury of deciding only between several versions of what would go in the central concourse, which were offered them as choices, not discussion topics to generate different ideas.

Please contrast that with one private developer’s efforts in the Eagle Landing Commercial project: Upon County Commissioners granting their requested zone changes at the former Top O’ Scott Golf Course property, the developer brought in an acclaimed “low-impact-design” landscape architect, and held two days of design “Charette” workshops involving neighbors and representatives from Community interests, State Dept. of Fish & Wildlife biologist, and others (of which I was one.) The result: everyone was pleased with the Application submitted to County Planning Dept., which included such (truly) innovative features, as “green-streets”/green-parking, pervious-paved parking areas, and community facilities that were sited where they’d best serve their users. Of special note- no flooded parking lots were in the resulting Plan, thank you.

I guess we have to look to private developers to protect the environment, and involve the community in a genuinely inclusive way, but not expect the same from our public Parks Dept. Rather, they’ll keep telling you how they had “meetings” and “listened.” And of course then did what they wanted in the first place. Yes, we did make a few inroads in getting (or just saving!) some additional facilities for “the rest of us,” but clearly, no one’s had significant success with other ideas for the field and fence layout and design, nor in precluding extensive advertising signboards, or discussing “lighted vs. unlit” fields, except, its sole designer of course. Our inroads to the project were not by pleasant cooperative planning... they were by adversity!

Had Applicant engaged in the former, they might have come up with, for example, lighting only two lds, or even three, to spare the most sensitive wildlife areas and the most adverse residential impacts.

Miss Thelma Hagenmiller testified before you, on some of the research she did for the Trolley Trail, where the U.S. Forest Service has been very pleased with its Mt. Hood area "pervious" trails; and they are ADA accessible, and low maintenance.

By the time a Plan comes before you, you shouldn't have to "fix" a troubled Plan for the Community's interest, when it resulted from a flawed public process in the first place, or even if it did not for that matter! They should be expected to "get it right, by the Community."

You can fix the most serious problem by having this public agency involve the Community in a good faith and smart way... instead of the autocratic one that was used. Frankly, I don't think even the baseball supporters had opportunity to give a lot of input, but rather are just so grateful to be provided usable fields! Since they are not multiple-use park users for the most part, they didn't notice any of these other things; that much is clear, and they're not the ones to be blamed for that. They certainly weren't invited by NCPRD to work on the Plan side by side with non-baseball users.

So much fear of "the process" was generated that the two sides didn't manage to sit down together "in spite of the process," though the Friends Group did reach out to Plan proponents, but the system insured that this would not come about. Who wouldn't be afraid to "give an inch" once everything's on the line?

Let me ask you, Commissioners: whether you really feel this is a good Plan, the best Plan that can be offered to our community; or even a Plan you can "patch up" by imposing special conditions for approval? Is it a Plan that enables you to live up to your Mission Statement of high community and environmental standards? If not, why not send the Applicant back to the Community to work on this in an inclusive way such as I've outlined above? Youth baseball has survived without the new fields for 15 years, since the failed District Park land purchase alone. Surely a few more months' wait will be worth gaining a stellar Community Park. Not only that, but the fields already there, if given over by their adult users can probably be made serviceable for youth play this first summer, until a major project goes forward. Why not enlist the Park Friends to help fill potholes, erect temporary fences for the season, and do other jobs volunteers can do? Sign me up!

Sincerely, Steve Berliner



Lindsey Nesbitt, Associate Planner
Community Development Department
6101 SE Johnson Creek Blvd.
Milwaukie, Oregon 97206

May 28, 2005

Letter Two

RECEIVED

MAY 31 2005

CITY OF MILWAUKIE
PLANNING DEPARTMENT

RE: North Clackamas Park Applications CSO-05-02, TPR-05-01 and WQR-05-01

Comments for Milwaukie Planning Commission, submitted by:
Steve Berliner, 4455 SE Aldercrest Rd., Milwaukie, OR 97222 tel.503-653-7875

Dear Commissioners:

I was glad to have the opportunity to correct the record, and show that Applicant's assertions about the 1996 Flood photos of the Park were false. They had told you that the photo disproved our claims that some of the proposed project area is within the 100-year Flood Plain. Actually staff also wrote you that a small amount of the area does lie in the 100-year Flood Plain. Truth is, as the Planning Director verified, that we didn't have a 100-year Flood in 1996. It probably wasn't half as wet as that in the Park's location and upstream (50-year or smaller Flood most likely).

You have three different assessments of where the 100-year Flood Boundary lies: Applicant's, Milwaukie's, and the Park Friends' Registered Engineer-produced map. My wife long ago coined a phrase: "The truth is usually somewhere in the middle." I can't think of a more perfect example of that than "where the 100-Year Flood Plain lies." Is this a case of the "lowest" standard applies? Isn't it funny that you're told the "gold standard" is the one that's least current, and the least-updated, the least independently verified of the three, and that even staff finds there to be "some" flood plain in the south side project area, and recommends more planting mitigation? But will these new young plants protect the public the same as balanced cut and fill if we have a 50-100 year or greater storm in 2006?

Isn't balanced cut and fill actually the "gold standard" of protections, rather than an old and untested FEMA map? Could it be that rather than the "gold standard" it would be more reasonable to say: "The FEMA map represents the minimum standard" for the use of balanced cut and fill development methods? Believe me, that's how I interpret it from here, downstream of the proposed development!

Long-time residents know the famous 1964 flood did inundate the Park, as it did the entire Oregon City Shopping Center (photos are posted on County Emergency Services' Website). Is our own Parks Dept. seriously telling us downstream residents, "We'll hide behind an outdated FEMA map and not offer you the enhanced flood protection of the "BMP," balanced cut and fill?" Let's say for argument sake that the FEMA map they used is right, and that the project area is in what... the 102-year, or 105-year Flood Plain. Is this supposed to give us downstream Creek-frontage owners a peaceful sense about their depositing 1,800 cubic yards of fill in that Flood Plain? Does that make them a good-neighbor agency, supported by my taxes?

One Commissioner astutely asked about liability of the City? The fact is that a group of downstream property owners have already been organizing and selecting an attorney prior to May 24, to represent us as an "injured class" should we be damaged by worsened flooding caused by Applicant's project. This is not the Park Friends Group. Cause-of-damage determination would be straightforward: we've seen a reduction in flooding since implementation of the flood control facility in the District Park. There is practically no room for further infill development downstream of the flood-gates. Should we suffer increased flooding from equivalent rated storm events post-development, and the flood-control facility did not release more volume than in the same pre-development events, then the Applicant's development will be held responsible.

An example would be: some of us had to sandbag in relatively minor flood events before the facility went online, but have not had to since it became operational. If we once again have to sandbag to protect personal property, or we experience accelerated bank erosion (loss of property), or suffer worse flooding

from the same events the control facility has protected us from – again, Applicant's project will be the first and probably largest cause looked at.

Similarly, if after future damaging floods, the FEMA map is corrected to a closer approximation of the one we've commissioned and presented for the project area, our position will be that the City and Applicant should have respected the professional work presented enough to independently verify the actual Boundaries. It will not be as though they could not have reasonably expected that the map used was not current – and was in error, as will have been determined independent-of our Engineer's work at that time; after the fact; too late.

The other issue I want to address in this letter is the outlandish scheme of intentional parking lot ponding. This storm-water facility will subject humans and wildlife to risks from a toxic soup that will accumulate in the lot; and will likely occur more frequently than you were led to think. I noticed that one Commissioner treated promises of "once every two years" skeptically, and thoughtfully asked about consecutive days of ponding. Please don't forget about drains plugged from months of leaves and debris blowing and washing down. Won't our Park be a special showplace to baseball and rose garden guests, with it's barricades around stagnant standing water, and the guy in waders trying to locate the blockage, with perhaps a few dead birds or animals nearby?

The fact is, and I confirmed this with the City's independent consultant, LDC Design, that you were repeatedly and incorrectly told there may be water in the lot briefly once each two years (assuming all their calculations/assumptions/values are correct, and weather patterns aren't becoming more wet... or are they?) Apparently they didn't want to answer by giving you the actual definition of a two-year storm event: It's not "once every two years." Rather, the definition is the amount of rainfall in a 24-hour period, which has a 50% probability of occurring in any given year. This doesn't sound nearly so rosy does it? Instead, now it's a coin toss as to whether there will be standing polluted water in the parking lot, with barricades around it, a gleaming monument to our high development standards in Clackamas County and Milwaukie. They didn't tell you that! Will the boys of spring arrive to a blocked-off lot with putrid standing water a day or two after a big storm event? You might also imagine some of the risks to toddlers and young children.

As for wildlife, they don't know not to drink from it, or not to consume injured, and dying prey overcome by entrapment or toxic water. Some birds are so sensitive to oil that a light coating will kill them if not successfully removed. There's a big difference between separating the oil first, then ponding the water, and just letting it stand there!

I'm not just writing just to complain – there are reasonable solutions! Here're my initial thoughts for one:

What they should be proposing, is the modern answer to the need for both open space and detention in urban parks... what many new parks are doing: Grading a large "cut" area, to balance their fill, in a large and gentle depression that can be used by people for casual recreation most of the year, and which can hold so much storm water, that in unusually rainy times it would simply be wet, and which in the 100-year event may actually accumulate standing water, but not to a dangerous level (guaranteed, it would simply overflow the desired maximum height into the Creek.)

Hand in glove with this practical solution, would be horse-trailer parking adjacent to the arena where it's supposed to be! The lone soccer field that was buried behind baseball fields and which won't be served by a parking area, for easy hauling of nets, cones, and bags of gear, can be relocated east of the I-205 Freeway, where soccer fields are going to be developed anyway according to Mr. Ciecko's statements. How big of a sacrifice is that, to protect downstream residents, wildlife, the parking lot and the high quality and usability of a Community Park hosting valuable natural resources?

Of course I believe there should be other changes like no advertising signs, but they need to be worked on in a community effort... all the changes do. They've overlooked much. Thank you all for listening.

Sincerely, Steve Berliner



Nesbitt, Lindsey

From: Ben Schonberger [ben@winterbrookplanning.com]
Sent: Tuesday, May 31, 2005 2:17 PM
To: Nesbitt, Lindsey
Cc: Eric Shawn; Carrie Richter (E-mail); dgorman@mfainc.org
Subject: Rebuttal memo

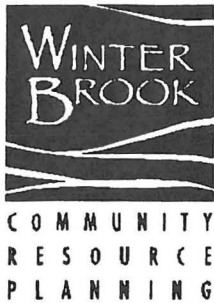


PC response 5-31.doc

Lindsey,

Please submit the attached memo into the record for the North Clackamas Park case. Thanks.

Ben Schonberger
Winterbrook Planning



MEMORANDUM

To: Milwaukie Planning Commission
From: Ben Schonberger
Date: May 31, 2005
Re: **Response to New Information**
(CSO 05-02, TPR 05-01, WQR 05-01)

This memo is a response by Friends of North Clackamas Park to new evidence submitted at the May 24, 2005 planning commission hearing. New information was submitted into the record by the applicant, by consultants hired by the applicant, by city staff, and by outside consultants hired by the city.

Overall View

The Planning Commission has clear authority to decide whether this proposal is appropriate for the site, and whether it meets all the code criteria. At the hearing, the District's attorney implied that the commission had no choice but to approve the application. The commissioners will evaluate applications based on the code, and make decisions based on their best judgment. One of the applicable CSO criteria is very subjective and open, allowing the commissioners wide latitude in weighing "public benefits" against "possible adverse impacts." As we have previously noted, the project does provide public benefits, but they are overshadowed by a mountain of adverse impacts. Legally, courts will defer to a local governing body's interpretation of its own code provisions.

A recurring theme of the District's testimony is a stubborn, steadfast refusal to make any alterations to the project design. This has been true even when such changes would improve the project, and would help it meet code standards. According to the applicant, it is impossible to reorient fields to reduce impacts, light poles cannot be moved or lowered, no alternatives exist to herbicide use, stormwater can be managed in only one way, and all damage to and loss of natural resources is unavoidable. The applicant has requested unusual interpretations of city code or outright rule changes to accommodate its design, rather than modifying its design to meet existing regulations. The District's unwillingness to modify the longstanding design is frustrating, because a public agency should be open to constructive criticism and reasonable requests.

Substantial evidence already in the record has identified numerous flaws in the application. Winterbrook Planning stands by its previously identified list of 34 flaws in the application. Some of these are outright grounds for denial and others qualify as adverse impacts. This memo will not restate the still-valid arguments in these submittals. Rather, what follows is a brief response to some of the key issues in the applicant's rebuttal materials.

Flood Plain

The purpose of the flood plain regulations is to protect downstream properties from future catastrophic flood events. The burden of proof is on the applicant to show that its method for mapping the flood plain is correct, and that construction will not create additional risk of damaging floods. Flood plain analysis by David Gorman, P.E., who is a senior engineer for Maul Foster Alongi, Inc., shows that the applicant's depiction of the flood plain boundary is not accurate, and therefore the burden of proof has not been met. The applicant has attempted to denigrate and dismiss Mr. Gorman's flood plain analysis. He has responded directly to these criticisms in a separate letter.

The analysis by Maul Foster Alongi, Inc., remains the only detailed work in the record that was completed and stamped by a registered professional engineer, and that used the best available data from FEMA and Clackamas County. In contrast to work submitted by the applicant and the city, Mr. Gorman's work is explicit in both its methodology and limitations.

The most important thing for all parties involved is to have an accurate flood plain map, and to protect downstream properties. A reasonable condition of approval would require the applicant to produce an accurate flood plain map, one that conclusively determines the boundaries of the flood plain. This would require a site-specific topographic survey, detailed hydraulic modeling, and would be carried out and stamped by a registered professional engineer. The applicant has not yet produced such a map, and therefore has not demonstrated that the balanced cut and fill standard is met.

Parking Lot Ponds

Rather than redesigning the layout of the park or the ballfields to accommodate stormwater detention, the applicant proposes to detain stormwater in ponds on the surface of the parking lot. The only reason the parking lot is being used as a detention facility is because the applicant will not modify the design to put it in a more appropriate location. The commission has raised concerns about this approach, but the applicant continues to dismiss or ignore its potential adverse impacts.

Milwaukie's outside engineering consultant, LDC Design Group, recommends against approval of the parking lot ponds. This consultant was hired only after the city's previous engineering consultant, Vigil-Agrimis, Inc., made a similar recommendation to city staff. Vigil-Agrimis then withdrew from the project three days after making this recommendation, without detailed explanation, and with a final plea to the city to "slow down the approval process." A request by Friends of North Clackamas Park uncovered these documents, which are now part of the record.

Paul Agrimis, P.E., concluded in his May 13, 2005 memo to the city:

“The proposed design does not appear to fully meet applicable standards for hydrology, floodplains, water quality, and wetlands, based on our review of the various submittals. Prior requests for clarification have only partially been met.”

Remarkably, city staff has gone against the findings of two professional advisers, and has recommended to the planning commission that they approve the design. This is highly unusual in a land use process, and calls into question the city’s purpose in hiring outside experts. Even if, as staff claims, the ponds are not an outright violation of city stormwater standards, they are still a poor design that will create enormous adverse impacts: concentration of traditional parking area pollutants (brake fluid, antifreeze, heavy metals), obstruction of disabled access, increased maintenance, and threats to water quality.

Finally, it should be noted that the area of the parking lot used for stormwater detention is actually within the Water Quality Resource Area. The WQRA land in this location will be burdened with 5,160 square feet of newly-paved parking for motor vehicles, will be used as a stormwater detention facility, will not be replaced with other land elsewhere in the park, and will degrade of water quality of the creek.

Lighting

Instead of modifying the lighting plan to meet city code, the applicant has asked that light poles be interpreted as a utility or that the commission change the rules to allow them. Neither of these requests are justifiable, as addressed in previous submittals, because they create serious problems with city precedent and procedure.

Rather than providing safe pedestrian lighting for walkways through the park, the applicant argues in their rebuttal that standard does not apply to public parks. This response avoids public concerns about safety. This statement is also factually inaccurate since the regulation explicitly applies to “all new development” (19.1410.3). The applicant’s argument that the proposal meets lighting standards, on average, is both unsupported by evidence and does not make sense from a policy standpoint. If the lighting standard could be met by averaging, it could be satisfied by a “laser beam” approach—a blindingly bright light at one location and virtual darkness everywhere else. Low-wattage, pedestrian-height lighting would provide a safe environment for walking, would meet the 0.5 foot-candle standard, and would avoid off-site impacts.

Instead of altering the design and placement of the light poles to avoid shining light into the sensitive WQRA, the applicant requests an unusual interpretation of city code to avoid making changes. Light levels caused by the field lights reaches as high as 25 foot-candles within the WQRA, but the applicant argues this light does not shine “directly” into the resource area per the regulation.

Light does not have intent. Two of the lighting poles are constructed either fully within the WQRA or a few feet from its boundary, and their luminaires cause light to shine on the resource area. High light levels are the direct result of new lighting. The bright light they cast comes directly from the new field lights.

Disabled Access

Rather than making modifications to the design to accommodate disabled users of the park, the District rebuts that Americans with Disabilities Act regulations do not apply. Eric Shawn, a school facilities manager and member of Friends of North Clackamas Park, has submitted a detailed letter outlining how the ADA regulations are not merely guidelines that may be ignored, and that they do indeed apply to the project. It is essential that the District provide access for all park users, regardless of their physical limitations.

Parking

The District's parking counts have been plagued with errors and have changed, from 406 in the original application to 390 currently. The city has counted only 352 spaces. Now, the applicant has changed its approach, reducing the count to 230 spaces and addressing only the parking demand generated by new playing fields, without accounting for any other park uses, new or existing. The District now asks to exclude from consideration all of the spaces in existing lots at the park—including the Milwaukie Center and Rose Garden lots. This is an attempt by the District to avoid upgrades to sub-standard Milwaukie Center and Rose Garden lots, including improvements that would stop parking lot runoff from discharging directly into the creek.

Aside from counting problems with the number of spaces needed per field, this approach fragments and limits the application even further, raising the piecemeal approval problem raised in earlier submittals. The Community Service Overlay approval requested would now be limited only to the playing fields and none of the other park facilities, e.g., the "tot lot," playground, or new walkways. Also, the District has not explained how it will stop ball field users from parking in the Rose Garden or Milwaukie Center lots. In reality, these the lots operate together to satisfy demand for all park uses. Therefore, they need to be evaluated in unison.

Finally, rather than properly installing an all-weather surface and drainage in the parking area near the soccer field and the equestrian arena, the applicant has threatened to eliminate this parking area from the design.

Conclusion

Friends of North Clackamas Park has grave concerns about the proposed design. As advocates for park improvements, we want to see the best design for the greatest number of users. There

will be only one chance in our lifetimes to re-develop this park correctly. This proposal is clearly not that best design, and the District has been unwilling to modify it to help reduce adverse impacts. The application does not meet Milwaukie code standards. As a result, we urge the commission to deny the application.

Thank you for the opportunity to present this rebuttal testimony.



Eric Shawn, D.Min.
13655 SE Briarfield Ct.
Oak Grove, Oregon 97222

503-659-9338

Milwaukie Planning Commission
City of Milwaukie
6101 SE Johnson Creek Blvd.
Milwaukie, Oregon 97206

RECEIVED

MAY 31 2005

CITY OF MILWAUKIE
PLANNING DEPARTMENT

May 29, 2005

Dear Planning Commissioners:

This letter contains my response to new evidence provided on May 24, 2005 suggesting the limited reach of ADA Accessibility Guidelines. The May 24, 2005 hearing was for land use case CSO -5-02, TPR 05-01 and WQR 05-01. I support park development that provides convenient access for everyone, including the handicapped, the elderly and the disabled among us.

1. Americans with Disabilities Act (ADA)

"The ADA, a major civil rights law in the U.S. prohibiting discrimination on the basis of disability, establishes design requirements for the construction or alteration of facilities. It covers facilities in the private sector (places of public accommodation and commercial facilities) and the public sector (state and local government facilities).

[http://www.equalopportunity.on.ca/eng_g/subject/index.asp?action=search_7&file_id=25]

2. ADA Title II Applies to Public Entities

"The Title II regulation covers public entities." "All activities, services, and programs of public entities are covered...." "Public entities must ensure that newly constructed buildings and facilities are free of architectural and communication barriers that restrict access or use by individuals with disabilities." [See attached document "Title II Highlights" published by U.S. Department of Justice, Civil Rights Division, Disability Rights Section. [<http://www.usdoj.gov/crt/ada/t2hlt95.htm>]

ADA Title II regulations apply to the City of Milwaukie as owner of North Clackamas Park and to North Clackamas Parks and Recreation District as the service district managing the facility. Liability for non-compliance is shared.

Certificate in Facilities Management - OSFMA Certified Oregon School Facilities Manager

Memberships:

APPA: Association of Higher Education Facilities Officers,
Oregon School Facilities Management Association
Sports Turf Managers Association

3. Title II Design Standards: UFAS or ADAAG

Title II has been adopted by the Department of Justice. According to 28 CFR Part 35 [implementing subpart A of ADA Title II (public entities) "Section 35.151(c) establishes two standards for accessible new construction and alteration. "

Based on the Title II Technical Assistance Manual published by the Department of Justice, "Public entities may choose from two design standards for new construction and alterations. They can choose either the Uniform Federal Accessibility Standards (UFAS) or the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (ADAAG)...." [28 CFR Part 35, section 35.151(c)]

"All facilities designed, constructed, or altered by, on behalf of, or for the use of a public entity must be readily accessible and usable by individuals with disabilities, if the construction or alteration is begun after January 26, 1992."

According to the Oregon Disabilities Commission Technical Assistance Center, public entities must use one of the ADA design standards for new construction and alterations.

4. Conclusion

ADA Title II regulations apply to recently completed construction, new construction and future alterations in North Clackamas Park.

I am writing to request that the Planning Commission ensure public benefit by requiring the North Clackamas Park and Recreation District 1) to identify which ADA design standard the district is following for new construction and alterations in North Clackamas Park, and 2) to make new and altered elements in the park fully and conveniently accessible to and usable by qualified individuals with disabilities.

Sincerely,

Eric Shawn



Title II Highlights

- I. Who is covered by title II of the ADA
- II. Overview of Requirements
- III. "Qualified Individual with a Disability"
- IV. Program Access
- V. Integrated Programs
- VI. Communications
- VII. New Construction and Alterations
- VIII. Enforcement
- IX. Complaints
- X. Designated Agencies
- XI. Technical Assistance

I. Who is Covered by Title II of the ADA

The title II regulation covers "public entities."

"Public entities" include any State or local government and any of its departments, agencies, or other instrumentalities.

All activities, services, and programs of public entities are covered, including activities of State legislatures and courts, town meetings, police and fire departments, motor vehicle licensing, and employment.

Unlike section 504 of the Rehabilitation Act of 1973, which only covers programs receiving Federal financial assistance, title II extends to all the activities of State and local governments whether or not they receive Federal funds.

Private entities that operate public accommodations, such as hotels, restaurants, theaters,

retail stores, dry cleaners, doctors' offices, amusement parks, and bowling alleys, are not covered by title II but are covered by title III of the ADA and the Department's regulation implementing title III.

Public transportation services operated by State and local governments are covered by regulations of the Department of Transportation.

DOT's regulations establish specific requirements for transportation vehicles and facilities, including a requirement that all new busses must be equipped to provide services to people who use wheelchairs.

II. Overview of Requirements

State and local governments --

May not refuse to allow a person with a disability to participate in a service, program, or activity simply because the person has a disability.

For example, a city may not refuse to allow a person with epilepsy to use parks and recreational facilities.

Must provide programs and services in an integrated setting, unless separate or different measures are necessary to ensure equal opportunity.

Must eliminate unnecessary eligibility standards or rules that deny individuals with disabilities an equal opportunity to enjoy their services, programs or activities unless "necessary" for the provisions of the service, program or activity.

Requirements that tend to screen out individuals with disabilities, such as requiring a driver's license as the only acceptable means of identification, are also prohibited.

Safety requirements that are necessary for the safe operation of the program in question, such as requirements for eligibility for drivers' licenses, may be imposed if they are based on actual risks and not on mere speculation, stereotypes, or generalizations about individuals with disabilities.

Are required to make reasonable modifications in policies, practices, and procedures that deny equal access to individuals with disabilities, unless a fundamental alteration in the program would result.

For example, a city office building would be required to make an exception to a rule prohibiting animals in public areas in order to admit guide dogs and other service animals assisting individuals with disabilities.

Must furnish auxiliary aids and services when necessary to ensure effective communication, unless an undue burden or fundamental alteration would result.

May provide special benefits, beyond those required by the regulation, to individuals with disabilities.

May not place special charges on individuals with disabilities to cover the costs of measures necessary to ensure nondiscriminatory treatment, such as making modifications required to provide program accessibility or providing qualified interpreters.

Shall operate their programs so that, when viewed in their entirety, they are readily accessible to and usable by individuals with disabilities.

III. "Qualified Individuals with Disabilities"

Title II of the Americans with Disabilities Act provides comprehensive civil rights protections for "qualified individuals with disabilities."

An "individual with a disability" is a person who --

Has a physical or mental impairment that substantially limits a "major life activity", or

Has a record of such an impairment, or

Is regarded as having such an impairment.

Examples of physical or mental impairments include, but are not limited to, such contagious and noncontagious diseases and conditions as orthopedic, visual, speech, and hearing impairments; cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, specific learning disabilities, HIV disease (whether symptomatic or asymptomatic), tuberculosis, drug addiction, and alcoholism. Homosexuality and bisexuality are not physical or mental impairments under the ADA.

"Major life activities" include functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

Individuals who currently engage in the illegal use of drugs are not protected by the ADA when an action is taken on the basis of their current illegal use of drugs.

"Qualified" individuals.

A "qualified" individual with a disability is one who meets the essential eligibility requirements for the program or activity offered by a public entity.

The "essential eligibility requirements" will depend on the type of service or activity involved.

For some activities, such as State licensing programs, the ability to meet specific skill and performance requirements may be "essential."

For other activities, such as where the public entity provides information to anyone who requests it, the "essential eligibility requirements" would be minimal.

IV. Program Access

State and local governments--

Must ensure that individuals with disabilities are not excluded from services, programs, and activities because buildings are inaccessible.

Need not remove physical barriers, such as stairs, in all existing buildings, as long as they make their programs accessible to individuals who are unable to use an inaccessible existing facility.

Can provide the services, programs, and activities offered in the facility to individuals with disabilities through alternative methods, if physical barriers are not removed, such as --

Relocating a service to an accessible facility, e.g., moving a public information office from the third floor to the first floor of a building.

Providing an aide or personal assistant to enable an individual with a disability to obtain the service.

Providing benefits or services at an individual's home, or at an alternative accessible site.

May not carry an individual with a disability as a method of providing program access, except in oemanifestly exceptional circumstances.

Are not required to take any action that would result in a fundamental alteration in the nature of the service, program, or activity or in undue financial and administrative burdens. However, public entities must take any other action, if available, that would not result in a fundamental alteration or undue burdens but would ensure that individuals with disabilities receive the benefits or services.

V. Integrated Programs

Integration of individuals with disabilities into the mainstream of society is fundamental to the purposes of the Americans with Disabilities Act.

Public entities may not provide services or benefits to individuals with disabilities through programs that are separate or different, unless the separate programs are necessary to ensure that the benefits and services are equally effective.

Even when separate programs are permitted, an individual with a disability still has the right to choose to participate in the regular program.

6.2 Page 76

For example, it would not be a violation for a city to offer recreational programs specially designed for children with mobility impairments, but it would be a violation if the city refused to allow children with disabilities to participate in its other recreational programs.

State and local governments may not require an individual with a disability to accept a special accommodation or benefit if the individual chooses not to accept it.

VI. Communications

State and local governments must ensure effective communication with individuals with disabilities.

Where necessary to ensure that communications with individuals with hearing, vision, or speech impairments are as effective as communications with others, the public entity must provide appropriate auxiliary aids.

"Auxiliary aids" include such services or devices as qualified interpreters, assistive listening headsets, television captioning and decoders, telecommunications devices for deaf persons (TDD's), videotext displays, readers, taped texts, Brailled materials, and large print materials.

A public entity may not charge an individual with a disability for the use of an auxiliary aid.

Telephone emergency services, including 911 services, must provide direct access to individuals with speech or hearing impairments.

Public entities are not required to provide auxiliary aids that would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens. However, public entities must still furnish another auxiliary aid, if available, that does not result in a fundamental alteration or undue burdens.

VII. New Construction and Alterations

Public entities must ensure that newly constructed buildings and facilities are free of architectural and communication barriers that restrict access or use by individuals with disabilities.

When a public entity undertakes alterations to an existing building, it must also ensure that the altered portions are accessible.

The ADA does not require retrofitting of existing buildings to eliminate barriers, but does establish a high standard of accessibility for new buildings.

Public entities may choose between two technical standards for accessible design: The Uniform Federal Accessibility Standard (UFAS), established under the Architectural Barriers Act, or the Americans with Disability Act Accessibility Guidelines, adopted by the Department of Justice for places of public accommodation and commercial facilities covered by title III of the ADA.

The elevator exemption for small buildings under ADA Accessibility Guidelines would not apply to public entities covered by title II.

VIII. Enforcement

Private parties may bring lawsuits to enforce their rights under title II of the ADA. The remedies available are the same as those provided under section 504 of the Rehabilitation Act of 1973. A reasonable attorney's fee may be awarded to the prevailing party.

Individuals may also file complaints with appropriate administrative agencies.

The regulation designates eight Federal agencies to handle complaints filed under title II.

Complaints may also be filed with any Federal agency that provides financial assistance to the program in question, or with the Department of Justice, which will refer the complaint to the appropriate agency.

IX. Complaints

Any individual who believes that he or she is a victim of discrimination prohibited by the regulation may file a complaint. Complaints on behalf of classes of individuals are also permitted.

Complaints should be in writing, signed by the complainant or an authorized representative, and should contain the complainant's name and address and describe the public entity's alleged discriminatory action.

Complaints may be sent to --

Disability Rights Section
Civil Rights Division
U.S. Department of Justice
P.O. Box 66738
Washington, D.C. 20035-6738

Complaints may also be sent to agencies designated to process complaints under the regulation, or to agencies that provide Federal financial assistance to the program in question.

X. Designated Agencies

The following agencies are designated for enforcement of title II for components of State and local governments that exercise responsibilities, regulate, or administer services, programs, or activities in the following functional areas --

Department of Agriculture: Farming and the raising of livestock, including extension services.

Department of Education: Education systems and institutions (other than health-related schools), and libraries.

Department of Health and Human Services: Schools of medicine, dentistry, nursing, and other health-related schools; health care and social service providers and institutions, including oegress-rootsî and community services organizations and programs; and preschool and daycare programs.

Department of Housing and Urban Development: State and local public housing, and housing assistance and referral.

Department of Interior: Lands and natural resources, including parks and recreation, water and waste management, environmental protection, energy, historic and cultural preservation, and museums.

Department of Justice: Public safety, law enforcement, and the administration of justice, including courts and correctional institutions; commerce and industry, including banking and finance, consumer protection, and insurance; planning, development, and regulation (unless otherwise assigned); State and local government support services; and all other government functions not assigned to other designated agencies.

Department of Labor: Labor and the work force.

Department of Transportation: Transportation, including highways, public transportation, traffic management (non-law enforcement), automobile licensing and inspection, and driver licensing.

XI. Technical Assistance

The ADA requires that the Federal agencies responsible for issuing ADA regulations provide "technical assistance."

Technical assistance is the dissemination of information (either directly by the Department or through grants and contracts) to assist the public, including individuals protected by the ADA and entities covered by the ADA, in understanding the new law.

Methods of providing information include, for example, audio-visual materials, pamphlets, manuals, electronic bulletin boards, checklists, and training.

The Department issued for public comment on December 5, 1990, a government-wide plan

for the provision of technical assistance.

The Department's efforts focus on raising public awareness of the ADA by providing--

Factsheets and pamphlets in accessible formats,

Speakers for workshops, seminars, classes, and conferences,

An ADA telephone information line, and

Access to ADA documents through an electronic bulletin board for users of personal computers.

The Department has established a comprehensive program of technical assistance relating to public accommodations and State and local governments.

Grants will be awarded for projects to inform individuals with disabilities and covered entities about their rights and responsibilities under the ADA and to facilitate voluntary compliance.

The Department will issue a technical assistance manual by January 26, 1992, for individuals or entities with rights or duties under the ADA.

For additional information, contact:

U.S. Department of Justice
950 Pennsylvania Avenue, NW
Civil Rights Division
Disability Rights Section, NYAV
Washington, D.C 20035-6738

(800) 514-0301 (Voice)
(800) 514-0383 (TDD)

www.ada.gov

last updated August 29, 2002



To: Planning Commission

From: Jeanne Garst, Office Supervisor

Subject: Additional Materials for Hearing Item 6.2 – NCPR

Date: June 7, 2005

The attached documents were received at the 5/24/05 Planning Commission Meeting from the applicant as part of their rebuttal. These materials are being provided for your review.

If you have any questions about these materials please contact Lindsey Nesbitt at 503-786-7658.



To: Planning Commission

From: Lindsey Nesbitt, Associate Planner

Re: North Clackamas Park Applicant Rebuttal

Date: June 8, 2005

File: CSO-05-02, TPR-05-01, and WQR-05-01

At the May 24, 2005 meeting, the public record was held open for written comments until 5:00 p.m. Tuesday, May 31, 2005. The applicant had seven additional days to respond to any comments received. The attached documents were received within the seven-day time limit and provide the applicant's written rebuttal to the public comment that closed May 31, 2005.

RECEIVED

JUN - 7 2005

To: Milwaukie Planning Commission
From: North Clackamas Parks and Recreation District
Date: June 7, 2005
Re: Response to Post-Hearing Written Submissions; CSO-05-02; TPR-05-01 and WQR-05-01

CITY OF MILWAUKIE
PLANNING DEPARTMENT

RESPONSE TO OPPONENTS' POST-HEARING WRITTEN SUBMISSIONS

The District thanks the Commission for its extremely hard work and patience on these Applications. The Commission has followed a very inclusive process that certainly allowed every possible concern from every interested citizen to be aired. The nature of land use proceedings is that people have very strong personal opinions about projects, no matter how small or large. The District, unlike private developers, is in an unusual situation because it, too, represents the public. The District has nearly 100,000 constituents, an advisory board, and a board of directors to which the District answers. The District does not take this responsibility lightly; witness the many, many letters of support the District has received for its proposal, even from neighbors of North Clackamas Park, and the many hours spent receiving public comments and addressing those comments in the proposal you are now considering. Ultimately, the District was charged by its own advisory board with obtaining the necessary approvals from the City, under the applicable criteria, to construct the proposed project.

The District also thanks the City's Planning Staff for their very hard work on these Applications, and appreciates Staff's recommendations to approve all of the Applications. It is unusual to have so little disagreement between Staff and an applicant in a large public project, or even small private ones.

With regard to the properly-filed final opponents' comments (see below), the District notes that the public benefits test of the CSO is a separate issue from the WQR review and the Transportation review, each of which have their own standards for review. The proposal should of course be evaluated in accordance with the City Code provisions. With respect to the CSO Application, the District believes that the many benefits the proposal provides outweigh whatever tangible, demonstrable, adverse impacts may exist, and believes that the "not in this location" comments have already been answered by the City's Comprehensive Plan.

Opponents' written comments following the May 24, 2005 hearing fall into two categories: (1) comments responding to additional information presented at the May 24, 2005 hearing relating to storm water and traffic ("storm water/traffic" category), and (2) general comments not related to new information or the topics presented on May 24, 2005 ("other" category).

It is Applicant's understanding that the Planning Commission wished to limit comment to the new issues raised at the May 24, 2005 hearing. Therefore, this memo will divide the opponents' comments into the two above categories – the first, which is what Applicant believes

the Commission should review, and the second, which Applicant believes the Commission wished to avoid, and should not review. Nevertheless, in the event that the Commission wishes to consider information/comment in the second category, Applicant hereby provides a response.

RESPONSE TO STORM WATER/TRAFFIC COMMENTS

Opponents' comments on FEMA floodplain map: Portions of Mr. Berliner's "letter two," Ms. Shawn's May 30, 2005 letter and a May 28, 2005 letter from David Gorman of Maul, Foster, Alongi respond to Applicant's testimony regarding the floodplain map and essentially question the accuracy of the FEMA map, which was revised in 2001.

The District completed a detailed topographic survey and provided it to the City Engineering staff that plotted the flood plain boundary. The accuracy of the boundary as shown on the District's proposal (with the addition of the approximately 10' X 10' area along the park's southern boundary) has been reviewed and accepted by the City's Engineering staff, verified on two separate occasions by the County's Floodplain Administrator, and is based on a "detailed study" prepared by FEMA.

As indicated in the memorandum from Clackamas County Floodplain Administrator, Steve Hanschka, dated June 2, 2005 (and attached as Exhibit 1), and confirmed by Joe Webber, Regional Flood Engineer, FEMA, Region X, Applicant's floodplain delineation was properly created by plotting the profile, including cross-sections, relative to the new topographical survey. This is exactly what Applicant was required to do – utilize the FEMA maps, cross sections and available topographic information to delineate the floodplain. While opponents criticize the FEMA maps, FEMA's Regional Flood Engineer, after detailed review of all available information, concluded that there is no reason to conduct a new study. Of course, the way to challenge a floodplain of "a stream for which a detailed study has already been prepared is to submit a Technical Appeal to FEMA", which has not been done. There is also no reason to think such an appeal would succeed, as Mr. Hanschka explains that the MFA's engineer's report lacks "any tangible data... to explain the supposed increase in size of the floodplain."

Mr. Hanschka's memo also clearly states the FEMA map is neither "least current" nor "least updated" as alleged by Mr. Berliner. In fact, the FEMA map has been updated "close to a dozen" times, most recently in March of 2001.

Thus, the County's Floodplain Administrator would rely upon exactly the data used by Applicant and City Engineering staff in identifying the floodplain, and sees no information which would cause him to question Applicant's/City Engineering staff's delineation. Mr. Hanschka concludes that in his professional opinion the Applicant is in compliance with all applicable regulations.

Given that the City and the County, and other local and regional governments rely on exactly the information Applicant relied upon in delineating the floodplain, there is no question that Applicant has sustained its burden to accurately delineate the floodplain and proposed balanced cut and fill within it. City Staff agrees. There is nothing in the City's Code that

Applicant could locate that could require or allow a condition that Applicant somehow redo the FEMA map.

The Commission should not and would not rely on opponent's floodplain interpolations, estimates or assumptions in making important City decisions concerning the floodplain, including but not limited to this Application.

Opponents' comments on the 100-year flood: Portions of Mr. Berliner's "letter two" question whether the 1996 flood was a "100-year" flood. The District attempted to verify the accuracy of this statement with staff at Clackamas County Water and Environment Services (experts in watershed and storm water management). In fact, no one at WES was able to state with certainty whether or not the 1996 storm event was or was not a 100-year storm event. What we do know is that the aerial photograph entered into the record shows that the park experienced no notable flooding on February 9, 1996. We also know the daily precipitation levels on February 9, 1996 and the prior days that constituted the entire storm event:

Feb 6, 1996	2.63 inches
Feb 7, 1996	2.27 inches
Feb 8, 1996	1.75 inches
Feb 9, 1996	.78 inches
Total	5.68 inches

Thus, we can conclude that even after 5.68 inches of rain over a four day period (an extremely rare occurrence), the park (and in particular – the project area) was not inundated. Additionally, as Mr. Berliner notes, subsequent to 1996, a flood control facility has been constructed upstream of the park which, as Mr. Berliner notes, has provided "a reduction in flooding since implementation..."

The storm water calculations by W & H Pacific are based on meeting the City's requirement of no net increase in runoff, post-development. The City has no specific criteria for measuring the runoff standards. Hydrologists such as Mr. Poulson base their runoff calculations on statistical mathematical calculations of predicted storms – both model storms and the generally-recognized "benchmarks" of 2- year, 10-year, 25-year, and 100-year "events". It is essentially irrelevant to the calculations which storm is a 100-year storm. References to these "benchmark" storms are primarily to try and turn the statistical modeling into anecdotal terms that non-hydrologists can understand.

Opponents' comments on the ODFW position: Portions of Ms. Shawn's May 30, 2005 letter urge the Commission to listen to the ODFW "recommendation." However, Applicant notes that previous letters (4/15/05 and 5/18/05) submitted by ODFW regarding the proposed project appeared to be contradictory. Upon inquiry, ODFW has now issued a third letter (6/3/05) to clarify its official position, which is attached as Exhibit 2. This letter states: "ODFW does not object to the project as it is proposed and believes that several actions in the current plan may benefit fish and wildlife."

Opponents’ comments on the parking lot detention: Portions of Mr. Berliner’s “letter two” question the parking lot detention frequency and duration, using some extreme and unsupported speculations. As you will note in other sections of this rebuttal and previously submitted engineering data, the proposed detention in the small area of the parking lot will be a rare occurrence even in the wettest winter months and will be of minimal depth and duration as shown in the table below:

Basin 1 Detention

Storm Event	Pre-Developed	Post-Developed	Release Rate	Detained Elevation	*Depth in parking lot	Duration in parking lot
2-year	0.36 cfs	1.75 cfs	0.38 cfs	61.57’	0.47’	1.9 hrs
10-year	0.77 cfs	2.46 cfs	0.69 cfs	61.76’	0.66’	3.3 hrs
25-year	1.00 cfs	2.85 cfs	0.90 cfs	61.86’	0.76’	4.5 hrs
100-year	1.49 cfs	3.62 cfs	1.26 cfs	62.05’	0.95’	7.2 hrs

As noted above, a two-year storm event will result in less than 6 inches of water (deepest in the area located immediately above the catch basin) in a small area of the lot for a period of less than 2 hours. Even a 100-year storm event will only generate less than one foot of water in the same small area of the lot for a period of just over 7 hours. “Substantial evidence” is what the District offers, and what the Commission must rely upon.

LDC testimony: Ms. Grover asserts: “Detaining water in an area with potentially high pollutants is not supported by LDC Design Group. Additionally, the parking area where ponding will occur is directly within the typical path for vehicular traffic and the wheel wash effect is not conducive for water quality.”

Response: Ms. Grover’s comments fail to provide any rationale to support her position. It should be noted that pollutants collected on the surface of any parking lot are not increased or decreased by the use of the parking surface for storm water detention. Under the District’s proposal, all storm water and its pollutants are conveyed through the entire storm water system (i.e., oil/water separators; detention swale and bio-swales) up to and including a 100-year storm event. As stated by Mr. Dave Poulson of W&H Pacific, the proposed storm water system meets or exceeds the most progressive storm water detention and treatment standards in effect in the Pacific Northwest.

Furthermore, Ms. Grover’s assessment fails to acknowledge the widely accepted fact that the vast majority of parking lot pollutants accumulate during dry periods and are removed from the surface by smaller rain events which will not result in any storm water ponding in the parking area.

Finally, Ms. Grover fails to acknowledge several important points related to her concern about vehicular traffic:

- a) Storm events that are large enough to trigger parking lot detention generally occur during the "off season" (i.e., the winter months) when parking demand and park visitation is at the lowest possible levels.
- b) On the rare occasion of a storm event large enough to trigger parking lot detention during league seasons, sporting events will likely be cancelled due to field playability conditions.
- c) In any event, the parking lot design allows for multiple access routes that avoid the area where detention would occur. Simply placing portable barriers would isolate the small area of detention for those short periods of inundation thereby eliminating the potential for "wheel wash effect."

Moreover, parking lot ponding will be rare and last only for short periods. For example, per the testimony of Dave Poulson, Senior Civil Engineer at W&H Pacific, a two-year storm event (i.e., 2.65" of rain within 24-hours) will result in parking area ponding that lasts just two hours. A review of the daily precipitation information from the National Climatic Data Center (NOAA) and Oregon Climate Service (OSU) over the last 9 plus years reveals that the number of storm events in which two or more inches of rain fell within a 24-hour period was limited to 8 events. Of these 8 events, two occurred in November, two in December, two in January and two in February. Additionally, only one event was classified as a "2-year storm event" (i.e., 2.65" /24 hours) and only one event approached a "10-year storm event" (i.e., 3.40"/24 hours).

Additionally, Mr. Poulson indicates that no parking lot ponding will occur in rain events of less than 2 inches within a 24 hour period except in the rare event of extremely heavy rain in a very short period of time (i.e. >1 inch of rain within 1-2 hours). In this rare case, minor ponding may occur with a duration of several minutes just like it would at *any* parking lot or street side catch basin under the same circumstances.

Conclusions that can be drawn from this data review are:

- 1) Over the last 9 plus years, storm events that would have resulted in parking lot ponding of an estimated 2-hour duration during either baseball or soccer seasons was limited to one event (11/19/96) which occurred at the very end of the fall soccer season.
- 2) The remaining 7 events occurred during "off season" when parking demand and park use are at their lowest levels (i.e., December – February). Of these 7 events, 6 would have resulted in parking lot ponding lasting less than 2 hours and 1 would have resulted in ponding lasting less than 3.5 hours
- 3) Based on daily precipitation levels for the period reviewed (i.e., January 1996 through May 2005) and information from Mr. Dave Poulson, it is clear that use of the parking lot for storm water detention will only rarely occur even during the wettest winter months with ponding occurring for only short durations in a small area of the parking lot that can easily be isolated from vehicular traffic while maintaining access to all other parking spaces.

Mr. Schonberger's May 31, 2005 memo: In his memorandum, Mr. Schonberger asserts:

"A recurring theme of the District's testimony is a stubborn refusal to make any alteration to the project design...According to the Applicant, it is impossible to reorient fields to reduce impacts, light poles cannot be moved or lowered, no alternatives exist to herbicide use, storm water can be managed in only one way, and all damage to and loss of natural resources is unavoidable."

Response: Mr. Schonberger fails to acknowledge the facts that have been presented in the record. For example:

- 1) Prior to the submission of the land use Application, the District conducted an extensive public process that led to the current proposal. That process resulted in major modifications to the plan and self-imposed conditions in response to concerns voiced by citizens, including those citizens who hired Mr. Schonberger. The District's public process assessed various field orientations and concluded the proposal before the commission represents the most desirable, efficient, environmentally sensitive and cost effective design for the park. It should be noted that even though Mr. Schonberger and his clients have had ample opportunity to come forward with any one of the "hundreds" of "practicable alternatives" they claim to exist, they have failed to do so.

The District has provided a thorough alternatives analysis that remains unrefuted except for the rhetoric and unsupported assertions presented by Mr. Schonberger.

- 2) The District has fully addressed the issue of field lighting and provided expert testimony from Christopher Fote of Sparling. Mr. Fote explained the trade-offs related to lowering or relocating light poles noting that lower poles will increase glare and spill thus exacerbating the very impacts that Mr. Schonberger claims his clients want reduced. Furthermore, Mr. Fote explained how lowered lights would create a safety hazard because the adjusted angle of the lights would shine directly into players' eyes. Again, although Mr. Schonberger is quick to criticize, he has failed to present even one "practicable alternative" to the District's plan.

Moreover, Mr. Schonberger is incorrect that MCC 19.1410.3 explicitly applies to "all new development." As noted by Milwaukie planning Staff, the code explicitly applies to "commercial, industrial, multi-family and institutional uses." Clearly this section does not apply. Nonetheless, the District's lighting plan provides more than adequate coverage to address safety concerns and meet the City's code requirement of an "average" of .5-foot candles.

- 3) The District has articulated which herbicides will be used for field maintenance and how their use will be minimized by creating a healthy stand of turf. The District has also explained that licensed "applicators" will apply these materials in compliance with label

restrictions and explained why the use of these materials poses no risk to WQRAs located along the northern boundary of the project area.

The District remains open to alternatives and has requested information in a good faith effort to determine if there are alternatives and if so to evaluate their effectiveness. There was nothing “silly or vicious”, no request for “job descriptions” or “proprietary information” as suggested by Steve Berliner, (see Exhibit 3). The request was made of a professional grounds manager who is a member of several professional grounds maintenance organizations who previously presented testimony (April 26, 2005) suggesting that North Clackamas Park was “an ideal candidate for alternatives to pesticides”. Based on the lack of a response, the District concludes that the maintenance proposed is fully in accordance with standard practices.

Again, the District notes that despite ample opportunity to do so, opponents have not provided any alternatives to the use of the herbicides discussed in the Application materials or provided any evidence or expert testimony that supports their assertions that use of these materials in a responsible manner, consistent with label restrictions will result in negative impacts to adjacent natural resources. While it remains the District’s burden to put forward its methods, nothing in the record indicates that there are practicable alternatives to the District’s proposal.

- 4) The District addresses storm water detention in more detail elsewhere in this response. However, regarding Mr. Schonberger’s comment, we note again, that Mr. Schonberger continues to refer to all the other alternatives yet fails to provide even one example. Mr. Schonberger previously presented two “sketches” which he asserted were “practicable alternatives,” yet one of these sketches reduced the number of ball fields to three and still did not provide any space for storm water detention, and the other “sketch” providing four fields showed the detention swale and bio-swales in the same location as proposed by the District.
- 5) Mr. Schonberger does not acknowledge the significant natural resource enhancements that are included in the District’s proposal. These include the creation of functioning riparian buffers where none currently exist, a state-of-the-art storm water detention and treatment system where none currently exists, and the creation of a new oak/ash forest area where none currently exists. Instead, Mr. Schonberger alleges that the District’s proposal causes “damage to and loss of natural resources.” There has been no evidence submitted to substantiate this assertion. The District has demonstrated in its alternatives analysis why the minimal development in the WQRA is required, demonstrated how it is compliant with relevant provisions of the City’s code and provided off-setting enhancement, well in excess of what is required.

RESPONSE TO “OTHER” COMMENTS

Applicant believes that the remaining submittals by opponents are not responsive to the stormwater or traffic issues, and therefore should not be considered by the Commission.

Vigil Agrimus letters: Applicant is somewhat confused by these submissions, as this firm had originally advised the City on stormwater issues, but rather suddenly withdrew from that task. City then retained LDC to perform their analysis, which was presented to you. Applicant understands that LDC in fact reviewed Vigil Agrimus' opinions, but of course LDC is required to give its own opinion on the issues, which does not comport with Vigil Agrimus' opinions. Given their withdrawal, the Vigil Agrimus opinions cannot be considered "substantial evidence," which is the requirement for considering expert testimony. The City has chosen to utilize LDC's opinions in reviewing the Application, not Vigil Agrimus'. Therefore those opinions are irrelevant to this proceeding and should not be considered in making the Commission's decision.

Mr. Berliner's "letter one": It contains a comment regarding camas plants: "Regarding the valuable Camas Lily stand adjacent to Kellogg Creek Drive; the widening project threatens it. The impacts should be determined and the plant community portion affected should be relocated to appropriate habitat within the park. Will oak or ash trees be felled there also and what is the mitigation for that?"

Response: According to Clackamas County DTD, the Kellogg Creek Drive improvements will be fully located within existing road right-of-way. A brief inspection of that area suggests the undeveloped right-of-way in the project area is dominated by invasive weeds and several hawthorn shrubs. If, in fact, the project area does harbor camas plants, the District is willing to work with Mr. Berliner to identify an appropriate relocation area within the park and support any volunteer effort he might desire to organize.

As this project is outside the City, tree removal along a road, if any is required, is subject to whatever policies govern in Clackamas County rather than the policies or codes of the City of Milwaukie.

In addition, any signage along Kellogg Creek Drive will be coordinated by the jurisdictional agency, Clackamas County, and the District will, of course, work with the County on any such issue.

Mr. Berliner's letter also comments: "What they should be proposing is the modern answer to the need for both open spaces and detention ... Included in this practical solution would be horse trailer parking adjacent to the arena ... the lone soccer field ... can be relocated east of I-205... the restroom/concession building is in the wrong place!!"

Response: The District respects Mr. Berliner's personal opinion about what he believes would constitute a better design for the southern one half of North Clackamas Park. However, the District notes:

- Eliminating the "soccer field" in anticipation of new soccer fields that may be constructed on land that may be purchased if a willing seller can be found does nothing to address the serious need for soccer fields that exists today.

- On the face of it, the idea of a “large cut” in the western portion of the park instead of the proposed soccer field may sound like a plausible idea. However, for an alternative to be “practicable” it must be feasible from an engineering perspective. In this particular case, that would require appropriate grades to allow for the gravity flow of storm water from the east end of the park to the west end of the park with outflow “day lighting” into the “large cut.” We see nothing in Mr. Berliner’s comments to suggest that he has actually considered the “on the ground” feasibility of his “reasonable, modern solution.”
- Creation of the road and parking lot that Mr. Berliner suggests for the horse arena would accomplish two results that are not mentioned in his comments. First, it would result in a significant, yet undisclosed, amount of additional storm water that would then need to be detained and treated. Second, it would perpetuate the ability of anyone to drive private vehicles to a corner of the park that has been repeatedly identified as a security concern under the existing conditions/design. Frankly, the District sees little justification for the risk or expense associated with Mr. Berliner’s suggestion considering the minimal use of the horse arena.
- The District simply disagrees with Mr. Berliner on the location of the restroom/concession building and notes that during the extensive public process that preceded this land use Application, none of the project opponents, including Mr. Berliner, ever raised this issue.

The District firmly believes that an essential element of good design is to site facilities that serve a basic need (like restrooms) in a location that is central, convenient and visible to all park users. A review of the plan shows the proposed location to meet all of these objectives.

Finally, Mr. Berliner comments: “Apparently Applicant has relied on one basic “rote” plan for ball field layout (probably taken from a stand-alone baseball park design). But who’s? This would not be W&H Pacific, the professional engineers who told you the concept came to them “in its present form” (and who didn’t applaud it, you may have noticed). Neither would it be the community who also saw the same Plan from inception through Application. Neither would it be the District Advisory Board, who was allowed to consider only the so-called pinwheel field-layout with its fences and paved concourse. How odd. I don’t understand the Plan’s genesis, or Applicant’s dogged adherence to only one design. Please consider whether you understand this, whether Applicant has justified it. The DAB was afforded the luxury of deciding only between several versions of what would go in the central concourse, which were offered them as choices, not discussion topics to generate different ideas.”

Response: Here are the facts:

- Every public presentation regarding the project during its developmental stages began with a presentation of the “sketch plan” developed in 1994 that the DAB declined to adopt. It, like other alternative concepts, was always “on the table” for consideration but,

ultimately, was not selected after extensive public comment and deliberation of the DAB. Simply put, it offers fewer fields and therefore fewer benefits than the cost would warrant.

- The very first task assigned to W&H Pacific was to evaluate the preferred alternative selected by the DAB and provide a “Design Development Report.” The very first sentence of that report states:

“For this first phase of design services for the development of a sport field complex at North Clackamas Park, W&H Pacific evaluated the District’s ‘Alternative 2’ concept plan, made site design improvements, explored alternative solutions, and evaluated the associated construction costs. This report gives the North Clackamas Parks and Recreation District the ability to make informed decisions about what facilities to include in the park.” (Emphasis added)

- In fact, the DAB did not make a final decision on the preferred alternative until the W&H Pacific report was presented and thoroughly discussed. Many hours of public comment taken by the DAB and the numerous modifications that they directed staff to include in the proposed plan address the concerns that were raised.
- The District has submitted this land use Application at the direction of the DAB only after an extensive public process, consideration of alternatives and a detailed “Design Development Report.”
- The record clearly shows the high level of “community” participation in plan development (21 public meetings) and support for the proposed plan. You’ve heard and seen this support from:
 - Milwaukie Center Community Advisory Board
 - Milwaukie Park and Recreation Board
 - Numerous representatives of youth sports
 - North Clackamas Chamber of Commerce
 - North Clackamas School District 12
 - Clackamas Christian Center
 - Tri-Cities Adult Softball League
 - Two of Milwaukie’s NDAs (none opposed the proposal)

The fact is, the vast majority of the “community” recognizes the multiple benefits offered by the proposed plan and supports its implementation.

Lawsuits against the City for flooding: The City’s attorney appropriately responded to this issue. Applicant submits that the City’s code does not address as a criteria of approval for this Application whether neighbors might sue the City for following the FEMA-approved map and topographic information.

In addition, MCC 18.04.090 provides:

“Warning – Liability disclaimer.

“The degree of flood protection required by this chapter is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This chapter does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This chapter shall not create liability on the part of the city, any officer or employee thereof, or the Federal Insurance Administration, for flood damages that result from reliance on this chapter or any administrative decision lawfully made thereunder. (Ord. 1899 § 2, 2002)”

ADA concerns: In a letter to the Planning Commission dated May 29, 2005, Eric Shawn submitted additional questions regarding ADA requirements for the North Clackamas Community Park project. In his letter Mr. Shawn does not contradict or refute any of the information provided by the District in the May 24, 2005 rebuttal memorandum to the Planning Commission. Rather, he requests additional information regarding the standards the District is following for the project. He also requested that the District be required to make new and altered improvements in the park fully and conveniently accessible to qualified individuals with disabilities. As previously indicated, the District is committed to assuring that new and redeveloped facilities are compliant with the applicable federal, state and city requirements for accessibility. As Mr. Shawn points out, Title II entities have the choice of using the Uniform Federal Accessibility Standards (UFAS), or the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (ADAAG) as adopted for Title II entities. While both guidelines are currently acceptable and fairly similar in nature, ADAAG is considered by some to be the more stringent of the two. This proposed project is designed using the current adopted ADAAG (28 CFR Part 36 - Appendix A).

Second, it is important to understand that the plans and drawings currently being reviewed by the City, Planning Commission and the general public (including Mr. Shawn) are at a preliminary level only and do not contain the necessary detail to fully or accurately assess the accessibility of the proposed site improvements. If the project is approved by the Planning Commission, the final construction documents will be reviewed by the City for building permits prior to development. At that time, the final plans will be scrutinized using applicable building codes. These building codes address ADA requirements (ADAAG) for things such as restrooms, assembly areas, access, parking, etc. Furthermore, it should be noted that it is the role of the City's Building Department to ensure that new buildings and structures are constructed consistent with state and federal building codes. As explained by Lindsey Nesbitt at the May 24 meeting, the appropriate staff from the Building Department will review and issue building permits, and will also monitor and inspect the project throughout the construction process to

ensure compliance with approved plans and building codes. Additionally, staff from the Planning and Engineering will inspect specific aspects of the project related to their expertise.

Susan Shawn letter re playground issues – and oversight:

Attached as Exhibit 4 is the report regarding the follow-up investigation conducted by the District. The District would certainly be concerned if its construction contractor had not in fact provided what the contract required. As shown in the report, the District found that the issues raised were groundless.

CONCLUSION

After all is said and done, it is the Commission's responsibility to determine whether the Applications comport with the City's Comprehensive Plan and City Code, or whether they are incompatible with either the Comprehensive Plan or the Code. Applicant submits that the proposal before you complies with both and respectfully requests approval.



RECEIVED

JUN - 7 2005

Exhibit 1

CITY OF MILWAUKIE

DEPARTMENT OF
TRANSPORTATION AND DEVELOPMENT

Sunnybrook Service Center

MEMORANDUM

Campbell Gilmour
Director

TO: NORTH CLACKAMAS PARKS & RECREATION DISTRICT
FROM: STEVE HANSCHKA, CLACKAMAS COUNTY FLOODPLAIN ADMINISTRATOR
DATE: JUNE 2, 2005
RE: FLOODPLAIN ISSUES SURROUNDING YOUTH SPORTS FIELDS AT NORTH CLACKAMAS COMMUNITY PARK

First, in my memo dated May 24, 2005, I used the most current information regarding the Flood Insurance Study (FIS) for Clackamas County, all of the information for which is kept current by our office, to include all Letters of Map Revisions issued for the County, of which there have been probably close to a dozen. Second, the letter to the Milwaukie Planning Commission, from David Gorman of Maul, Foster & Alongi dated May 28, 2005, appears to raise several issues, summarized and commented upon as follows:

1. Maul, Foster & Alongi (MFA) states that the applicant relied on the graphical information on the FEMA maps and did not examine the predicted water surface elevations at FEMA cross sections "A," "B" and "C."

However, it is my understanding that the applicant, along with the City of Milwaukie, has defined the floodplain by mapping the 100-year flood elevations as defined by the Flood Profiles, which inherently includes pinpointing the predicted water surface elevations at the cross sections and all points in between. The new topography simply gives a more exact location of each cross section and points in between. For example, the predicted water surface elevation of the 100-year flood, also known as Base Flood Elevation (BFE), at cross section "A" is about 54.1. Roughly 350 feet upstream from that point, the BFE is about 55.6, and so on down the line. The applicant's floodplain delineation was created by plotting the profile, including the cross sections, relative to the new topographical survey.

2. MFA states that the existing FEMA map was based on very old topographic information with a resolution of 10 feet.

Given the information contained in the Flood Insurance Study (FIS) for Clackamas County, I don't believe that the age of the topographic information nor the resolution — as well as the vertical accuracy and overall preciseness of the mapping — can be determined without contacting the U.S. Army Corps of Engineers or Michael Baker & Associates (FEMA's primary mapping consultant) to obtain the hydraulic model, work maps and other pertinent information related to the mapping of Mount Scott Creek. And, depending on the age of the topographic information, the question of how much the topography has changed today, in comparison to when the stream was mapped, would have to be examined to determine if it, in fact, made any difference. MFA does not appear to have obtained or analyzed this information. Again, the key question would be the overall accuracy of all factors that were involved in the original study. On the afternoon of June 1, 2005, I spent more than an hour on the phone with Joe Webber, who is the regional Flood Engineer for FEMA Region X. Together, we conducted a detailed examination of all applicable portions of the text, bibliography, sources, profiles, maps, etc. of the FIS, during the course of which I related to him the recently surveyed topography of the site. In the end, it was his professional conclusion that he could find no viable reason to conduct a new study of Mount Scott Creek, and that the primary factor that would increase the size of the floodplain relative to

the current map would be a dramatic increase in peak discharge. So far, no evidence has been introduced to suggest that the peak discharge of Mount Scott Creek has increased. However, he allowed as that the procedure for challenging the floodplain of a stream for which a detailed study has already been prepared is to submit a Technical Appeal to FEMA, including a new backwater model that uses the new topography and prepares new cross sections.

3. MFA states that its floodplain map was created by applying the numerical values provided by FEMA to the revised topographic information.

However, in a previous letter, it was stated that their floodplain map was created by using straight-line interpolations, rather than applying the elevations from the Stream Profiles to the new topography to delineate the floodplain. It was my understanding that the applicant initially submitted an estimated location of the floodplain that was refined by City of Milwaukie Engineering staff, by applying the elevations from the Stream Profiles to the new topographical survey to delineate the floodplain.

4. MFA seems to direct a good deal of its discussion toward the validity of 1996 aerial photography of flooding in terms of the accuracy of its depiction of the 100-year event for Mount Scott Creek.

It appears as though neither party can affirm whether or not the aerial photography captured Mount Scott Creek at the peak of its flow, but it is nonetheless — and no more and no less — a factor that the City of Milwaukie considers in its regulation and determination of the floodplain. And, the fact that the photographs appear to correspond roughly to the FEMA maps, as opposed to the lack of any photographs that show the flooding on Mount Scott Creek to be to be the larger floodplain that MFA depicts, would seem to represent at least some amount of affirmation of the accuracy of the FEMA maps.

In summary, I still cannot ascertain that any tangible data have been submitted to explain the supposed increase in the size of the floodplain. Without such proof, or even with proof, it is a very tall order, in terms of money, time and resources — as well as highly unusual — to require re-mapping the floodplain of a stream, especially when a detailed study has already been prepared by FEMA.

The primary purpose of the City of Milwaukie's Flood Hazard Ordinance is to promote the public health, safety and general welfare, and to minimize public and private losses due to flood conditions in specific areas. To implement the standards of this Ordinance by maintaining membership in the National Flood Insurance Program (NFIP), the City and its residents reap the benefits of vast amounts of federal resources and dollars that, among other things, provide detailed floodplain maps for streams that guide development without the need for additional mapping. The final question, it would appear, becomes: Given that the federal government has already gone to the time and expense to develop a fully detailed study for Mount Scott Creek, is the public health, safety and general welfare really threatened or compromised by this alleged, somewhat unsubstantiated error in the detailed study that it warrants a brand new study of the Creek, even though the area in question will contain merely athletic fields?

In my professional opinion, the answer would be no. Floodplain management at the local level is essentially dictated by federal regulations. Local governments adopt NFIP criteria through their development ordinances, and in implementing those regulations and using the FIS information to direct development, jurisdictions ensure that its residents, structures and other contents are kept reasonably safe from flooding. An opposing party, such as MFA, may challenge a detailed stream study, such as the one that currently applies to Mount Scott Creek, by submitting a Technical Appeal to FEMA. Until such time that such an appeal is upheld, the applicant is in compliance with all applicable NFIP regulations that pertain to the proposed development.



Oregon

Theodore R. Kulongoski, Governor

Exhibit 2

Department of Fish and Wildlife

Northwest Region
17330 SE Evelyn Street
Clackamas, OR 97015-9514
(503) 657-2000
FAX (503) 657-2050

June 3, 2005

RECEIVED

JUN - 7 2005

CITY OF MILWAUKIE
PLANNING DEPARTMENT



Lindsay Nesbitt
City of Milwaukie
Planning Department
6101 SE Johnson Creek Blvd.
Milwaukie, OR 97206

Charles Ciecko
North Clackamas Parks and Recreation District
9101 SE Sunnybrook Blvd.
Clackamas, OR 97015

Project: North Clackamas Community Park Development

Dear Ms. Nesbitt and Mr. Ciecko,

The Oregon Department of Fish and Wildlife (ODFW) apologizes for any confusion that occurred due to multiple submissions of comments on the North Clackamas Community Park Development project. ODFW does not object to the project as it is proposed and believes that several actions in the current plan may benefit fish and wildlife.

ODFW recommended several actions to further enhance benefits to fish and wildlife within the project area, including possible consideration of a 100-foot riparian area along a portion of Mt. Scott Creek. This recommendation was intended as a suggestion to the North Clackamas Parks and Recreation District if they wish to maximize future benefits to fish and wildlife through active restoration (planting) of riparian vegetation within this zone.

Again, we apologize for any confusion that may have been created and appreciate the opportunity to make comments on the project. If you have any questions about these comments or recommendations please contact me at (503) 657-2000, ext. 230.

Sincerely,

Susan P. Barnes

Susan P. Barnes
NW Region Wildlife Diversity Biologist

Cc: Jeff Boechler, ODFW

Ciecko, Charlie**RECEIVED**

From: Ciecko, Charlie
Sent: Thursday, April 28, 2005 2:32 PM
To: 'Eric Shawn'
Subject: Broad leaf herbicides

JUN - 7 2005**CITY OF MILWAUKIE
PLANNING DEPARTMENT**

Dear Eric, I read with interest your testimony related to the broad leaf herbicides discussed in our land use application. As the manager of the grounds at Catlin Gable School and a member of a variety of maintenance organizations, I'm sure you are aware of the challenges related to the control of broad leaf weeds in turf. I'm sure you're also aware that the products that we described in our application materials are the most commonly used herbicides for controlling broad leaf weeds in managed turf....both commercial and residential. Frankly, I'm always interested in a better way to get the job done so I was motivated to write and ask you what you'd suggest. How do you manage weeds at Catlin Gable? What is the approach recommended by the organizations you are a member of? I would appreciate hearing about any alternatives to what we laid out in our application materials. Thanks Eric.

Charlie Ciecko
North Clackamas Parks and Recreation District

6/7/2005



RECEIVED

JUN - 7 2005

CITY OF MILWAUKIE
PLANNING DEPARTMENT

Date: April 4, 2005
To: Charles Ciecko, Director
From: Roy Wall, Administrative Services Manager
Subject: Review of North Clackamas Park Playground Equipment Project

On February 16, 2005, Eric Shawn raised concerns related to the construction of the play equipment at North Clackamas Park. At that time, the project was not complete but you requested me to review the specifications of the playground at North Clackamas Park and take actual construction measurements at the site to see if this project met specifications. You also requested me to review and document the project closing and reconciliation and include that review in a report. Subsequently, Mr. Shawn retained an attorney and a civil engineer. In correspondence dated March 23, 2005 additional allegations were raised about the play equipment. Even though the civil engineer had never inspected the site, you requested me to address issues he had raised. This memorandum is intended to address the combined list of issues raised by Mr. Shawn and his civil engineer.

The playground is not open to the public as grass is being grown around the site. The site has an orange fence around it and there are notices on the fence informing the public that the site is not open at this time.

The scope and cost of the project was modified after the contract was awarded to bring the project in line with the available budget. These changes were incorporated into the contract document.

The changes I noted are:

- Landscape Maintenance change from 90 days to 30 days reducing the cost from \$7,500 to \$2,500.
- Drain system scope modified from \$4,960 to \$3,115.
- Three Benches and 1 Trash Receptacle was reduced to Two Benches and no Trash Receptacle changing the price from \$3,700 to \$1,900.
- Add for increase in lineal footage of concrete curb. Plus \$720.

These changes reduced the cost of the contract with J. P. Contractors from \$64,216.50 to \$56,291.50.

Reproduced below are the allegations made by Mr. Shawn and his civil engineer, followed by my responses as verified in the field.

Issue 1: The concrete wall is poured on mud rather than on a compacted sub-grade and on the specified compacted aggregate base. The wall is 16" high rather than the 18" height specified.

Answer 1: The play area walls were constructed on an undisturbed sub-grade as approved by the project manager. Rock was not used in this case under the walls due to the existing undisturbed, compacted sub-grade. The walls are 18" to 19" high. The walls were formed with 16" boards with two to three inches of concrete below the forms to create a footing for the walls. Rebar was used throughout the play area walls to make sure they will be held in place.

I checked specifications and confirmed 18" was called for.

I measured the wall height at the playground and found the wall to be 16" to the bottom of the form with a concrete footing below of 2" to 3". Contract specification is met.

Question 2: There is one layer of geo-textile matting rather than two layers and there is no drain rock under the wood fiber surfacing.

Issue 2: There is one layer of filter fabric under the safety wood chips on top of the existing soil except in the area of the perforated drain pipe where a layer of filter fabric is between the soil and the rock and a second layer of filter fabric is on top of the perforated drain pipe underneath the wood chips.

I checked the specifications and they show that rock would be put in the areas where the drain system is installed. To reduce the cost of the project the drain system was reduced in scope. I dug through the wood chips and found the filter fabric and the rock on top of the drain pipe.

Issue 3: The concrete handicap ramp is 30% thinner than specified, has no 45 degree chamfer, and is not poured on a compacted aggregate base.

Answer 3: Specification called for 4" of concrete. At the site, I measured the concrete thickness of the handicapped ramps and found it to be poured at a 3 3/4" thickness of concrete on 2" of 1" minus compacted rock. Standard 2" by 4" lumber was used for forming sidewalks and they are 3 3/4" thick. The aggregate base was compacted on the handicapped ramps with a motorized compactor along with the sidewalks. There was no chamfer applied at the end of the handicapped ramps as it was not deemed necessary (by project mgr.) due to all edges being covered with safety wood chips. The specifications for the play equipment are that a fall zone of 6 feet is required from any piece of play equipment post (no swings in area). I measured the closest piece of play equipment post (not swing in area) to the handicapped ramp and found the distance to be 7'.

Note: To determine if concrete thickness of 3 ¾" vs. 4" could constitute "cause" to reject work, you contacted Jody Yates, project manager for Clackamas County Department of Transportation and Development. You reported to me that Ms. Yates had advised you that the described variation of concrete thickness would generally be deemed acceptable.

Issue 4: The sidewalk does not appear to be poured on compacted sub-grade and on a compacted aggregate base. The concrete under the site furnishings appears to be 30% thinner than specified.

Answer 4: The sidewalks were formed with standard 2" by 4" lumber. Under the sidewalks and site furnishing area a 2" layer of 1" minus crushed rock was installed and compacted with a motorized compactor. My measurement of the concrete was 3 ¾". The drawings indicate a minimum of 4" thickness of concrete and 4" thickness of rock. I measured a 2" rock base under the concrete. The project manager made a field decision to reduce rock base to 2" based on the undisturbed nature of the native soil.

Issue 5: Drainage underneath the play area is inadequate, which compromises the wood fiber play surface. Inadequate drainage voids the warranty of the installed play surface.

Answer 6: The drainage system was modified within the play area to keep the project within budget. Sof-Fall engineered wood fiber recommends installing a drainage system. A drainage system was installed and is functioning.

Question 7: The installed depth of the wood fiber surface is insufficient, subjecting users to potential injury.

Answer 7: I dug several holes in the wood safety chips and found the depth to be 11 to 12 inches. Sof-Fall recommends a surface of 8 to 12 inches. It is my understanding that the wood safety chips will settle over time and that additional chips will be needed periodically to retain the necessary thickness of wood safety chips.

Issue 8: There appears to be no drain rock underneath the wood fiber play surface.

Answer 8: I checked the specifications and they show that rock would be put in the areas where the drain system is installed. To reduce the cost of the project, the drain system was reduced in scope. I dug through the wood chips and found the filter fabric and the rock on top of the drain pipe.

Issue 9: The lack of drainage may void the warranty for the wood fiber system.

Answer 9: There is drainage in the play-area, therefore the warranty is not voided.

Issue 10: Concrete footings for the play structure were poured into holes containing mud slurry.

Answer 10: Concrete footings were poured by use of a concrete pumper truck. I watched some of the pouring and did not see any mud slurry in the holes. I did see some water in some of the holes and the concrete displaced the water at the bottom of the holes. Subsequently I dug down to the concrete and found it solid and supportive.

Issue 11: The smaller diameter pipes used to support the play structure appear to have no concrete footings.

Answer 11: All of the posts installed into the ground have concrete poured at the base.

I called the contractor to confirm that all posts had concrete poured at the base. Also, I dug around a number of the posts and found concrete at the base that is solid and supportive of the structure. Additionally, please note the attached affidavit signed by the manufacturer's representative stating that the installation was inspected and found to be installed per the manufacture's design and specifications and compliant with all current ASTM Safety Standards and US Consumer Product Safety Commission Guidelines for Public Playground Equipment. The affidavit noted that "collars need to have two tek screws per collar where possible". Additional tek screws were sent by the manufacturer and have been installed in the collars.

Issue 12: The engineered wood fiber surfacing has not been compacted and is as shallow as 4" in some fall zones of the play structures. Installation of surfacing does not appear to meet the ASTM F 1292—4 standard specification for impact attenuation surfacing materials within the use zone of playground equipment.

Answer 12: The manufacturer of the wood safety chips recommends 8" to 12" of chips. The measurements I made showed chip depths of 12 inches in most areas. I noticed some areas were already settling towards 8 inches. I informed the project manager who told me that he had already arranged with the contractor to add 50 cubic yards of additional safety wood chips as it is routine for new chips to settle after initial installation and that additional chips will be needed periodically to retain the necessary thickness of wood safety chips.

Issue 13: The west post of the tot lot swing set is not solid in the ground.

Answer 13: The west post has been evaluated with the contractor and has been strengthened at the base and is solid in the ground.

Issue 14: The engineered wood fiber surfacing does not have good drainage.

Answer 14: A drain system was installed during construction and is functioning. If the drainage is not effective, additional drain pipe can be added by District staff.

Issue 15: There does not appear to be regular and frequent maintenance of the engineered wood fiber surface. As a result, play area fall zones quickly move out of compliance and the depth of fiber is reduced by use and as pieces of hard mud and beverage cans accumulate in the fall zones.

Answer 15: The play area is not open to the public as grass is being grown around the play area. Signs to that effect are displayed on the orange fence surrounding the play area. When the play area is opened up to the public the North Clackamas Parks and Recreation District maintenance staff will be performing maintenance of the wood safety chips by raking out humps, adding chips as necessary and removing any foreign materials left in the area by park visitors.

Question 16: Elimination of drain rock and shallower depth of engineered wood fiber has reduced the margin of safety. At the western most swing on the south Swing Set the distance from the concrete wall is less than twice the distance from the pivot point to the engineered wood fiber surfacing system. This margin of safety will continue to decline unless wood fiber is added frequently and daily maintenance is performed. The margin of safety will also decline at the eastern most swing as children disturb the surface.

Answer 16: The south swing set has free fall area of 16 feet from the center beam as the swings go back and forth. The actual measurement from the center beam on the southwest post is 17 feet to the existing curb. The swing set meets the fall zone requirements. Under all swing sets the wood safety chips are displaced as people swing. The maintenance staff is will rake back the wood safety chips on a regular basis.

Also, please see attached affidavit from manufacture's representative.

Issue 17: Warning labels have not been installed on uprights.

Answer 17: I viewed 4 warning labels at the site.

Issue 18: The walkway was constructed with a 6 foot width rather than the 7 foot width specified and does not appear to be poured on compacted sub-grade and compacted aggregate base.

Answer 18: On sheet L4.0 the plan drawing indicates the walkway to be 6 feet wide. The walkway measures 6 feet. The walk ways were poured on compacted sub-grade of compacted aggregate.

Issue 19: The north support structure for the slide track breaks the plane of the 6 foot fall zone between the support and the concrete. The fall zone between the slide track and the concrete handicap ramp needs to be evaluated for safety.

Answer 19: The support post on the slide track ride is 5 feet 10 ½ inches from the concrete curb. The project manager has called the factory representative and he has come out to the site. The factory representative indicated that this post is outside of the critical fall zone and meets the fall zone requirements. The 6 foot fall zone on the slide track ride is 7 feet to the bottom of the handicapped ramp. There is no 45 degree chamfer on the end of the handicapped ramp. The lower end of the handicapped ramp is covered with a layer of safety wood chips and is outside the 6 foot fall zone.

SUMMARY

Based on my review and inspections of the project, I have concluded that the project was constructed in a manner substantially consistent with the original specifications or as amended by the project manager in some areas during the project.

As previously noted to Mr. Shawn (electronic correspondence 2/22/05), contract documents, Section 21 states "The District reserves the right to make, at any time during the progress of the work to be done, such changes or alterations as may be found to be necessary or desirable; provided, however, such changes or alterations shall not change the character of the work to be done, nor increase the cost thereof unless the cost increase is approved in writing by the contractor. Any changes or alterations so made shall not invalidate this contract nor release the surety of the contractor on the performance bond and the contractor agrees to do the work as changed or altered as if it had been a part of the original contract".

Section 1300.11 states "If the owner's representative determines a variation from the contract documents is in the best interest of the owner, and it does not involve change in the contract price or item, the owner's representative, with concurrence, may permit such variation."

It should be further noted that if defects in materials or workmanship are discovered within 365 days after the acceptance of work, a performance bond is in place to assure remedy.

Finally, the allegations related to equipment safety made by Mr. Shawn and his civil engineer (who never inspected the site) appear to be groundless and without merit based on my site inspections and the signed affidavit from the manufacturer's representative.

INSTALLATION INSPECTION CERTIFICATION

I have attached to this report the installation inspection certification from Northwest Recreation.

North Clackamas Park Play Equipment Project Close out and Reconciliation

As additional information, I reviewed the contract close out document and reconciliation which is standard on all projects. It is summarized below.

North Clackamas Park Play Equipment Project Close out and Reconciliation

Contract Amount	\$56,291.50
Amendment #1 Removal of Tree	<u>175.00</u>
Total Contract Amount	\$56,466.50

No.	Items not completed in contract	Cost
3.	Tree & work protection fencing	(\$ 500.00)
8.	Import & place +/-250 cubic yards structural fill	(5,000.00)
12.	Outfalls with rip-rap (two of three deleted from project)	(600.00)
18.	Gravel Paving	(598.50)
19.	Flexible Edging	<u>(480.00)</u>
	Total Deductions from Contract Cost	(\$7,178.50)

Additional Items not in contract that were completed by Contractor	Cost
1. Contractor moved +/-55 cubic yards of dirt to other side of park	\$1,100.00
2. Stop Work Order 12/6/04-12/14/04 (\$585 per day) (7 work days)	4,095.00
3. 5 cubic yards of additional concrete	1,750.00
4. Gravel path excavation/repair	<u>300.00</u>
Total Additions to Contract Cost	\$7,245.00
Net Amount Due to Contractor	\$ 66.50



NORTHWEST RECREATION

- Site & Street Furnishings
- Athletic Playfield Structures
- Park & Playground Structures

INSTALLATION INSPECTION CERTIFICATION

DATE:

CUSTOMER:

I, Terrance F. Johnston, of Northwest Recreation sold to North Clackamas Park & Rec
the playground equipment at North Clackamas Park which was installed on February of 2005

On February 22, 20 05, I inspected the installation at North Clackamas Park
and hereby certify that the equipment has been installed according to the manufacturer's
design and specifications with the following corrections noted. (collars need to have two
tek screws per collar where possible) I further certify that all the equipment inspected
complies with all current ASTM Safety Standards, and the U.S. Consumer Product safety
Commission Guidelines for Public Playground Equipment.

Terrance F. Johnston 2/23/05
Signature Date
Northwest Recreation 2/23/05
Company Date

Mary Johnston 2/23/05
Witness Signature Date



To: Planning Commission
From: Lindsey Nesbitt, Associate Planner
Date: June 14, 2005
File: CSO-05-02, TPR-05-01, and WQR-05-01
Re: Miscopied Staff Report Attachment

The following document was included as Attachment 3 of the May 10, 2005 Planning Commission staff report. However, the second page of the document was accidentally omitted. Please replace Attachment 3 of the May 10, 2005 Staff Report with the following complete document.



April 28, 2005

Michelle Healy
North Clackamas Parks and Recreation District
9101 SE Sunnybrook Blvd.
Clackamas, OR 97015

Re: Preliminary Hydrologic Analysis Report

Dear Ms. Healy,

The city and the city's consultant Vigil-Agrimis has reviewed the preliminary Hydrological Analysis Report prepared by W&H Pacific.¹ The report indicates that the North Clackamas Parks District proposes to collect storm water from the parking area through "trapped" catch basins and then discharge to a storm drainage detention facility (bio-swale) through an underground storm drainage system. The system has been designed based upon standards commonly used by Clackamas County's Water Environmental Services (WES). The proposal includes the construction of bio-swales within water quality resource (WQR) buffer areas. The code permits storm water detention facilities to be constructed within WQR buffer areas. However, in order for staff to ensure the proposed swales will not create a negative impact on WQR areas, additional information is needed.

Staff believes the proposed hydrologic analysis of the proposed storm detention system appears to be consistent with the approach used by many of the surrounding jurisdictions. Staff also believes the analysis appears to be consistent with WQR regulations that post development flows shall not exceed pre-development storm water flows, but lacks analytical data necessary to complete an analysis. In most cases, the report establishes standards that the proposed detention system has been designed to meet, but calculations that demonstrate how the standards will be accomplished were not included in the report. In order for staff to complete a full analysis of the proposed hydrological analysis report, and make a recommendation to the Planning Commission, please provide the following:

1. Provide a detailed summary of the two drainage basins for the pre and post development conditions, including a break down of the pervious and impervious areas and their corresponding runoff to fully document volumes and rates.

¹ Received April 15, 2005.

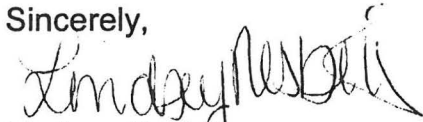
2. The report states that the post development storm water discharge rate shall not exceed $\frac{1}{2}$ of the 2-year pre-developed discharge rate. Provide a detailed summary of the detention facilities that include:
 - a. Size of orifices
 - b. Elevation of orifices
 - c. Detained volume
 - d. Elevation of the water surface
 - e. The head acting on each orifice
 - f. Calculations of the release rate for each orifice
3. Revise the report to demonstrate how the detention system works for the larger design storms, specifically, the 10-year and the 25-year events. Include the parking area inundation, depths of inundation, and duration of the inundation for the parking area.
4. Please provide clarification on the following:

The design does not appear to provide for high flow by-pass; therefore, all events would be directed through the flow control manhole, or over the curb. Will the overflow over the curb pass as sheet flow or as concentrated flows with the potential for erosion in the water quality resource area buffer?
5. The curb elevation on the grading plan appears to be lower than the detained water elevation during a two-year storm. Staff is concerned that untreated storm water would be directly discharged into the tributary and WQR areas during a 2-year or greater storm
6. Staff is concerned about impacts to the water quality resource areas. Revise the report to include an analysis that describes how the bio-swales will function during larger storms. Provide a summary of the hydrology and hydraulics for each bio-swale. Provide calculated flow velocity, water depth, and retention time (Appendix F indicates a residence time of 9 minutes, which is consistent with codes throughout the region).
7. Provide details for storm water outfall into the unnamed tributary including outfall velocities and slope protection and erosion control measures. Pipe flow calculations should be prepared indicating exit velocity for 25-year and lower recurrence interval storm events. Slope protection and erosion control measures can then be evaluated for effectiveness.
8. Calculations were provided for the 2-year, 25-year, and 100-year storms, the modeling is consistent, however, the calculations do not describe what occurs when 25-year or 100-year storm is routed through the detention facility designed and sized for a 2-year release rate. In order to assess performance of the proposed detention facility, provide water surface elevation, depth and duration of inundation calculations for the larger storm events.

9. Describe why the storm water from new ball fields will not be routed through the bio-swale. (This is not required by code.)

At this time, staff is unable to make a recommendation to the Planning Commission without the above-mentioned material. Staff would like to have these issues resolved prior to the May 10, 2005 Planning Commission meeting. In order to allow staff time to review the revised material prior to the May 10th meeting, please submit the requested materials no later than 4:00 pm Wednesday, May 4, 2005. All questions or concerns should be addressed to Lindsey Nesbitt. Please do not contact the City's consultant. I can be reached at 503-786-7658.

Sincerely,



Lindsey Nesbitt
Associate Planner

Copy:

John Gessner, Planning Director

Paul Shirey, Engineering Director

Brenda Schneilding, Civil Engineer

Charlie Ciecko, North Clackamas Parks and Recreation Director

Tracy Johnson, Vigil-Agrimis

PLANNING COMMISSION

PLEASE PRINT

[illegible]

INTERESTED PERSONS SIGN-UP SHEET

PLANNING COMMISSION

Meeting date: June 14, 2005

PLEASE PRINT

[illegible]

PLANNING COMMISSION

PLEASE PRINT

[illegible]