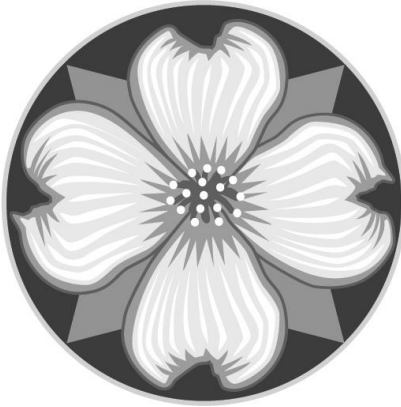




Regular Session

RS

Milwaukie City Council

COUNCIL REGULAR SESSION

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

2304th Meeting**AGENDA**

DECEMBER 3, 2019

Note: times are estimates and are provided to help those attending meetings know when an agenda item will be discussed. Times are subject to change based on Council discussion. **Page #**

1. CALL TO ORDER (6:00 p.m.)**A. Pledge of Allegiance****2. PROCLAMATIONS AND SPECIAL REPORTS****A. Milwaukie High School (MHS) Outstanding Student Achievement Award for November 2019 Rescheduled (6:01 p.m.)**

Presenter: Carmen Gelman, MHS Principal

B. Christmas Ships – Proclamation (6:10 p.m.)**2**

Presenter: Dave Kaiser, Christmas Ships

C. Portland General Electric (PGE) Resiliency – Update (6:20 p.m.)

Presenter: Maria Pope, PGE

D. Department of Environmental Quality (DEQ) Emergency Spill Planning – Update (6:50 p.m.)

Presenter: Mike Zollitsch, DEQ

3. CONSENT AGENDA (7:10 p.m.)

Consent items are routine matters that are not discussed during the meeting; they may be approved in one blanket motion and any Councilor may remove an item from the Consent Agenda for separate consideration.

A. Approval of Council Meeting Minutes of:**4**

1. November 5, 2019, Work Session;
2. November 5, 2019, Regular Session; and
3. November 10, 2019, Council Dinner.

B. Public Safety Advisory Committee (PSAC) Appointment – Resolution**17****4. AUDIENCE PARTICIPATION (7:15 p.m.)**

To address Council, complete a comment card and submit it to staff. The Mayor will call for comments regarding City business. Per the Milwaukie Municipal Code (MMC) only issues that are “not on the agenda” may be raised; issues that await a Council decision and for which the record is closed may not be discussed; “all remarks shall be directed to the whole Council, and the presiding officer may limit comments or refuse recognition.” The presiding officer may limit the time permitted for comments and may request that a spokesperson be selected for a group of persons wishing to speak. **The public is also invited to make comments in writing and may submit comments before the meeting, by mail, e-mail, or in person to City staff.**

Schedule Note: due to the anticipated amount of time required for Public Hearing item 5. A. Council will consider Other Business item 6. A. first. The times below reflect this revised order.

5. PUBLIC HEARING

Public Comment will be allowed on items under this part of the agenda following a brief staff report presenting the item and action requested. The presiding officer may limit testimony.

**A. Appeal of Elk Rock Estates Development (File #AP-2019-003) – Order, 21
continued from November 19, 2019 (7:30 p.m.)**

Staff: Denny Egner, Planning Director, and
Vera Kolas, Associate Planner

6. OTHER BUSINESS

These items will be presented by staff or other individuals. A synopsis of each item together with a brief statement of the action requested shall be made by those appearing on behalf of an agenda item.

**A. Extending the Housing Emergency and Maintaining Renter Protections – 99
Resolutions (2) (7:20 p.m.)**

Staff: Christina Fadenrecht, Administrative Specialist

7. INFORMATION (9:00 p.m.)

The Council and City Manager will provide reports on City events, projects, and programs.

8. ADJOURNMENT (9:05 p.m.)

Americans with Disabilities Act (ADA) Notice

The City of Milwaukie is committed to providing equal access to all public meetings and information per the requirements of the ADA and Oregon Revised Statutes (ORS). Milwaukie City Hall is wheelchair accessible and equipped with Assisted Listening Devices; if you require any service that furthers inclusivity please contact the Office of the City Recorder at least 48 hours prior to the meeting by email at ocr@milwaukieoregon.gov or phone at 503-786-7502 or 503-786-7555. Most Council meetings are streamed live on the City's website and cable-cast on Comcast Channel 30 within Milwaukie City Limits.

Executive Sessions

The City Council may meet in Executive Session pursuant to ORS 192.660(2); all discussions are confidential and may not be disclosed; news media representatives may attend but may not disclose any information discussed. Executive Sessions may not be held for the purpose of taking final actions or making final decisions and are closed to the public.

Meeting Information

Times listed for each Agenda Item are approximate; actual times for each item may vary. Council may not take formal action in Study or Work Sessions. Please silence mobile devices during the meeting.



COUNCIL REGULAR SESSION

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

2304th Meeting

MINUTES

DECEMBER 3, 2019

Mayor Mark Gamba called the Council meeting to order at 6:05 p.m.

Present: Council President Angel Falconer; Councilors Lisa Batey, Wilda Parks, Kathy Hyzy

Staff: Assistant City Manager Kelly Brooks	City Recorder Scott Stauffer
Associate Planner Vera Kolias	Community Development Director Leila Aman
City Attorney Justin Gericke	Housing & Economic Development Associate Christina Fadenrecht
City Manager Ann Ober	Planning Director Denny Egner

1. CALL TO ORDER

Pledge of Allegiance.

2. PROCLAMATIONS, COMMENDATION, SPECIAL REPORTS AND AWARDS

A. ~~Milwaukie High School (MHS) Outstanding Student Achievement Award for November 2019 (rescheduled)~~ (removed from the agenda)

B. Christmas Ships – Proclamation

Dave Kaiser, Christmas Ships Vice President, introduced the proclamation and commented on the 2019 season. **Mayor Gamba** proclaimed Christmas Ships Days.

C. Portland General Electric (PGE) Resiliency – Update

Maria Pope, PGE President, introduced Bill Messner, PGE's Director of Safety, Security, and Resiliency. She provided an overview of PGE's work to make the region's electrical system resilient and responsive to climate change. The group remarked on the recent installation of the region's first electric avenue charging station in Milwaukie and the increased use of electric vehicles.

Ms. Pope noted that the city and PGE had partnered to install smart street lights in Milwaukie. She commented on PGE's commitment to decarbonization, electrification, and system performance. She provided an overview of PGE's work to lower customer power usage and bills through the smart grid program.

Mr. Messner discussed PGE's response to climate change concerns. He remarked on PGE's work with national and regional partners to prepare for emergencies. **Ms. Pope** commented on how PGE crews restore power during an outage. **Mr. Messner** remarked on PGE's wildfire prevention and response efforts. He, **Councilor Batey**, and **Ms. Pope** noted how utility poles are maintained.

Mr. Messner talked about PGE's work to prevent cyberattacks and prepare for earthquakes. He and **Ms. Pope** noted the regional network of utility providers who support each other in emergency and disaster situations.

Ms. Pope commented on PGE's customer bill assistance program, noting their work with state and federal agencies to help low-income customers get financial assistance.

Mayor Gamba asked if PGE had a program to underground utility lines to prepare for earthquakes. **Ms. Pope** noted the high cost of burying lines and reported that PGE had been working on it with local governments. She and **Mayor Gamba** discussed resiliency goals for the smart grid testbed.

Councilor Hyzy asked about the governance structure of the western United States power grid. **Ms. Pope** explained PGE's role in the western power grid. She and **Councilor Hyzy** noted the use of software to manage power flow through the grid. They remarked on regional reactions to developing local power grids to enhance post-disaster resiliency.

Councilor Batey remarked on utility poles in her neighborhood and the city's plan to build new sidewalks. She urged PGE to coordinate pole replacement work with city sidewalk projects. **Ms. Pope** agreed it was good to work together and noted PGE's ongoing pole replacement work. She complimented the city on its efficient permitting process for replacing poles. The group observed that the city had a map of planned sidewalk projects that PGE could review when replacing poles. They commented on the good working relationship between the city and PGE.

D. Department of Environmental Quality (DEQ) Emergency Spill Planning – Update

Mike Zollitsch, Oregon DEQ Emergency Response Program Manager, remarked on the state's disaster resiliency work. He distributed a handout and discussed DEQ's response to hazardous waste spills and the recently passed state House Bill 2209 which required spill response plans. He noted that the state was working on creating rules for spill response plans and commented on the need for industry-specific strategies.

Councilor Hyzy and **Mr. Zollitsch** noted that the Union Pacific Railroad (UPRR) line that runs along Hwy 224 carried crude oil rail cars. They observed that the short rail line that runs through downtown Milwaukie would probably not be required to develop response plans. The group commented on whether short line trains carry hazardous materials. **Mr. Zollitsch** remarked that a railroad's goal in developing response plans is to restore rail service. He noted that DEQ and the Oregon Department of Transportation work first to restore road service and eventually to protect the environment when responding to spills.

Mr. Zollitsch discussed differences in response plan requirements in Oregon and Washington. He noted DEQ would work to improve relationships with state and local emergency response agencies.

Councilor Hyzy asked when response plans would be completed. **Mr. Zollitsch** explained that industry plan rules go into effect in January 2020 and plans needed to be submitted to DEQ within a year. He commented on the state rule-making process and the opportunity for the public to comment on draft rules. He added that DEQ would be developing regional response plans while the industry plans were being created. He expected it would take six years to develop plans for most road and rail lines and noted that emergency responders were located within a half-mile of the rail lines in Milwaukie. He talked about the toxicity of crude oil and how DEQ would respond to a spill.

Councilor Batey and **Mr. Zollitsch** clarified that the state law requiring industry response plans goes into effect on January 1, 2020, and the new rules needed to be developed within a year. They commented on how compliance with the new law and rules would be assessed, noting the challenges railroads have working with many subcontractors in different regions. They remarked on how laws in Oregon, Washington, and California differed in terms of holding railroads financially accountable for spills.

Mayor Gamba noted that railroads were required to be fiscally bonded to ensure they were financially able to respond to emergencies. **Mr. Zollitsch** explained that railroads were required to pay for a natural resources damage assessment. He remarked on how the federal government had created an oil liability trust fund to cover assessment costs. He and **Mayor Gamba** commented on how the trust fund had been created using revenue from oil transported from Alaska.

Ms. Ober and **Mr. Zollitsch** summarized that there would be a regulatory process for the new rules where the public could comment.

Councilor Batey and **Mr. Zollitsch** noted the proximity of Milwaukie's first responders to the UPRR line and that there had not been many spills in Milwaukie to date.

3. CONSENT AGENDA

It was moved by **Councilor Batey** and seconded by **Council President Falconer** to approve the Consent Agenda as presented.

A. City Council Meeting Minutes:

1. November 5, 2019, Work Session;
2. November 5, 2019, Regular Session; and
3. November 10, 2019, Council Dinner.

B. Resolution 71-2019: A Resolution of the City Council of the City of Milwaukie, Oregon, making an appointment to the Public Safety Advisory Committee (PSAC).

Motion passed with the following vote: **Councilors Parks, Hyzy, Falconer, and Batey, and Mayor Gamba** voting "aye." [5:0]

4. AUDIENCE PARTICIPATION

Mayor Gamba reviewed the public comment procedures and **Ms. Ober** reported that there was no follow-up from the November 19 audience participation.

Douglas Edwards, Milwaukie resident, explained that he had recently moved to the city. He noted that he had served in elected office in California and thanked Council for their service. The group noted there were board and committee vacancies if Mr. Douglas was interested in applying.

Mayor Gamba announced that Agenda Item 6. A. would be heard before Item 5. A.

6. OTHER BUSINESS

A. Extending the Housing Emergency and Maintaining Renter Protections – Resolutions (2) (moved up the agenda)

Ms. Fadenrecht reviewed previous Council actions to extend the housing emergency and renter protection measures. She reported on the state of the housing market in the region. She noted staff's recommendation to continue the emergency measures and asked for Council feedback on modifying the ordinances.

Mayor Gamba noted that the state had just passed legislation making no cause eviction illegal. **Ms. Fadenrecht** confirmed that the state had passed eviction legislation and that the law was under review due to legal concerns. Staff suggested Council keep the city's measures in place until the state law had been clarified.

It was Council consensus that staff should bring proposed modifications to the housing emergency and renter protection ordinances to a future meeting.

It was moved by Councilor Parks and seconded by Councilor Hyzy to approve the Resolution extending the declared housing emergency for a period of six months, pursuant to Ordinance 2117. Motion passed with the following vote: Councilors Parks, Hyzy, Falconer, and Batey, and Mayor Gamba voting “aye.” [5:0]

Resolution 72-2019:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, EXTENDING THE DECLARED HOUSING EMERGENCY FOR A PERIOD OF SIX MONTHS, PURSUANT TO ORDINANCE 2117.

It was moved by Council President Falconer and seconded by Councilor Batey to approve the Resolution maintaining the renter protection measures in Milwaukie Municipal Code (MMC) 5.60, pursuant to Ordinance 2118. Motion passed with the following vote: Councilors Parks, Hyzy, Falconer, and Batey, and Mayor Gamba voting “aye.” [5:0]

Resolution 73-2019:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, MAINTAINING THE RENTER PROTECTION MEASURES IN MILWAUKIE MUNICIPAL CODE (MMC) 5.60, PURSUANT TO ORDINANCE 2118.

Mayor Gamba recessed the regular session at 7:17 pm and reconvened at 7:25 p.m.

5. PUBLIC HEARING

A. Appeal of Elk Rock Estates Development (File #AP-2019-003) – Order, continued from November 19, 2019 (moved down the agenda)

Call to Order: Mayor Gamba called the public hearing on the appeal of the Planning Commission’s decision to deny a natural resources cluster development application, files NR-2018-005 and AP-2019-003, to order at 7:26 p.m.

Opening: Mayor Gamba explained Council would deliberate on the appeal until 9 p.m. and would likely continue the hearing to December 10.

Purpose: Mayor Gamba noted the purpose of the hearing was for Council to deliberate on the appeal. Ms. Kolias cited the relevant code criteria for Council to consider.

Procedures: Mayor Gamba reviewed the order of business and procedures.

Site Visits: It was noted that all Council members had visited the site.

Ex-Parte Contacts and Conflicts of Interest: It was noted that Council President Falconer, Mayor Gamba, and Councilors Parks and Batey had no new contacts or conflicts to report. Councilor Hyzy reported she had no new contacts to report but due to previously cited conflicts of interest she would recuse herself from participating in the hearing.

It was noted that Councilor Hyzy left the meeting at 7:30 p.m.

Jurisdiction: It was noted that no audience member challenged Council’s jurisdiction.

Staff Update: Ms. Kolias reviewed the code sections Council was to deliberate on.

Questions from Council to Staff: **Councilor Batey** suggested Council would have questions once deliberation started. **Mr. Gericke** commented on Council's access to information in the application record and the importance of not considering new evidence.

Council Discussion:

Councilor Parks remarked that she had questions about the site related to the natural resource designations and the flood plain area, and the amount of cut-and-fill to be done. She liked the design of the proposed homes.

The group remarked on how to deliberate on the appeal issues.

Mayor Gamba and **Councilor Batey** commented on inaccuracies they had noted in the final written testimony submitted by the appellant.

Mayor Gamba suggested it was not possible to always have clear and objective standards for all development projects due to changing conditions. He believed the role of the local governing body was to apply the rules to a project while accounting for the effects of climate change such as increased flooding. He discussed the relevance of the MMC and Federal Emergency Management Administration (FEMA) flood plain building standards and the long-term consequences of the city allowing new homes to be built in a flood plain. He thought there were enough grounds to deny the application.

Council President Falconer and **Councilor Batey** suggested Council begin by looking at the reasons for denying the application in the September 10 staff report to the Planning Commission. The group discussed the first question outlined in the report related to whether the application adequately addressed flood plain issues. **Ms. Kolias** reviewed the questions posed to the Commission at the September 10 hearing. The group noted that the Commission had denied the application on two grounds. They noted that staff had prepared draft findings for denying or approving the application for the Commission.

The group discussed flood plain issues and flood flow velocity, noting MMC requirements that had been brought up in the Commission hearing related to the construction of residential crawl spaces. It was noted that the city's engineering staff memo outlining the site's flood plain issues had different flood data than what the applicant's engineering consultant had used. **Mr. Egner** began to remark on the intent of the applicant in using flood data from a different location on the Willamette River and **Mr. Gericke** asked Mr. Egner to not characterize the applicant's intent.

The group remarked on which MMC section addressed garage size and closed spaces. **Mr. Gamba** suggested the FEMA flood data used in the city's engineering memo and by the applicant were irrelevant because the MMC required the use of FEMA's flood map which provided an average velocity rate. **Councilor Batey** remarked that the applicant, not the city, had the burden to disprove the FEMA data. She and **Mayor Gamba** talked about the use of FEMA's flood map and whether the MMC requirements for crawl spaces in a 100-year flood plain were a reason for denying the application.

It was noted that staff was tracking the list of reasons to deny the application. **Mr. Egner** suggested Council had so far agreed with the Commission's reasons related to flooding for denying the application. It was noted that Council agreed with Mr. Egner's statement.

Ms. Kolias reviewed the second reason the Commission had cited in denying the application, required mitigation work in a natural resource area. **Mayor Gamba** didn't know if the proposed mitigation work made up for the loss of habitat conservation area (HCA) on the site. **Council President Falconer** and **Councilor Batey** commented on

the Commission's consideration of the mitigation plan, the lack of alternate mitigation options considered by the applicant, and the confusion about the maximum number of units allowed on the site. **Mayor Gamba** and **Council President Falconer** remarked that the maximum density for the site was one unit of housing.

Councilor Batey agreed with Mayor Gamba and Council President Falconer about site density and asked if the applicant could build rowhouses on 19th Avenue. The group noted rowhouses could be built on the site. They remarked on the applicability of MMC natural resource requirements and Comprehensive Plan natural resource hazard objectives.

Council President Falconer commented on the number of units proposed by the applicant and the number of units allowed on the site.

Councilor Batey referenced staff's September 10 recommended findings for denial and remarked that the applicant's proposed mitigation plan was appealing. **Council President Falconer** commented on the desirability of the open space on the site being managed by a homeowner's association (HOA) versus the city.

The group noted that the Commission had not addressed mitigation criteria in their findings of denial. **Council President Falconer** believed the applicant had not considered enough alternative layouts and expressed concern about the proposed mitigation plan.

Mayor Gamba wondered if conditions of approval should be prepared in case the project was sent back to the city by the state Land Use Board of Appeals (LUBA). **Mr. Gericke** suggested Council did not need to prepare conditions of approval right now and noted how Council could prepare for a LUBA hearing decision.

Councilor Batey commented on the project's potential impact on neighboring properties based on the proposed cut-and-fill work that could alter the flood plain flow. She thought there had not been analysis of the altered flood plain. **Mr. Gericke** suggested Council make a note of things to be found in the record. **Councilor Batey** felt there had not been enough analysis of the impact of the project on the flood plain and neighboring properties.

The group noted the next criteria to consider. It was Council consensus that the natural resource findings for denial related to floodplain issues that staff had presented to the Commission was a good starting place for Council's deliberations.

Councilor Batey commented on the disconnect between Willamette Greenway standards and natural resource overlay zone criteria. She believed Council's role was to interpret the competing standards and criteria when considering development projects. She thought the applicant and some neighbors had prioritized river views over other design elements and suggested the preservation of river views should not overrule other design concepts like rowhouses. She believed the emphasis on river views had led to the application not meeting several criteria. **Mayor Gamba** added that the Comprehensive Plan's natural resource hazards section referenced flooding. He believed life safety should always take priority over river views. **Councilor Batey** agreed that the project was incompatible with the Comprehensive Plan's focus on life and safety in floodplains. **Councilor Parks** suggested the Comprehensive Plan be cited as a reason for denial. The group noted staff was tracking Council's findings.

Councilor Batey thought that the building setbacks should be directed away from the river and noted that the issue had not been addressed by the Commission. She discussed inconsistencies in the Willamette Greenway standards related to required distances from the riverbank to pathways and buildings. **Ms. Kolias** noted that building new structures within certain distances of the riverbank would trigger a greenway review.

Councilor Batey commented that the applicant's report had made it sound like there might be public access points to the river, but she believed that would not be the case. **Councilor Parks** and **Mayor Gamba** noted the application stated there would be no public river access which they thought would contradict state law.

Ms. Kolas noted Council had addressed the issues in the September 10 staff report. She reviewed variance requests outlined in the July 23 staff report to the Commission. She and **Councilor Batey** noted that Commission had not discussed the variances which included a request to build three-story structures.

Mayor Gamba understood the reasoning for the three-story request. He asked if a bottom floor could be an unenclosed space. **Mr. Egner** began to reply, and **Mr. Gericke** suggested the answer was not in the record and could not be considered. The group discussed whether the MMC definition of floor height was in the record.

Mayor Gamba said he would not approve the variance request regarding garage door width because he believed the MMC did not allow enclosed spaces to be built in a floodplain which meant there could not be a garage door on the first floor. **Councilor Batey** agreed and expressed concern about garage doors dominating the front of homes.

The group discussed whether a two-and-a-half story structure could be built if the ground floor were an open carport. They noted how access to the second floor could be built and what height restrictions may need to be considered. **Mr. Gericke** reminded Council that a code section could not be considered if was not in the record. **Councilor Batey** suggested she had concerns but could see approving the height variance.

Mayor Gamba remarked on the potential impact of the side yard setback variance request on adjacent park and natural areas. He and **Councilors Parks and Batey** suggested they would deny the side yard variance request.

Ms. Kolas reported that earlier versions of the project had required a variance related to the proximity of driveways to buildings, but plan changes had eliminated the need for that variance. She and **Councilor Batey** remarked on the driveway route in previous plans.

Councilor Batey discussed the applicant's reference to the city's Housing Needs Analysis (HNA) to support the type of housing to be built on the site. She suggested the applicant would be building homes that cost more than \$490,000, like other developers had built in the city recently. **Council President Falconer** and **Mr. Gericke** noted that the construction of other homes was not in the record. **Councilor Batey** remarked that she did not think the type of housing proposed for the site was the kind of housing the city needed per the HNA. She and **Council President Falconer** remarked on the type of housing called for by the HNA and the type of housing proposed for the site.

Councilor Parks suggested that the entire HNA was part of the record. The group noted that the types of houses being built in the city was not in the record.

Councilor Batey disagreed with the applicant's argument that staff had supported findings of approval because they had prepared draft findings of approval and denial. She noted that staff had reported they were conflicted over the recommendation and had prepared findings for both outcomes instead of making a recommendation. **Council President Falconer** remarked that such work reflected staff's unbiased approach.

Council President Falconer noted it was 8:52 p.m.

Mayor Gamba commented on the applicant's argument that the approval criteria for cluster developments needed to consider the definition of the word practicable. He

understood that to mean the cost of the project need to be considered. **Council President Falconer** suggested the applicant's argument had underscored the concerns about a lack of consideration for alternative designs. **Mayor Gamba** cited the Comprehensive Plan's standards for the lowest living level floor and noted that the requested garage door variance would not be a foot above the lowest flood elevation. The group remarked on whether the lowest floor could be an open garage and the likelihood that future home owners could turn a first-floor garage in a floodplain into a living space. **Mr. Egner** and **Mr. Gericke** suggested staff could investigate what guidance about first-floor garages existed in the application record at the next hearing.

Councilor Batey asked for confirmation that the river dock was no longer part of the application. **Ms. Kolias** confirmed that the dock was not part of the proposed project. **Councilor Batey** asked staff to look in the record to see which code provision was used for the dock. She expressed concern about a dock project in an area where the city had been working to restore fish habitat. **Mr. Gericke** suggested the dock element of the project was not being proposed so should not be part of Council's deliberation.

Council President Falconer asked when Council should consider the applicant's written statement about having an opportunity to amend the application. **Mr. Gericke** suggested Council could consider that at the end of deliberations.

The group noted staff's recommendation for Council to continue the hearing to December 10 at 7:15 p.m. at the Public Safety Building (PSB) Community Room. They noted issues with noise in the PSB room and staff said they would look at the speaker system.

Council Decision: It was moved by **Council President Falconer** and seconded by **Councilor Parks** to continue the hearing to a date certain of **December 10, 2019**. Motion passed with the following vote: **Councilors Parks, Falconer, and Batey, and Mayor Gamba** voting "aye." [4:0]

7. INFORMATION

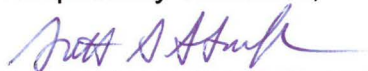
Mayor Gamba announced upcoming events, including a Hillside master plan celebration, a community planning 101 class, the annual Umbrella Parade and Tree Lighting event, the annual Winter Solstice and Christmas Ships viewing event, a Homewood Park habitat enhancement event, and the closure of the temporary Ledding Library site in preparation of the grand opening of the new library building in January. **Councilor Batey** encouraged the public to donate to the Milwaukie Parks Foundation.

8. ADJOURNMENT

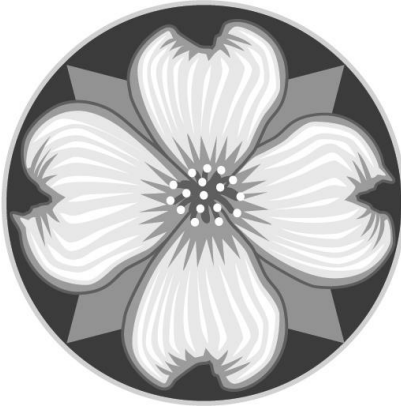
It was moved by **Councilor Parks** and seconded by **Council President Falconer** to adjourn the Regular Session. Motion passed with the following vote: **Councilors Parks, Falconer, and Batey, and Mayor Gamba** voting "aye." [4:0]

Mayor Gamba moved to adjourn the regular session at 9:07 p.m.

Respectfully submitted,



Scott Stauffer, City Recorder



RS Agenda Item

2

**Proclamations,
Commendations,
Special Reports,
& Awards**

PROCLAMATION

WHEREAS, the Christmas Ships Parade is a 65-year-old tradition; and

WHEREAS, the Christmas Ships will sail to destinations on the Columbia and Willamette Rivers between December 5th and December 22nd, 2019; and

WHEREAS, the Christmas Ships will sail to Milwaukie Bay on December 11th, 13th, 18th, 20th, and 21st, 2019; and

WHEREAS, the City of Milwaukie's Winter Solstice and Christmas Ships Viewing event at Milwaukie Bay Park, featuring the Christmas Ships' combined Columbia and Willamette Fleets as they sail to-and-from George Rogers Park in Lake Oswego, will be held on Saturday December 21st, 2019.

NOW, THEREFORE, I, Mark Gamba, Mayor of the City of Milwaukie, a municipal corporation in the County of Clackamas, in the State of Oregon, do hereby proclaim December 5th through December 22nd, 2019, as **Christmas Ships Days** in Milwaukie.

IN WITNESS WHEREOF, and with the consent of the City Council of the City of Milwaukie, I have hereunto set my hand on this 3rd day of December 2019.

Mark F. Gamba, Mayor

ATTEST:

Scott S. Stauffer, City Recorder



Resiliency is key to achieving Oregon's clean energy future

Presentation to Milwaukie
City Council

Dec. 3, 2019

Maria Pope
President and CEO

Bill Messner
Director
Safety, Security
and Resiliency





Powering Milwaukie

We are your partner in meeting the energy needs of Milwaukie and the more than 21,000 community members and hundreds of businesses you represent

- Smart Street Lights
- Smart Test Bed
- Milwaukie Electric Avenue
- Green Future Impact
- Tax dollars and franchise fees
- Employee giving and volunteer service

We share a lot in common

You want your citizens to have energy that is:

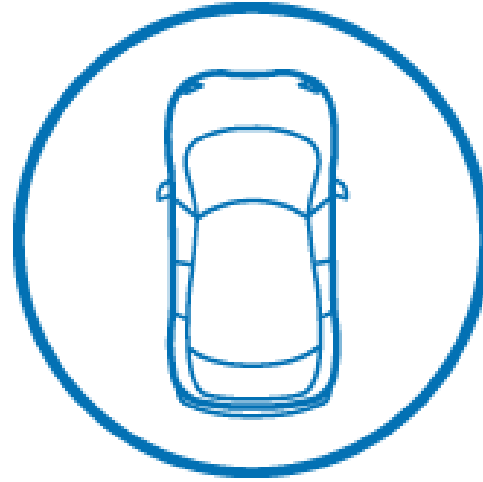
- Safe
- Reliable
- Affordable and equitable
- Clean
- Resilient
- Secure



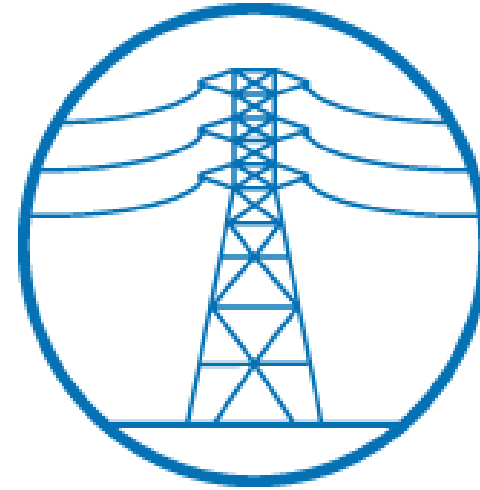
Responding to a changing energy landscape



Decarbonize



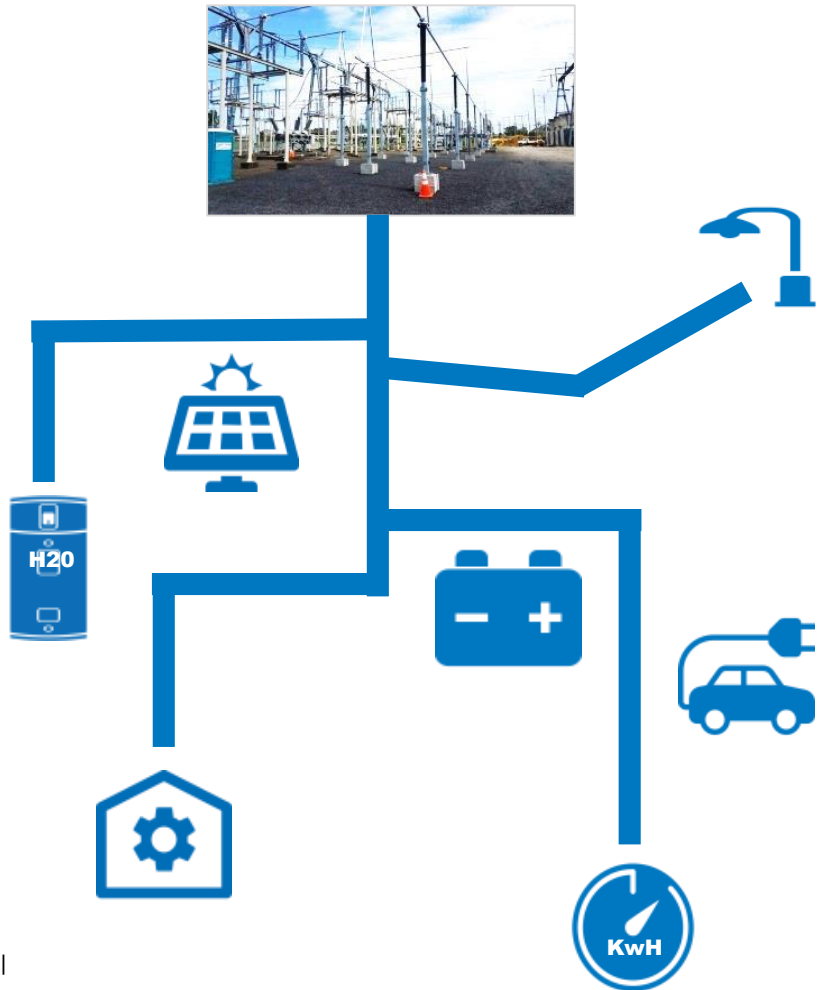
Electrify



Perform

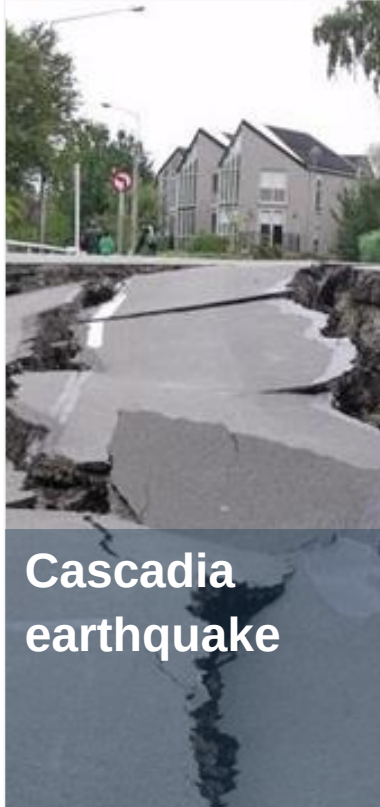
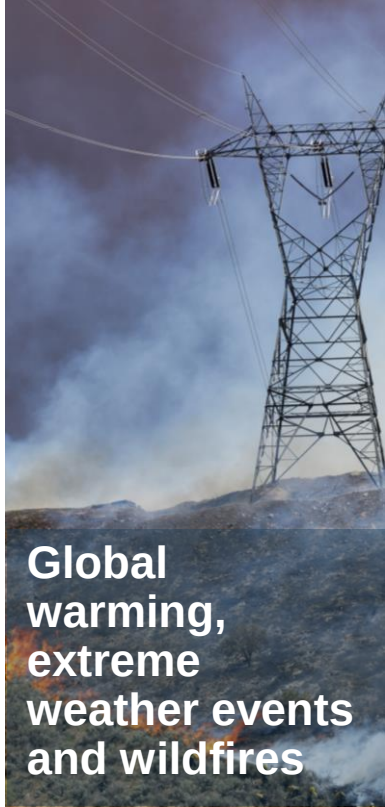
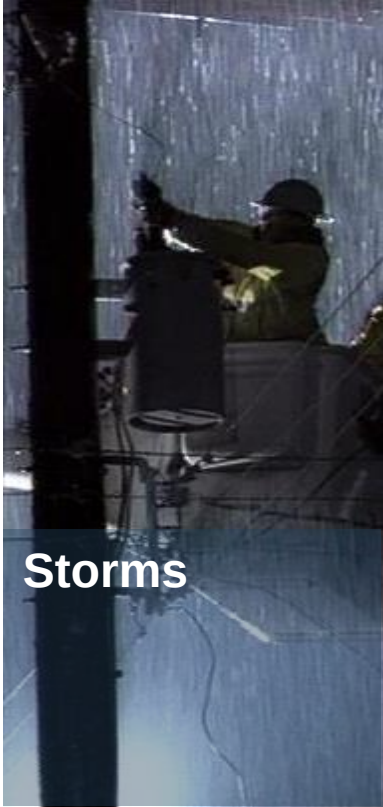
A smart, integrated grid

Building a highly resilient grid that seamlessly links energy from many sources and is essential to a reduced-carbon future



- Built to withstand extreme weather and natural disasters
- Able to recover quickly from any disruption
- Ensures power always flows at locations critical to public safety and emergency response
- Uses customer and utility-scale energy storage to maximize renewable energy and keep power flowing
- Uses technology to create a virtual power plant on the grid

Emerging threats add to complexity



Preparing for emergencies



Emergency planning and exercises

- Dedicated emergency management and cybersecurity
- Companywide use of Incident Command System
- Ongoing testing of plans and procedures
- Regional exercises
- National exercises such as GridEx



System improvements

- Seismic upgrades
- Upgraded radio network
- Vegetation management
- Alert and monitoring systems
- Smart Grid



Redundant systems

- Carver Readiness Center
- Integrated Operations Center
- Offsite communications backup



Strategic partnerships

- Edison Electric Institute and Western Energy Institute
- Utility mutual assistance
- County/city emergency management
- State/Emergency Support Function #12 coordination
- Multi-agency coordination group

Collaborative partnerships are key



Your PGE team includes:



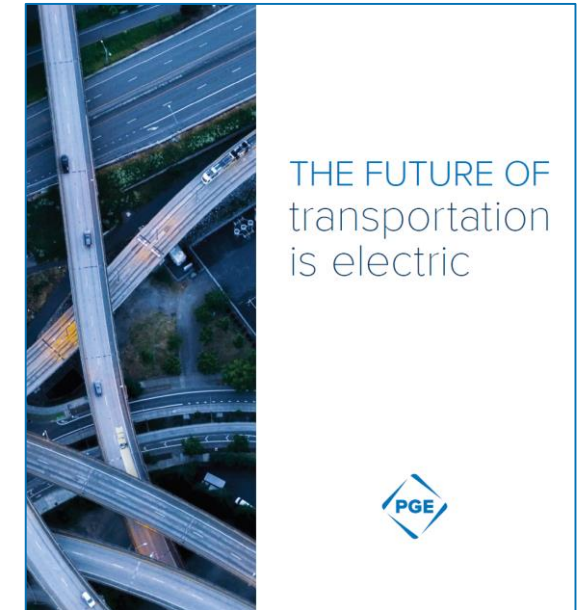
Eric Underwood
Local Government
Affairs manager



Daniel Herrera
Senior Key
Customer manager



THANK YOU — *Questions?*



LEARN MORE

portlandgeneral.com
fullcleanfuture.com

APPENDIX

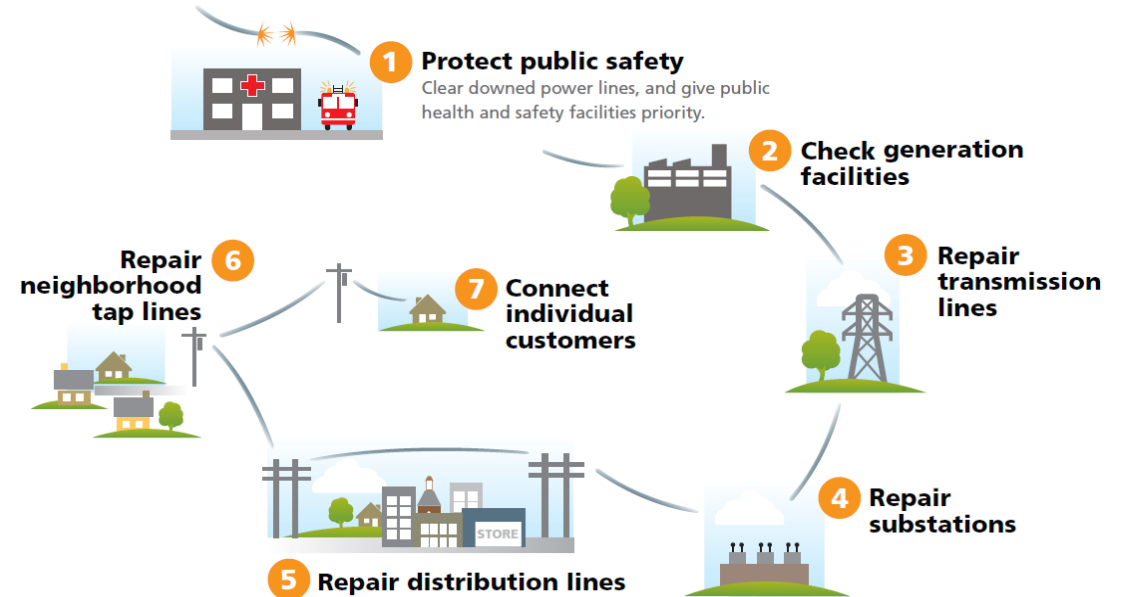


Storm preparedness and response

PGE prepares for outages all year round, not just before a storm

- Robust tree trimming program
- Year-round inspection schedule of poles and wires
- Ongoing focus on system hardening
- Preparedness and safety messaging to customers
- Crews ready to respond 24/7, 365 days a year
- Mutual aid agreements in place and available during major emergency or outage events

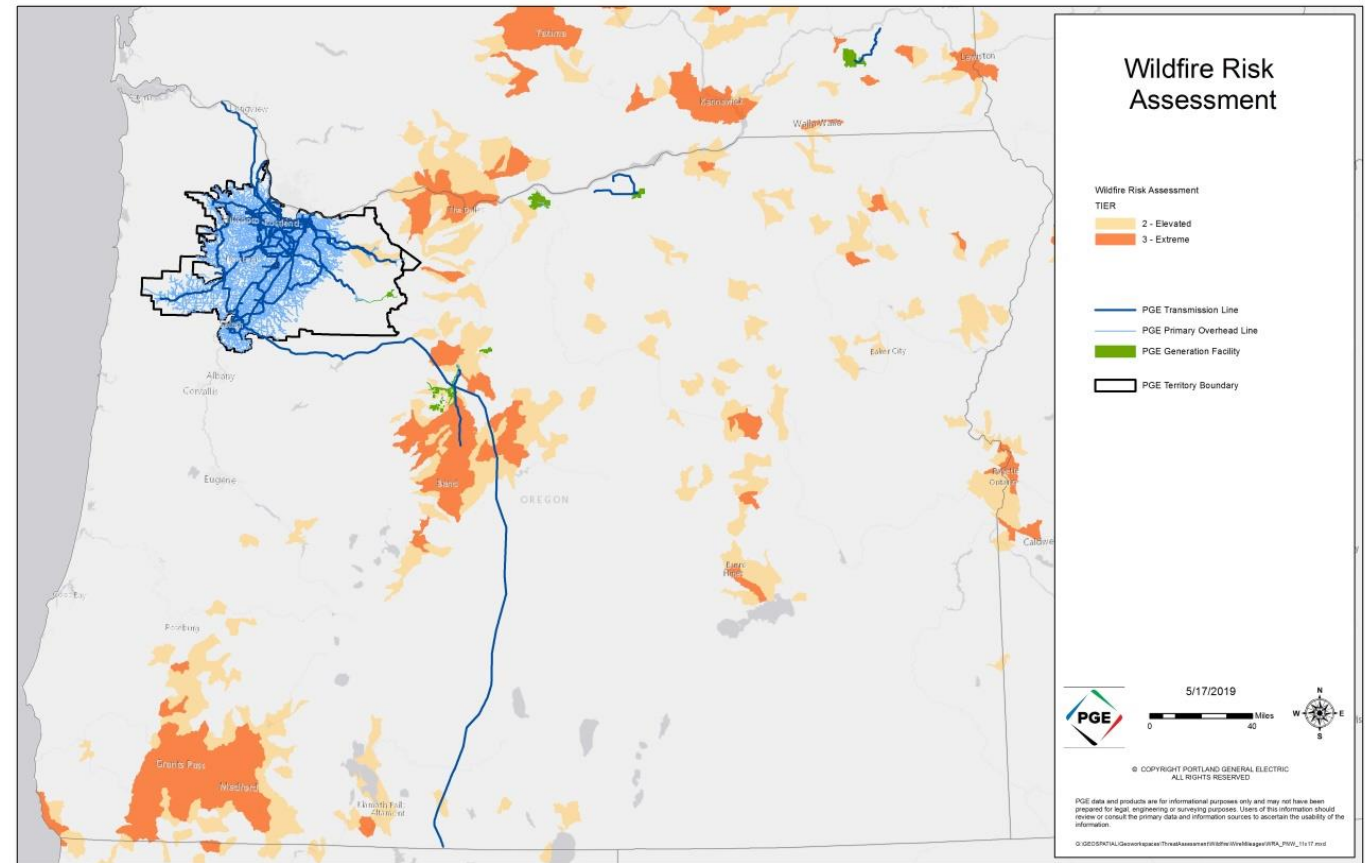
Seven steps to restoration



Wildfire prevention and response

Advanced Wildfire Risk Reduction Program:

- Fire risk modeling and assessment
- Design and construction modifications
- Inspection and maintenance enhancements in high-risk areas
- Operational practices
- Situational and conditional awareness
- Preparedness, response and recovery
- Communication and outreach



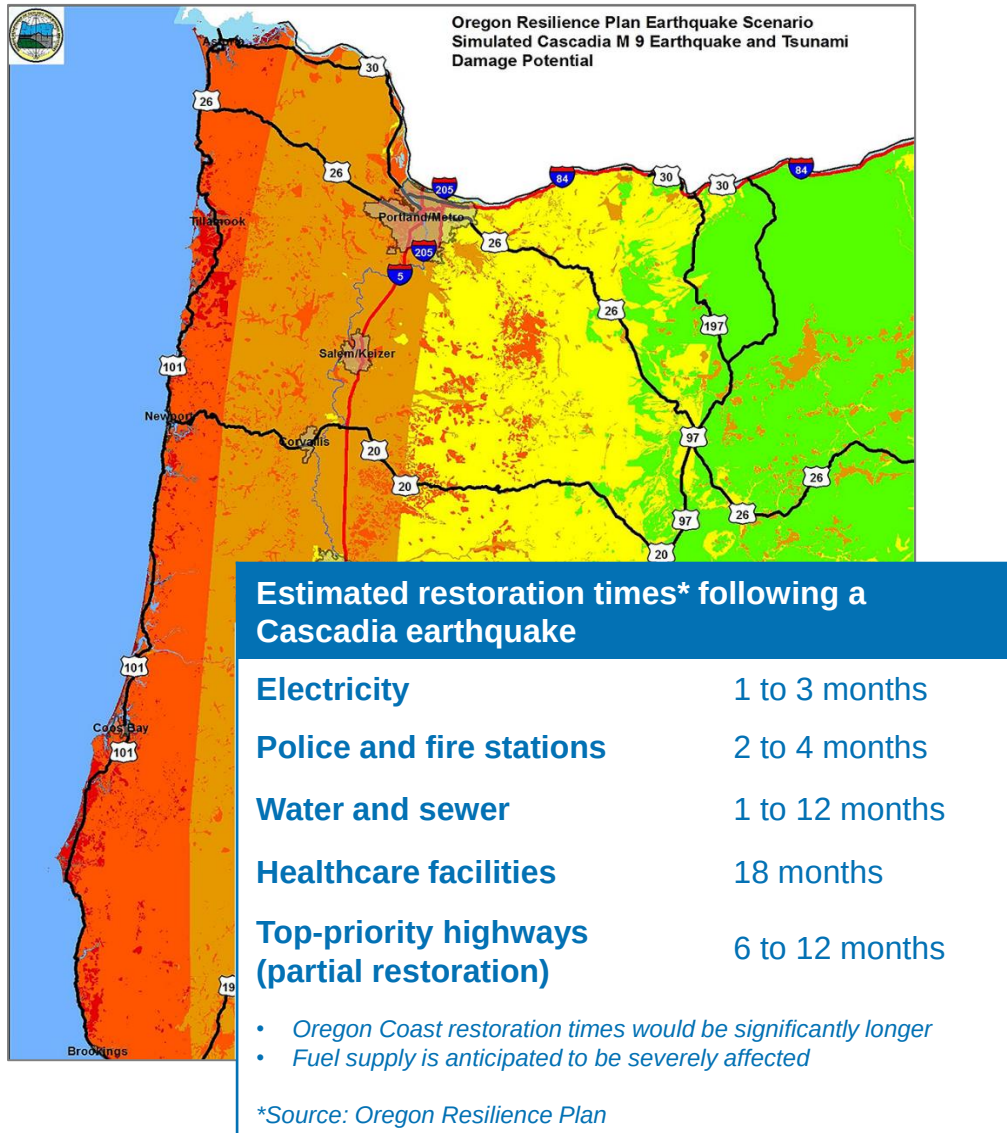
Cybersecurity and physical security preparedness and response

Cyberattacks on PGE systems have increased in volume and sophistication and physical security threats are on the rise. PGE has made significant investments in an integrated cyber- and physical security program to preserve electrical reliability for our customers.

Steps we've taken:

- Benchmarked program in 2016 and 2019, with improvements finalized in 2020
- Expanded PGE cybersecurity team 500% (9 → 54 employees)
- Enhanced technology and practices to protect customer information
- Better technology and practices to block physical access
- Yearlong employee training and awareness
- Formal integrated response plan
- Exercises to test capabilities (such as the recent GridEx training)

Earthquake preparedness and response



- Expanded training and planning
- Strong partnership with Salem and other cities
- Exercising readiness in complex, national exercises (ClearPath, GridEx, etc.)
- Strengthening generation, transmission and distribution infrastructure
- PGE Readiness Center (24/7 back up facility located in Clackamas)
- Integrated Operations Center (2021)



Every second counts

When oil or hazardous waste spills occur, response time is critical. The faster official responders arrive, the better the chances of minimizing environmental damage and potential health impacts. DEQ emergency operations staff play a crucial role in assessing potential impacts and, more importantly, taking action to control the spill and begin clean-up work.

Trained for speed

DEQ emergency responders are trained and prepared for rapid deployment, interagency cooperation, on-scene coordination, and safe, effective clean-up operations. We operate with a 24/7 mentality, knowing that spills can happen anywhere, anytime. Each year we receive about 1,000 to 2,000 reports of spills, big and small. We measure success by the timeliness of initial response, and how quickly we can begin the clean-up or mitigation process when needed.

How we work

DEQ's Emergency Response Program consists of 10 full-time and one half-time staff. We augment the team with staff from other programs who respond to after-hours and weekend events. Two people are always on duty, and an Emergency Response coordination cell line provides additional support to our after-hour duty officers. Each of our

three regions is assigned an on-scene coordinator who travel to sites of significant spills and monitor other incidents through contact with the responsible party and other responders.

Prevention and preparation

The best spill is the one that doesn't happen. That's why we monitor potential hazards to ensure the responsible parties follow appropriate and up-to-date safety measures. But we also know that not all spills can be prevented, and we have to be prepared. We conduct drills and contingency planning to address – and avoid – worst case scenarios. The risks are significant. If a spill were to occur on the Columbia River, for example, currents and tidal flux within Oregon's estuaries would cause oil to spread rapidly unless it was quickly contained. A wide variety of sensitive aquatic life, waterfowl and fragile habitat could be seriously damaged.

Need for sufficient resources

DEQ's Emergency Response Program provides for a flexible, efficient use of our resources to protect human health and the environment. Yet, the level of available resources is not sufficient to address significant spills requiring a sustained incident management team, or provide support for local disaster response coordination. Investing in this critical program will make Oregon safer, healthier and cleaner.

DEQ's mission is to be a leader in restoring, maintaining and enhancing the quality of Oregon's air, land and water.

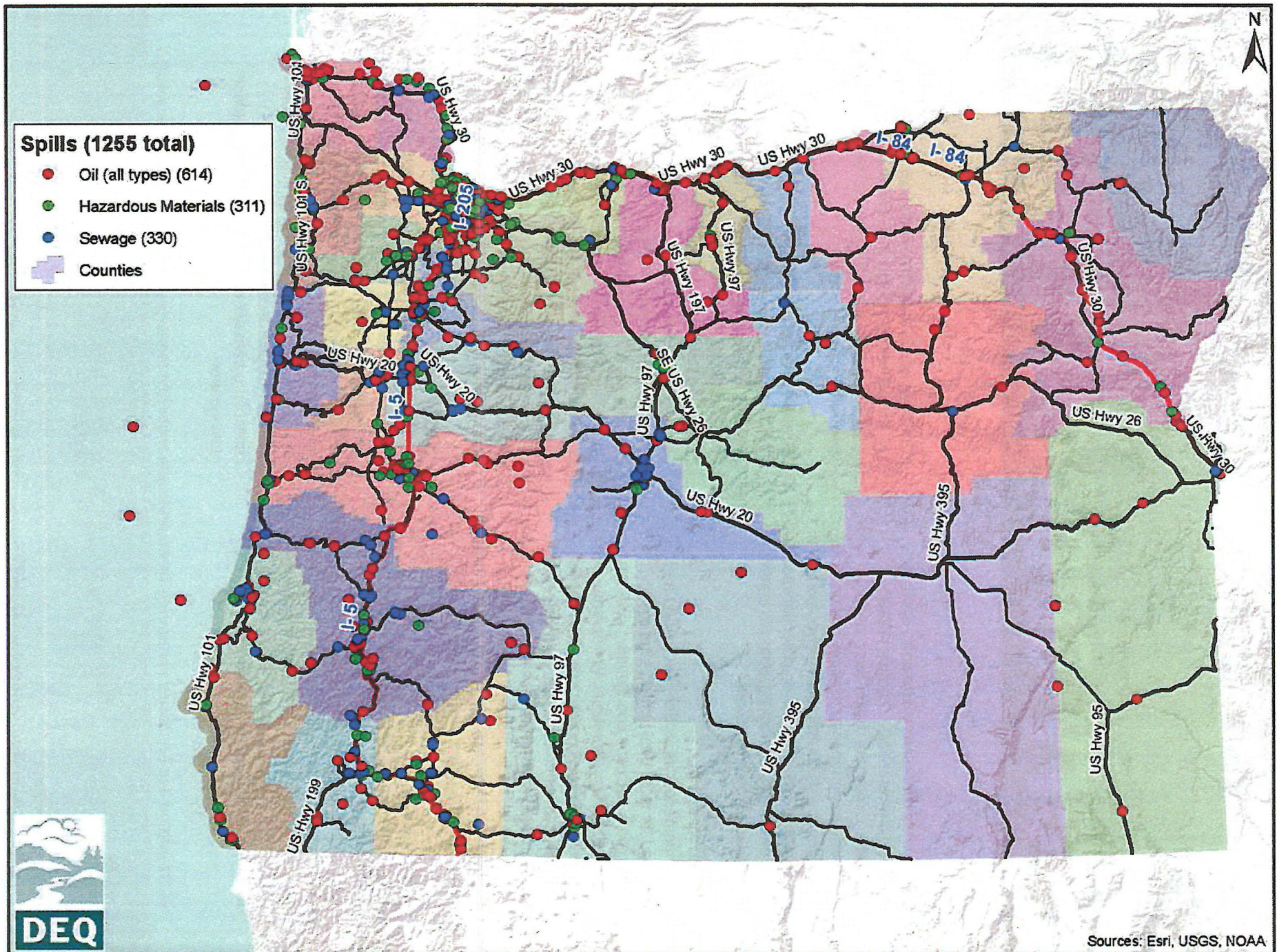


State of Oregon
DEQ Department of Environmental Quality

CONTACTS

Abby Gayle Boudouris, Office of Policy & Analysis | 503.229.6108
Mike Zollitsch, Emergency Response | 503.229.6931

Spills in Oregon by County (Fiscal Year 2019)



Fact Sheet

Closing Gaps in Spill Response Planning for Rail Routes

Oil and hazardous material spills are toxic and threaten public health and the environment. The Oregon Department of Environmental Quality's ability to prepare for those types of spills along rail routes is limited due to gaps in regulatory authority.

Proposed legislation, House Bill 2209, would address the gaps and give DEQ authority to protect Oregon's communities through better spill response planning requirements.



Oil train derailment in Mosier, OR, 2016

California and Washington have had the authority to require railroads to develop and maintain oil spill contingency plans since 2015 and 2016, respectively. Without the same authority in Oregon, DEQ is unable to effectively plan for oil-train related emergencies.

While vessels and pipelines that transport oil, or facilities that store oil, are required to prepare contingency plans and conduct spill drills Oregon does not require the same for railroads.

What are the gaps in planning for rail?

Currently, railroads transporting oil through Oregon are not required to:

- provide contingency plans that outline how they would respond to a spill
- provide information that will help DEQ develop Geographic Response Plans
- conduct and participate in oil spill drills and exercises to demonstrate response capabilities

What changed?

Transport of crude oil by rail was not prevalent in Oregon when the state's oil spill contingency planning and preparedness laws were developed. A single train consisting of 100 or more tank cars can carry over three million gallons of crude

oil. The types of crude oil trains carry can vary from the Bakken Formation, primarily in North Dakota, to tar sands from Alberta, Canada, to waxy crude from Utah. Each of these products has unique chemical properties which require a wide range of response tactics.

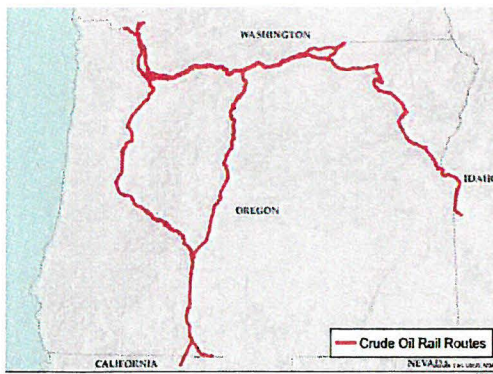
What would the proposed legislation do?

HB 2209 would require railroads that transport oil in bulk to prepare oil spill contingency plans and conduct oil spill drills and exercises, as well as participate in the development of Geographic Response Plans. It would make high hazard rail transportation in Oregon subject to the same spill response planning requirements as vessels, pipelines, and facilities.

What's the difference between contingency and Geographic Response Plans?

Contingency plans explain what a company will do if the oil it is transporting, storing or transferring spills. Contingency plans provide details on response equipment and personnel; document the plan holder's training, drills and exercises; demonstrate the plan holder's capability to respond to spills; and include protection strategies for sensitive areas.

While contingency plans focus on containment of a spill, Geographic Response Plans are the product of a larger planning process that involves more resource managers and stakeholders. These plans identify sensitive resources and describe strategies to protect these resources and recover released oils. They are designed to help first responders avoid the initial confusion that generally accompanies any spill.



High hazard rail routes in Oregon



State of Oregon
Department of
Environmental
Quality

Land Quality Division
Cleanup and Emergency
Response Program
700 NE Multnomah St.
Suite 600
Portland, OR 97232
Phone: 503-229-5696
800-452-4011
Fax: 503-229-6762
Contact: Michael Zollitsch
Phone: 503-229-6931
www.oregon.gov/DEQ

*DEQ is a leader in
restoring, maintaining and
enhancing the quality of
Oregon's air, land and
water.*

Updated April 19, 2019
By: Emergency Response
Program

Roles and Responsibilities

Under the State's Comprehensive Emergency Management Plan, DEQ and the Office of State Fire Marshal are the lead agencies for responses to oil and hazardous material spills in Oregon. Oregon Revised Statutes (ORS) 468B directs DEQ to develop interagency response plans for oil and hazardous material spills to the Columbia River, the Willamette River below Willamette Falls, coastal waters and estuaries of the state. ORS 466.620 also requires the Environmental Quality Commission to adopt an oil and hazardous materials response master plan.

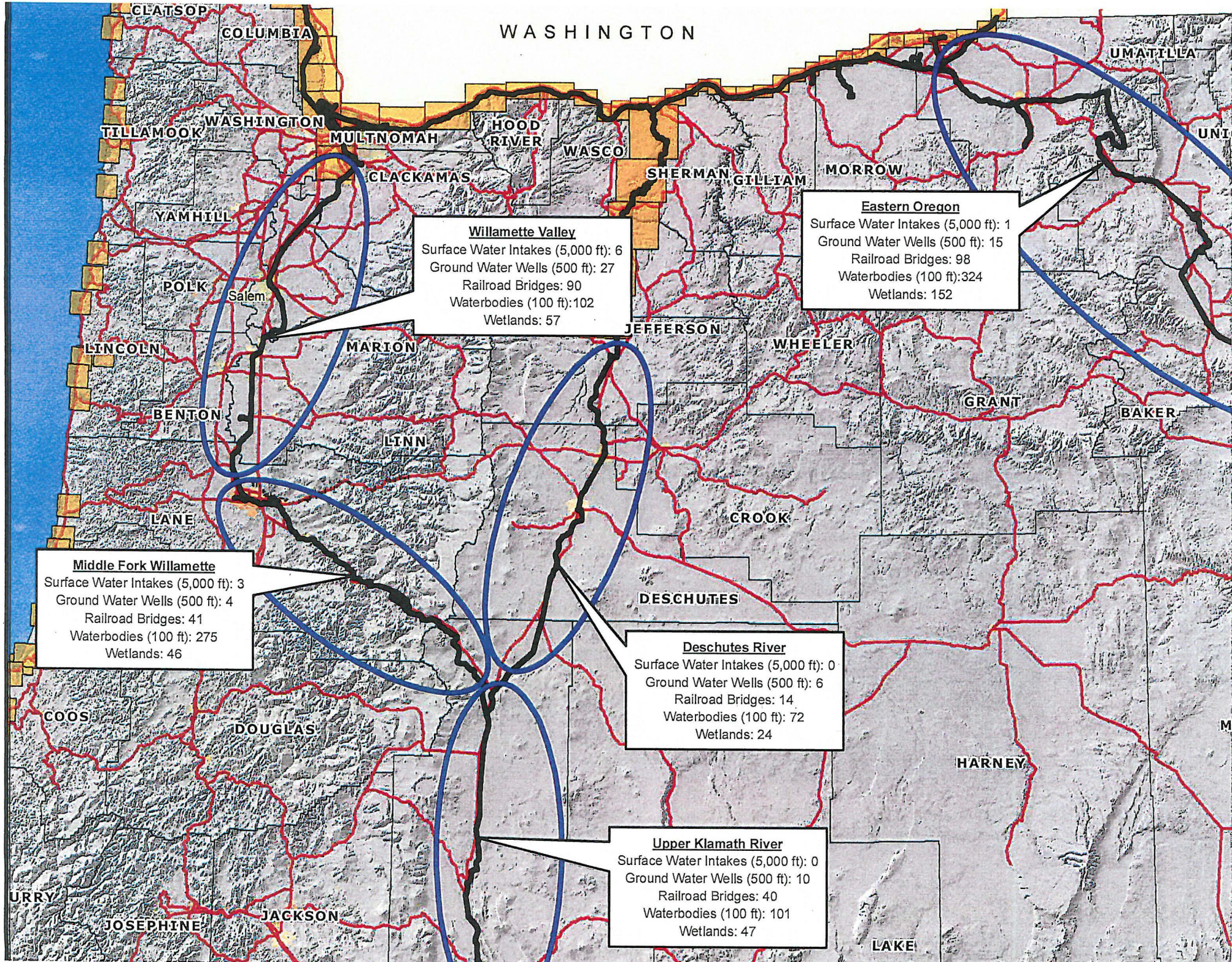
For more information, please contact:

Mike Zollitsch, Interim Manager
Cleanup and Emergency Response Program
503-229-6931

michael.zollitsch@state.or.us

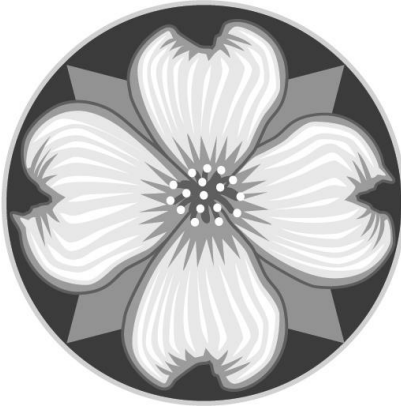
Alternative formats

DEQ can provide documents in an alternate format or in a language other than English upon request. Call DEQ at 800-452-4011 or email deqinfo@deq.state.or.us.



Environmental Response

Phase	Action	Washington		Oregon	
		Vessels Facilities Pipelines	Rail	Vessels Facilities Pipelines	Rail
Prevention/ Mitigation	Risk-Reduction Management Practices/Requirements	Yes	Yes	Yes	Yes
Preparedness	Industry Contingency Planning	Yes	Yes	Yes	No
Preparedness	Geographic Response Plans	Yes	25 Completed or Underway	Yes	One
Preparedness	Required Drills and Exercises	Yes	Yes	Yes	No
Life Safety	Local and Hazmat Teams	Some local teams, but no Statewide Hazmat Teams		Yes	
Environmental Response	Protection of Resources at Risk Pollution Recovery	Yes		Yes, but limited capacity	



RS Agenda Item

3

Consent Agenda



COUNCIL WORK SESSION

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

MINUTES

NOVEMBER 5, 2019

Mayor Mark Gamba called the Council meeting to order at 4:00 p.m.

Present: Council President Angel Falconer; Councilors Lisa Batey, Wilda Parks, Kathy Hyzy

Staff: Administrative Specialist Christina Fadenrecht	City Recorder Scott Stauffer
Associate Planner Mary Heberling	Community Development Director Leila Aman
City Attorney Justin Gericke	Planning Director Denny Egner
City Manager Ann Ober	Senior Planner David Levitan

1. Comprehensive Plan Review Process Update – Discussion

Mr. Levitan provided an overview of the Comprehensive Plan update process that was scheduled to be finished by March 2020. He explained the public engagement process that had taken place, including Comprehensive Plan Advisory Committee (CPAC) and Planning Commission meetings, town halls, open houses, media outreach, neighborhood district association (NDA) meetings, and community events. He noted the policy document had 12 topic areas grouped into five categories derived from the “super actions” in the Milwaukie Community Vision. He added that transportation would be an added section after the Transportation System Plan (TSP) was updated.

Mr. Levitan explained staff’s tasks to finalize the Comprehensive Plan. He explained the opportunities for the public to comment at upcoming Planning Commission and Council meetings or submit comments via mail or email. He reported that after the policy document was adopted, staff planned to address middle housing.

Mr. Egner asked if Council had any questions about the process for adopting the Comprehensive Plan. He noted that staff was accepting public comments on the final draft policies.

Council President Falconer asked for clarification about the time periods associated with the comments brought to Council in December. **Mr. Egner** explained that the October 23 open house comments would be rolled into the public hearing process, as well as any new comments received up until the public hearings. **Councilor Batey** noted that all comments received before the October open house had been summarized into the “pinned down” elements. **Councilor Parks** noted that Council had already reviewed those comments. **Council President Falconer** thought that in terms of presentation, she did not want to lose sight of the fact that the city had been doing this work for two years and hundreds of people had commented in the process to get the city where it was today. She noted that now Council was being asked to review new comments that were happening much later in the process.

Mr. Egner and **Mr. Levitan** clarified that the new comments would be rolled into the public hearing process. **Ms. Ober** summarized that Council President Falconer’s preference was to include all the comments and **Council President Falconer** agreed.

Mr. Egner explained that October 23 was the first time that staff had taken all the policy documents and packaged them together as they were expected to appear in the final document. He discussed why the process evolved the way that it did. He noted where

all other comments were captured. **Mayor Gamba** noted that comments had been submitted during the process before the CPAC made their decisions to move forward. **Council President Falconer** pointed out that if more comments were received now that were the same as earlier comments originally found to be in the minority, then the new comments should be understood in the full context. **Mr. Egner** said if something like that became a discussion point, it was up to Council and staff if they wanted to go back and see why a decision was originally made.

Councilor Hyzy asked if it was possible to provide links directly to those block “pinning down” comments on the project website for the public to access them more easily. **Ms. Ober** asked that if staff did not compile a collection of all comments, then the public should be notified that now was the time to include comments into the public record.

Mr. Levitan explained how the public comment process was intended to work and how comments were incorporated and reviewed. He noted the differences in the comments during the early policy development stages and the various public events. He reported that the mailing list of interested persons had been contacted after the open house to notifying them that they could submit comments.

Mr. Levitan observed that since one of the city’s main priorities was addressing housing affordability, staff was working on middle housing options. He provided an overview of HB2001, which required cities greater than 25,000 population or cities within the Metro region of over 1,000 people to allow duplexes on any lot where single-family-residential (SFR) houses were permitted, and must allow triplexes, fourplexes, and cottage clusters in any zone where SFR were permitted. He reported that the Oregon Department of Land Conservation and Development (DLCD) was beginning their rulemaking and code process related to HB2001 requirements. He reported that cities must update their zoning codes by June 2020.

Mr. Levitan asked Council two questions about staff’s middle housing work. Question 1: Was Council comfortable with keeping existing land use designations and zoning districts, and moving straight to code work? Question 2: Should opportunities for triplexes, fourplexes, and cottage clusters be permitted citywide (context-based) or in focused areas (location-based). **Mr. Egner** noted that whatever Council decided would be a starting place, as the plan may change after the public and Planning Commission provided feedback.

Councilor Batey expressed confusion about what Council was being asked. She believed the second question was most important and needed robust public discussion. She did not know if she had enough information to answer the first question.

Mr. Levitan and **Mr. Egner** provided more background on the first question. They provided three options. Option 1: Council could maintain existing zoning districts. Option 2: Council could direct staff to do minor housekeeping amendments, focusing on certain zones. Option 3: Council could direct staff to draft wider policy-driven amendments, which would require a broader discussion with the community. **Council President Falconer** and **Mr. Levitan** discussed how zones were defined and that the city would need to change the permitted uses and development standards for zoning districts.

Mr. Levitan said Option 1 would allow the city to focus on the uses and not worry about the zoning map and **Councilor Batey** asked what the benefit of that would be. **Mr. Levitan** explained it was one less step and allowed the process to be shorter. The discussion between the community would then focus on where within the existing

zoning districts those middle housing types should be allowed. He noted HB2001 specifically stated that if cities were not proposing any changes to the zoning map and were just bumping up density by adding more housing types within the existing zones, cities did not have to do the infrastructure analysis required for re-zoning. He noted staff was already looking into how the implementation of HB2001 could influence growth over the next decades. He said that once the city completes a TSP update staff could consider housing and TSP items together and see how they feed into the city's Capital Improvement Plan (CIP). **Mr. Egner** summarized that going through this Option 1 was easier to maintain existing zoning districts because the city did not have to go through a transportation planning rule (TPR) analysis.

Mayor Gamba noted that many zones were defined by lot size. He asked if the city would only allow cottage clusters that are condominium-style where residents do not own the land and only own the cottage, which would result in smaller lot sizes. **Mr. Egner** did not believe the city had answered that question yet. **Councilor Batey** noted if three town homes were built on a Residential 7 (R7) lot, then the three lots would not meet the required minimum lot sizes.

Mr. Levitan explained that the city could establish different minimum lot sizes and development standards for different housing types. He said HB2001 allowed cities to do that without being required to look at transportation impacts. He said that Milwaukie would want and need to consider the transportation impacts, but it would be part of the city's process instead of a state-based process.

Mr. Egner summarized the options. **Mr. Levitan** provided context and explained the City of Minneapolis, Minnesota's recent decision to maintain zoning districts while adding minor amendments. He observed that the more Council discussed potential amendments to the land use map and Comprehensive Plan, the longer the process would take. **Mr. Egner** noted that the options would require different levels of staff time.

Councilor Hyzy asked if there was any difference in a city-led transportation impact study versus the state required study. **Mr. Egner** described the process and the state TPR. He noted that there was no TPR analysis for the Monroe Street Apartments project; there was a city-required transportation impact study that would look at nearby streets, but it would not look at the overall impact on the system.

Council President Falconer asked if the addition of middle housing was considered a major change, as the city was not considering changes to high density. **Mr. Egner** did believe it was major because it could result in a lot of change over time.

Mr. Levitan clarified that if the city was proposing these changes outside of HB2001 and wanted to include changes to allow up to fourplexes on a 5,000 square foot lot in certain residential zones, trip generation rates would be higher. So even though the zoning map would not change, it was still considered a zoning change and a TPR would be required. **Mr. Egner** discussed the timing of the Comprehensive Plan review process. He said it could be possible for the city to look at bigger land use changes during the upcoming TSP update.

Councilor Batey believed HB2001 was ambiguous and noted that the state would provide more clarity in 2020. She asked if Council should do some smaller items while waiting for clarity from the state. **Mayor Gamba** did not think anything Milwaukie was talking about would be less than what the state required. **Council President Falconer** noted the risk of getting public comments and a lot of energy around concepts that the

state then says will not be allowed under the HB2001 rules. **Mr. Egner** believed that the state law was vague enough to allow the types of uses the city was discussing. **Council President Falconer** hoped there would be more clarity around what “reasonable” means in the law. **Mr. Levitan** believed “reasonable” and other items to be addressed through the rule-making process would affect cities who were not on track to comply with HB2001. He did not believe the city was at risk of not complying.

Councilor Batey asked if Council were to answer the second question about citywide versus a focused approach, if that would change staff’s thoughts on the options to the first question. **Mr. Levitan** noted examples of how different responses could increase the overall effect and amount of community discussion. **Mr. Egner** discussed the timeframe for the three options related to zone changes. **Mr. Levitan** noted that the DLCD and Metro would need to decide about minimum and maximum density rules in zoning districts. **Mr. Egner** said that no matter what the city decided, there would probably be tweaks as the state adjusts the process and rules. He and **Mr. Levitan** discussed whether the zoning map or the code work should happen first.

Councilor Hyzy asked how each option would affect the timeframe and staff workload capacity. **Mr. Egner** said Option 3, the wider policy-driven amendments, would probably take a year. He thought Option 2, minor housekeeping amendments, would not take as long. **Ms. Ober** asked if the city would have to do the state-mandated studies if it chose Option 2. **Mr. Egner** believed if the city rezoned certain residential zones it would not trigger an extensive analysis.

Councilor Hyzy was concerned about making sure the city conducted a good public process and addressed the housing crisis. **Councilor Batey** observed that Option 1 would get Council to the code writing process faster, which she thought was good. **Mr. Levitan** noted that staff would return to Council on November 19 for further discussion on the process. **Councilor Hyzy** observed that since Milwaukie was close to being ready to comply with HB2001, it had the opportunity to be at the table in a unique and powerful way.

Ms. Ober said that staff would have more information from the state before Council would be asked to adopt anything. She noted that staff had no control over the state process but could control the city’s process and could begin conversations with the community. She strongly recommended that Council choose an option and not wait.

Councilor Batey agreed and suggested Council go with Option 1 or 2 while discussing the second question. **Ms. Ober** explained that staff could take both Option 1 and 2 out to the community for feedback. She asked for Council input on how to start that public communication.

Mr. Egner asked if there was any interest in Option 3, the wider policy-driven amendments. He reported that it could be a big issue that might distract staff and Council from some of the lower-hanging-fruit work like the code work.

Council President Falconer did not want to ignore a wider policy discussion and wanted the community to have that conversation and discuss transportation connectivity. She also appreciated the desire to get the other part of the conversation going. She expressed support for either direction. **Councilor Hyzy** found it appealing to begin with minor housekeeping changes and monitor when the city could have bigger conversations about zoning. **Mr. Egner** noted that was helpful direction for staff.

The group moved on to Question 2: should opportunities for triplexes, fourplexes, and cottage clusters be permitted citywide (context-based) or in focused areas (location-based)? **Councilor Batey** believed this was the big public discussion to have.

Mr. Egner said staff could go out to the public with both options or one option. **Councilor Batey** wanted to have both options presented to the public. **Councilor Hyzy** asked what the difference was in staff time. The group discussed how the process would play out if both options went to the public. **Mr. Levitan** summarized the process staff would undertake to incorporate Council and public comments into writing draft code language.

Mr. Egner said Council could decide to have a lower density option citywide and a higher density option within the HB2001 context for areas along the transportation corridors. He noted that had been the recommendation from the consultant who worked on the cottage cluster project.

Mayor Gamba asked if there would need to be a minimum lot size if the city maintained the greenspace rule. **Mr. Egner** said that was an example of the type of standards that could be built into an approach. The group discussed greenspace and lot coverage requirements. **Mr. Levitan** noted other requirements that helped dictate how many units could be on a lot, such as parking requirements and setbacks. **Mr. Egner** discussed design standards for different housing types, which also played into this conversation.

Mr. Levitan observed that design standards would need to be addressed in the middle housing conversation. **Mr. Egner** explained that currently triplexes and fourplexes needed to meet the multi-family standards but if the city allowed them in SFR areas, the city would need to decide which standards should be required.

Ms. Ober summarized that Council gave direction on Question 1. She summarized that Council wanted staff to provide information about items that would need to be included in the public conversation, such as changes related to parking, setbacks, and lot size coverage. She noted staff would come back to Council on November 19 to provide additional details.

Mr. Levitan clarified that the city was required by HB2001 to remove the owner occupancy requirement and the off-street parking requirement for Accessory Dwelling Units (ADUs). Those changes would go to the Planning Commission next week and come before Council on December 17.

2. Adjourn

Mayor Gamba announced that adjournment of the work session Council would meet in executive session pursuant to Oregon Revised Statute (ORS) 192.660 (2)(h) to consult with counsel concerning legal rights and duties regarding current litigation or litigation likely to be filed.

Mayor Gamba adjourned the Work Session at 5:17 p.m.

Respectfully submitted,

Amy Aschenbrenner, Administrative Specialist II

COUNCIL REGULAR SESSION

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

MINUTES

NOVEMBER 5, 2019

Mayor Mark Gamba called the Council meeting to order at 6:15 p.m.

Present: Council President Angel Falconer; Councilors Lisa Batey, Wilda Parks, Kathy Hyzy

Staff: Assistant City Manager Kelly Brooks	Development Project Manager Alison Wicks
City Attorney Justin Gericke	Finance Director Bonnie Dennis
City Manager Ann Ober	Municipal Court Clerk Carla Bantz
City Recorder Scott Stauffer	Municipal Court Judge Kimberly Graves
Community Development Director Leila Aman	Police Chief Luke Strait

1. CALL TO ORDER

Pledge of Allegiance.

2. PROCLAMATIONS, COMMENDATION, SPECIAL REPORTS AND AWARDS**A. Veterans Day – Proclamation**

Mike Wilson, American Legion Post 180, introduced the proclamation and noted the American Legion's work on behalf of veterans. **Mayor Gamba** proclaimed November 11 to be Veterans Day. **Mr. Wilson** noted upcoming events at the Post.

B. 75th Anniversary of the 1944 City Charter – Proclamation

Mr. Stauffer, **Ms. Bantz**, and **Ms. Dennis** introduced the proclamation and explained that the 1944 voter-approved charter changed the city's form of government to the council-manager structure and established the municipal court. **Mayor Gamba** presented a commemorative gavel to Judge Graves and read the proclamation recognizing the 75th anniversary of the adoption of the 1944 City Charter.

~~C. International Energy Conservation Code (moved down the agenda)~~

Mayor Gamba announced that item 2. C. would be moved to the end of the agenda and item 6. A. would be considered after 6. C.

3. CONSENT AGENDA

It was moved by Councilor Parks and seconded by Councilor Hyzy to approve the Consent Agenda as presented.

A. City Council Meeting Minutes:

1. October 1, 2019, Work Session;
2. October 1, 2019, Regular Session; and
3. October 8, 2019, Joint Session.

B. Resolution 66-2019: A Resolution of the City Council of the City of Milwaukie, Oregon, making appointments to the Tree Board.**C. Approval of an Oregon Liquor Control Commission (OLCC) application for Zappos Pizza, 6115 SE King Road – Off-Premises Sales.**

Motion passed with the following vote: Councilors Hyzy, Falconer, Batey, and Parks, and Mayor Gamba voting "aye." [5:0]

4. AUDIENCE PARTICIPATION

Mayor Gamba reviewed the public comment procedures. **Ms. Ober** reported that in follow-up to the October 15 audience participation comments, staff was looking at the request to repaint a curb near the corner of Main Street and Scott Street.

Charles Maes, Case de Tamales restaurant owner, remarked on a long-standing issue he has had with a no parking spot near the corner of Main and Scott streets. He explained that the spot was poorly marked by worn paint and signs that are too tall. He presented photos of the spot and a gallon of paint and a brush to the city to repaint the curb. He asked that the paint be donated to the Milwaukie Museum if the city could not use the paint. **Mayor Gamba** and **Ms. Ober** noted that the type of paint Mr. Maes presented could not be used to paint the curb. **Ms. Ober** confirmed that public works staff was working on improving signage at the spot.

5. PUBLIC HEARING

A. None Scheduled.

6. OTHER BUSINESS

A. ~~Downtown Transportation Modes~~ (moved down the agenda)

B. Monroe Street Neighborhood Greenway – Update

Ms. Brooks provided an update on the greenway grant application, noting recent regional committee meetings that had resulted in the project being ranked high on funding priority lists. She thanked Council, staff, and partners for promoting the project and noted next steps in seeking final approval to receive funding from Metro. She noted funding from planned state transportation projects at Hwy 224 and Monroe Street that would help the project. **Councilor Batey** asked where staff was in preparing for the project and **Ms. Brooks** reported that staff was working to hire a design consultant in early 2020. The group thanked Ms. Brooks for her work on the project.

C. Oak Grove – Lake Oswego (OGLO) Bridge – Update

Mayor Gamba provided an overview of the project known as both the OGLO Bridge and the Willamette River Crossing. He noted the bridge's possible location and that the current phase was only to determine if a bridge would be feasible. Next steps would look at environmental and neighborhood impacts of a bridge.

Councilor Parks asked if funding for the bridge would impact funding for other projects in Clackamas County. The group discussed where funding for studying the project had come from and where funding might come from if the bridge were to be built.

Councilor Parks asked if alternate locations were being considered. **Mayor Gamba** confirmed there were three alternate locations. He suggested there was misinformation about the project being spread by opponents of the bridge. He reported that the most expensive bridge design included the ability to carry mass transit vehicles and was widely disliked. He remarked on the projected costs of building a bicycle and pedestrian bridge versus a bridge that could carry transit vehicles. He and **Councilor Hyzy** noted that all options would be able to carry emergency vehicles.

Mayor Gamba discussed the challenges of riding a bicycle between Milwaukie and Lake Oswego and the benefits of a bicycle and pedestrian bridge between Oregon City

and Sellwood. He suggested it was critical missing regional infrastructure. He remarked on the political influence being exerted against the project. He and **Councilor Hyzy** added that the project had been in the county's Transportation System Plan (TSP) for 20 years and had received strong support from Milwaukie-based groups.

Mayor Gamba introduced the resolution in support of the bridge project.

Councilor Batey noted she supported the project but was concerned about a lack of citations for statements in the resolution, specifically the Metro T2020 transportation bond Local Investment Team's (LITs) ranking of the project and scientific polling in support of the project. **Mayor Gamba** and **Councilor Hyzy** remarked on the polling data presented to the bridge project committee which indicated that 58% of residents on both sides of the river supported the project. The group discussed the LIT's work to prioritize transportation projects and noted the LIT had unanimously supported the project. **Councilor Parks** suggested the LIT ranking sentence be removed from the resolution. It was Council consensus to remove the LIT ranking sentence.

The group discussed the polling data reference in the resolution and **Councilor Batey** noted she was satisfied with the sources she had seen that supported the statement.

Councilor Hyzy read the resolution into the record:

A resolution of the City Council of the City of Milwaukie, Oregon, in support of the Willamette River Crossing.

Whereas, Milwaukie residents believe the climate crisis is real, and that transformation of our transportation options and habits are a key component of reducing the region's climate impacts; and

Whereas, transportation emissions account for 29 percent of Milwaukie's carbon footprint; and

Whereas, via our Climate Action Plan, Milwaukie has committed to becoming a carbon neutral city by 2050; and

Whereas, a bike and pedestrian bridge connection between the east and west sides of the Willamette River would provide a more efficient and low-carbon way for many of our residents to cross the river; and

Whereas, the need for an additional crossing of the Willamette River between Oregon City and Sellwood was identified in an exhaustive transportation planning study twenty years ago; and

Whereas, an improved regional active transportation network contributes directly to Milwaukie's vision of an entirely equitable, delightfully livable, and completely sustainable community; and

Whereas, a bike/pedestrian crossing of the Willamette River is a critical piece of disaster preparedness for our region, as the vast majority of our local bridges will collapse in a major earthquake, and this bridge would accommodate emergency vehicles; and

Whereas, scientific polling shows strong support for the bridge on both sides of the river. Now, therefore, the Milwaukie City Council is in full support of the continued study of a Willamette River Crossing and believes it deserves serious consideration as part of Metro's T2020 transportation bond package. For too long, the cities and neighborhoods that line the Willamette River have been united by our love of its greenspaces and natural beauty yet divided by the river itself. The economic, social, and environmental benefits of building this connection are too great to ignore. As a region, we must take bold action on the climate crisis, and the Willamette River Crossing provides a notable opportunity to put people and planet first.

It was moved by Council President Falconer and seconded by Councilor Batey to adopt the resolution in support of the Willamette River Crossing. Motion passed with the following vote: Councilors Hyzy, Falconer, Batey, and Parks, and Mayor Gamba voting “aye.” [5:0]

Resolution 67-2019:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, IN SUPPORT OF THE WILLAMETTE RIVER CROSSING.

Councilor Hyzy noted a news headline about the climate emergency.

A. Downtown Transportation Modes – Discussion (moved down the agenda)

Ms. Wicks provided an overview of the implementation of the Downtown Parking Management Strategy. She asked for Council feedback on proposed code changes related to skateboard, roller skate, and inline skate restrictions. The group remarked on downtown businesses’ appreciation for the city’s parking enforcement officer.

Ms. Wicks reviewed next steps in implementing the parking strategy, including Council discussions on managing on- and off-street parking and convening a downtown parking work group. She discussed the city’s investments in non-vehicular transportation modes and discussed current Milwaukie Municipal Code (MMC) regulations for skateboards.

Chief Strait discussed how the Milwaukie Police Department (MPD) enforced skateboard regulations. He reported that two citations had been issued in the last 10 years and MPD focuses on education to seek compliance. **Councilor Batey** asked if downtown businesses had issues with skateboarding. **Chief Strait** reported that the MPD had heard safety concerns from businesses. He noted the city’s parking enforcement officer had estimated that 20 people a day use skateboards in downtown.

Ms. Wicks discussed neighboring cities’ skateboarding regulations and asked if Council wanted to revise Milwaukie’s skateboard regulations. **Council President Falconer** expressed support for revising the MMC, citing concerns about blanket exclusion in entire zones. **Councilor Batey** expressed support for revising the MMC and cited concerns about allowing skateboards on sidewalks. The group remarked on whether skateboards should be excluded from sidewalks and pathways. **Mayor Gamba** expressed support for modeling the MMC on the Lake Oswego and Oregon City skateboard regulations. He and **Councilor Hyzy** remarked on differences in skateboard use in downtown Portland and Milwaukie.

The group discussed the need to increase code enforcement efforts if skateboards were not allowed on sidewalks. Concern was expressed about writing code requirements that could not be enforced and the need for the MMC to protect against property damage. They talked about addressing safety and liability concerns while encouraging active non-vehicular transportation modes. **Chief Strait** explained how the MPD enforced skateboard regulations.

Councilor Hyzy suggested that the city reach out to neighboring cities to learn more about how they enforce skateboard regulations. **Ms. Wicks** summarized that staff would reach out to neighboring cities, skateboard advocates, and businesses. She noted that additional parking strategy changes would also be brought for Council consideration. **Councilor Batey** asked that Council have time to review the maps of where skateboarding is banned. **Chief Strait** remarked on MPD’s approach to enforcing current MMC skateboarding regulations.

D. Public Records Code Update – Ordinance and Resolution

Mr. Stauffer provided an overview of the request to revise MMC 2.35 and city Policy 600.2 related to public records and recent changes in state law.

Councilor Batey asked why the city needed the policy document. **Mr. Stauffer** suggested the policy was the operational guide for administering the code. He and **Councilor Batey** noted where the policy was available online and how the public submitted a records request. It was noted that the policy, “How to Make a Public Records Request” document, and records request form contained similar language. **Councilor Hyzy** expressed support for providing consistent, if redundant, information.

Mr. Stauffer noted that the policy and “How to” document included a link to the Master Fee Schedule for occasions when requests require a fee. He reported that the city averaged 315 records requests per year. He displayed copies of the last two editions of the “Attorney General’s Public Meetings and Records Manual”.

It was moved by Councilor Parks and seconded by Councilor Hyzy to approve the Ordinance amending Municipal Code Chapter 2.35 and repealing Ordinance 1786. Motion passed with the following vote: Councilors Hyzy, Falconer, Batey, and Parks, and Mayor Gamba voting “aye.” [5:0]

Ms. Ober read the ordinance two times by title only.

Mr. Stauffer polled the Council with Hyzy, Falconer, Batey, and Parks, and Mayor Gamba voting “aye.” [5:0]

Ordinance 2185:

AN ORDINANCE OF THE CITY OF MILWAUKIE, OREGON, AMENDING MUNICIPAL CODE CHAPTER 2.35 AND REPEALING ORDINANCE 1786.

It was moved by Councilor Parks and seconded by Councilor Hyzy to approve the Resolution adopting revisions to City Policy 600.2 Public Records and repealing Resolution 72-2007. Motion passed with the following vote: Councilors Hyzy, Falconer, Batey, and Parks, and Mayor Gamba voting “aye.” [5:0]

Resolution 68-2019:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, ADOPTING REVISIONS TO CITY POLICY 600.2 PUBLIC RECORDS AND REPEALING RESOLUTION 72-2007.

E. Board and Committee Youth Members Program – Resolution

Mr. Stauffer summarized Council’s previous discussion about a proposal to place youth members on certain city boards and committees. He explained that the proposed resolution would formally direct staff to proceed with the youth member program.

Councilor Parks asked if it was necessary to ask a youth applicant if they were a registered voter. The group thought such a question could stop someone from applying. It was the group consensus to remove the voter registration question from the form.

Mayor Gamba suggested that better board and committee descriptions should be included on the application. The group discussed how a youth applicant would apply and where information about the committees would be made available. **Council President Falconer** noted Council was not asked to approve the form and **Mr. Stauffer** explained how the form had been created.

The group expressed excitement for the youth member program and noted the positive feedback received from other cities about the program.

Mr. Stauffer reported that staff had decided to not address the issue previously raised about meeting quorums until after the initial pilot program. The group remarked on the potential for quorum issues. They noted that the same Code of Conduct that adult board and committee members abided by would also apply to youth members.

Mr. Stauffer reviewed the program implementation timeline and noted Council and staff would revisit the program in early 2021.

It was moved by Council President Falconer and seconded by Councilor Parks to approve the Resolution initiating a board and committee youth members pilot program. Motion passed with the following vote: Councilors Hyzy, Falconer, Batey, and Parks, and Mayor Gamba voting “aye.” [5:0]

Resolution 69-2019:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, INITIATING A BOARD AND COMMITTEE YOUTH MEMBERS PILOT PROGRAM.

C. International Energy Conservation Code (IECC) – Resolution

Councilor Batey asked who on staff and neighboring agencies were International Code Council (ICC) voting members. **Councilor Hyzy** and **Ms. Ober** explained there were four ICC voting members on city staff and that all supported the proposed resolution.

Councilor Batey noted that Councilor Hyzy had provided Council with background information on the resolution. **Ms. Ober** explained the role of the ICC in drafting building codes that local governments adopt. She summarized that the resolution would encourage the ICC to adopt more energy efficient standards. **Mayor Gamba** and **Councilor Hyzy** remarked on the long-term importance of energy efficient standards.

Councilor Batey reported she had read a recent article that indicated homebuilder associations had stacked ICC committees and blocked energy efficient codes. She asked if the city should do more to promote energy efficient standards. The group discussed how the city could work with local and national partners to encourage the ICC to adopt more energy efficient standards.

It was moved by Councilor Hyzy and seconded by Councilor Batey to approve the Resolution to support cities climate, energy and fiscal goals by voting in unity for a more efficient 2021 International Energy Conservation Code. Motion passed with the following vote: Councilors Hyzy, Falconer, Batey, and Parks, and Mayor Gamba voting “aye.” [5:0]

Resolution 70-2019:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, TO SUPPORT CITIES CLIMATE, ENERGY AND FISCAL GOALS BY VOTING IN UNITY FOR A MORE EFFICIENT 2021 INTERNATIONAL ENERGY CONSERVATION CODE.

Ms. Ober and **Mr. Stauffer** suggested Council recess the Regular Session to meet in Executive Session, and then return to the Regular Session.

7. INFORMATION

Mayor Gamba announced upcoming events, including a housing and senior services fair, fall leaf drop dates and times, a work party at the Minthorn Springs Wetland, the Milwaukie Parks Foundation launch party, the South Downtown Plaza grand opening event, the Thanksgiving Farmers Market, a Planning 101 community class, and the annual Umbrella Parade and Tree Lighting event. The group remarked on the reliability and energy efficiency of the light-emitting diode (LED) lights on the Christmas tree.

Mayor Gamba announced that Council would recess the Regular Session to meet in Executive Session pursuant to Oregon Revised Statute (ORS) 192.660 (2)(h) to consult with counsel concerning legal rights and duties regarding current litigation or litigation likely to be filed.

Mayor Gamba recessed the Regular Session at 8:06 p.m. and reconvened the Regular Session at 8:58 p.m.

Action Related to Executive Session Discussion – Motion (added to the agenda)

It was moved by Councilor Batey and seconded by Council President Falconer that the city move forward with the legal action discussed in Executive Session. Motion passed with the following vote: Councilors Hyzy, Falconer, Batey, and Parks, and Mayor Gamba voting “aye.” [5:0]

8. ADJOURNMENT

It was moved by Council President Falconer and seconded by Councilor Hyzy to adjourn the Regular Session. Motion passed with the following vote: Councilors Hyzy, Falconer, Batey, and Parks, and Mayor Gamba voting “aye.” [5:0]

Mayor Gamba moved to adjourn the regular session at 8:59 p.m.

Respectfully submitted,

Scott Stauffer, City Recorder

COUNCIL DINNER

Home of Councilor Hyzy
12210 SE 19th Avenue
www.milwaukieoregon.gov

MINUTES

NOVEMBER 10, 2019

Mayor Mark Gamba called the Council meeting to order at 5:00 p.m.

Present: Councilors Lisa Batey, Wilda Parks, Kathy Hyzy

Absent: Council President Angel Falconer

Staff: City Attorney Justin Gericke, City Manager Ann Ober

The group participated in a social dinner and no topics of City business were discussed.

Mayor Gamba adjourned the Special Session at 8:00 p.m.

Respectfully submitted,

Ann Ober, City Manager

COUNCIL STAFF REPORT

To: Mayor and City Council
Ann Ober, City Manager

Date Written: Nov. 25, 2019

Reviewed: Amy Aschenbrenner, Administrative Specialist

From: Scott Stauffer, City Recorder

Subject: **Appointment to the Public Safety Advisory Committee (PSAC)**

ACTION REQUESTED

As outlined in the Milwaukie Municipal Code (MMC), consider approving a resolution making an appointment to the city's Public Safety Advisory Committee (PSAC).

HISTORY OF PRIOR ACTIONS AND DISCUSSIONS

On April 26, committee member Megan Elston resigned. Throughout the spring and summer, applications were accepted for candidates to fill the vacant position. On November 22, an interview panel comprised of two members of Council, the committee staff liaison, and the committee vice chair, met and conducted interviews. The interview panel has nominated the individual named below for appointment to the PSAC.

ANALYSIS

Authority to fill city board, commission, and committee (BCC) vacancies is granted to the Mayor and Council by Section 26 of the City Charter. To fill vacant positions, members of Council along with appropriate staff liaisons and BCC chairs conduct interviews from applications received by the city. The interview panel makes appointment recommendations to Council, which considers and approves recommendations typically through the Regular Session consent agenda. Appointed individuals serve for a term length determined by the MMC. Upon the completion of a term, if the individual is eligible, they may be reappointed by Council to serve another term.

BCC appointments are made when a term has expired or when a position has been vacated. Generally, position terms expire in March or June, but appointments are also made as needed to fill vacancies. Some BCCs have positions nominated by neighborhood district associations (NDAs) instead of by an interview panel. NDA-nominated appointments are noted if applicable.

Jay Panagos has been nominated to fill PSAC position 10, with a term ending June 30, 2020. Mr. Panagos is a warehouse lead and has volunteered with Portland Sunday Parkways, the Nature Conservancy, and the Rebuilding Center. He has lived in unincorporated Milwaukie for 16 years.

BUDGET AND WORKLOAD IMPACTS

There are no fiscal or workload impacts associated with the recommended actions.

COORDINATION, CONCURRENCE, OR DISSENT

Staff received confirmation from the interview panel that the individual listed below has been nominated to serve on this committee.

STAFF RECOMMENDATION

Staff recommends making the following appointment:

Public Safety Advisory Committee (PSAC): 2-year terms, limit of 3 consecutive terms.

Position	Name	Term Start Date	Term End Date
10	Jay Panagos	12/3/2019	6/30/2020

ALTERNATIVES

Council could decline to make the recommended appointment which would result in a vacancy on the noted committee.

ATTACHMENTS

1. Resolution



COUNCIL RESOLUTION No.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, MAKING AN APPOINTMENT TO THE PUBLIC SAFETY ADVISORY COMMITTEE (PSAC).

WHEREAS, Milwaukie Charter Section 26 authorizes the Mayor, with the consent of the Council, to make appointments to boards, committees, and commissions (BCCs); and

WHEREAS, a vacancy exists on the Public Safety Advisory Committee (PSAC); and

WHEREAS, an interview panel comprised of two members of Council, the committee staff liaison, and vice chair, have recommended that the following individual be appointed to the PSAC:

Position	Name	Term Start Date	Term End Date
10	Jay Panagos	12/3/2019	6/30/2020

Now, Therefore, be it Resolved by the City Council of the City of Milwaukie, Oregon, that the individual named in this resolution is hereby appointed to the identified committee of the City of Milwaukie for the term date noted.

Introduced and adopted by the City Council on **December 3, 2019**.

This resolution is effective immediately.

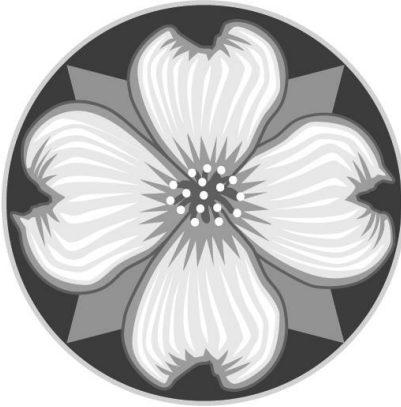
ATTEST:

Mark F. Gamba, Mayor

APPROVED AS TO FORM:

Scott S. Stauffer, City Recorder

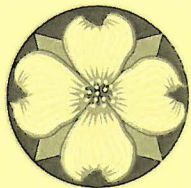
Justin D. Gericke, City Attorney



RS Agenda Item

4

Audience Participation



CITY OF MILWAUKIE
CITY COUNCIL

10722 SE Main Street
P) 503-786-7502
F) 503-653-2444
ocr@milwaukieoregon.gov

Speaker Registration

The City of Milwaukie encourages all citizens to express their views to their city leaders in a **respectful** and **appropriate** manner. If you wish to speak before the City Council, fill out this card and hand it to the City Recorder. Note that this Speakers Registration card, once submitted to the City Recorder, becomes part of the public record.

Name: Rev Doug Edwards

Organization:

Address: 9989 SE 43rd Ave

Phone: 626 755 7170

Email: Rev Doug Edwards

Meeting Date: 12/3/19

Topic: Yambo. Com

You are Speaking...

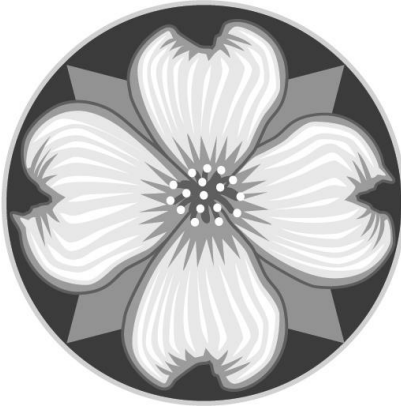
☐ in Support

☐ in Opposition

☒ from a Neutral Position

☐ to ask a Question

Comments:



RS Agenda Item

5

Public Hearing

COUNCIL STAFF REPORT

To: Mayor and City Council
Ann Ober, City Manager

Date Written: Nov. 21, 2019

Reviewed: Leila Aman, Community Development Director

From: Denny Egner, Planning Director

Subject: **AP-2019-03 Elk Rock Estates Appeal – Council Deliberation**

ACTION REQUESTED

On December 3 Council is expected to deliberate and reach a tentative decision regarding the appeal of the Planning Commission denial of the proposed Elk Rock Estates project. On December 17 Council is expected to make their final decision and adopt findings.

HISTORY OF PRIOR ACTIONS AND DISCUSSIONS

[November 19:](#) Council held a public hearing on the appeal of the Planning Commission's decision to deny the proposed Elk Rock Estates project.

Following the hearing, staff recognized that page RS59 of the November 19 Council staff report included links to the Planning Commission record that were not accurate. A revised page with the correct links to the entire record was inserted into the staff report and is attached to this report.

ANALYSIS

As was noted at the hearing on November 19, the only deliberation and conclusions addressed by the Planning Commission in their decision concerned the natural resources and floodplain findings that were necessary for the Commission to deny the application. Because the standard of review on appeal to the Council is de novo on the record, it will be necessary for the Council to review the entire record and decide whether the project meets the relevant approval criteria. The record includes all materials from the application review process and proceedings before the Planning Commission.

In this appeal, Council is being asked to review the entire record and make, as provided in MMC 19.1010.6 (E), the final local decision on the application as required by Oregon Revised Statute (ORS) 227.178. Council is not charged with simply "reviewing" the Planning Commission's decision and it should not give the Commission's decision any deference as it reviews the record. The MMC does not allow for a remand to the Planning Commission, and the final local decision reached in this appeal may be appealed to the Oregon Land Use Board of Appeals.

BUDGET IMPACTS

Not applicable.

WORKLOAD IMPACTS

Not applicable.

COORDINATION, CONCURRENCE, OR DISSENT

The information above is based on information supplied by the city attorney.

STAFF RECOMMENDATION

Not applicable.

ATTACHMENTS

1. Revised Appeal Record – Attachment 3 to the November 19 staff report.
2. Applicant's Attorney's Final Written Argument
3. Applicant's Final Written Argument

Attachment 3.

APPEAL RECORD - REVISED

Elk Rock Estates (AP-2019-003) (links in blue)

Appeal ([AP-2019-003](#)) of the denial of the Elk Rock Estates

Natural Resources cluster development application

([NR-2018-005](#); [LC-2018-001](#); [WG-2018-001](#); [VR-2018-014](#); [VR-2018-015](#))

**1. NR-2018-005; LC-2018-001; WG-2018-001; VR-2018-014; VR-2018-015
APPLICATION MATERIALS**

- a. Applicant's Narrative and Supporting Documentation received 2/26/19
 - i. [Narrative and Stormwater Report](#)
 - ii. [Site Plan and Building Elevations](#)
 - iii. [Natural Resources Reports](#)
- b. [Applicant's additional information submitted 4/30/19](#)
- c. Applicant's revised and additional information
 - i. [HCA Mitigation Plan and Alternatives, received 6/25/19](#)
 - ii. [HCA Mitigation and Alternatives, received 7/07/19](#)
 - iii. [Response to Engineering review, including plan set, received 6/25/19](#)

2. NR-2018-005; LC-2018-001; WG-2018-001; VR-2018-014; VR-2018-015 REFERRAL

- a. [Application Referral Cover Sheet 02/28/19](#)

3. [PC HEARING 05/28/19](#)

- a. [Meeting Packet](#)
- b. [Meeting Video](#)

4. [PC HEARING 07/23/19](#)

- a. [Meeting Packet](#)
- b. [Additional materials submitted for public hearing](#)
- c. [Staff presentation](#)
- d. Applicant's presentation – (not provided by applicant – see meeting video)
- e. [Meeting Video](#)
- f. [Minutes](#)

5. [PC HEARING 09/10/19](#)

- a. [Meeting Packet](#) – includes all comments received during open written record period and applicant's final argument
- b. [Meeting Video](#)
- c. [Minutes](#)

6. [PC HEARING 10/08/19](#)

- a. [Meeting Packet](#) – includes final recommended findings for denial
- b. [Meeting Video](#)
- c. [Draft Minutes](#)

7. PC NOTICE OF DECISION – NR-2018-005; LC-2018-001; WG-2018-001; VR-2018-014; VR-2018-015

- a. [Planning Commission Notice of Decision](#)



November 26, 2019

Michael C. Robinson

Admitted in Oregon
T: 503-796-3756
C: 503-407-2578
mrobinson@schwabe.com

VIA E-MAIL

Mr. Mark Gamba, Mayor
City of Milwaukie City Council
Milwaukie City Hall
10722 SE Main Street
Milwaukie, OR 97222

RE: Appeal of City of Milwaukie Planning Commission (the "Planning Commission")
Decision in City of Milwaukie File No. NR-2018-005; Applicant's Final Written
Argument

Dear Mayor Gamba and Members of the Milwaukie City Council:

This office represents Gillis Properties, LLC, the Applicant. This letter and Mr. Gillis' separate submittal are the Applicant's final written argument. Neither this letter nor Mr. Gillis' separate letter contain new evidence.

1. Introduction.

The City Council opened the hearing on the Applicant's appeal of the Planning Commission decision on November 19, 2019. City Councilor Falconer recused herself from participating. No party asked that the public hearing be continued or the written record held open. The Applicant did not waive its final written argument. The City Council allowed Applicant's final written argument without new evidence to be submitted on November 26, 2015 at 5:00 p.m. Thereafter, the City Council closed the public hearing and the record to all other parties. No person may submit additional argument or evidence to the City Council other than the Applicant through its final written argument.

The Applicant has extended the 120-day period in ORS 227.178(1) until December 17, 2019 in order for the City Council to make a final decision on the appeal.

The Applicant agrees that the entire Planning Department file is digitally before the City Council.

The Applicant agrees that the City Council's scope of review is not limited to the issues that were raised on appeal pursuant to Milwaukie Municipal Code ("MMC") 19.1010.3.B, "On the Record *De Novo* Hearing" and that items not decided in the decision are not necessarily approved. However, the Planning Commission denied the Application only for the reasons expressed in its final decision. The City Council can find that the other applicable approval criteria are satisfied and urges the City Council to address only the reasons for the Planning Commission's denial as contained in the Applicant's appeal.

2. **Applicable zoning on the Site.**

The Site is located in the R-5 Low Density Residential zone, is within the Willamette River Floodplain and is thus subject to MMC Title 18, “Flood Hazard Regulations.” The Site is also within the Willamette Greenway Zone, MMC Section 19.401, and the Natural Resources Zone, MMC Section 19.402. Most of the Site proposed to be developed is within the Willamette River Floodplain but none of the site proposed to be developed is within the Willamette River Floodway. This site is committed to urban development. Milwaukie Comprehensive Plan (the “MCP”) Map 6, “Buildable Lands,” shows that this area is developed because it is not shown as unbuilt lands nor as a water body. The August 27, 2019 Staff Report to the Planning Commission at Page 16 provides that the Site may contain up to twelve (12) dwelling units pursuant to MMC 19.402.14.C.1, “Calculation of the Permitted Number of Dwelling Units” **(Exhibit 1)**.

The Applicant proposes to develop detached single-family homes rather than attached single-family homes in order to be more consistent with the surrounding residential area.

To the extent that the City Council believes that the MCP directs development away from this area, that conclusion is inconsistent with the MCP Objective #5-Housing Choice, Policy 1, which provides for infill housing in areas such as this Site. The 2016 City of Milwaukie Housing Residential Needs Assessment (the “Housing Assessment”) does not preclude development of this site nor does it limit development to one dwelling unit for the following reasons.¹

First, the Housing Assessment map entitled “Single-Family” shows the Site as “likely to redevelop.” The Housing Assessment at Page 37 identifies redevelopment acreage as “a common example in Milwaukie is a single-family home on a large lot that has potential to accommodate additional development.” The Housing Assessment notes that for purposes of the City’s Buildable Land Inventory, “this home is counted as part of current inventory and expected to remain, while the lot itself is counted as offering some additional future capacity through partition or other infill method.” Emphasis added. Housing Assessment at Page 37. Additionally, Housing Assessment Figure 5.3, “Projected Future Need for New Housing Units (2036),” shows a need for 527 single-family detached units, representing 64% of new housing units. This is sufficient to satisfy ORS 197.303(1).

Neither the MMC nor the MCP limits this Site to one dwelling unit and the Housing Needs Assessment indicates that the Site is part of the expected infill development to provide almost 70% of the needed housing units in the City through 2036.

¹ The City Council may consider the evidence from the 2016 Housing Needs Assessment because the City Attorney’s August 6, 2019 memorandum at Page 2 included the document in the record.

3. Major issues on appeal.

A. The approval standards found in MMC Section 18.04, “Flood Hazard Areas” as they relate to flood velocity, must be resolved in favor of the Applicant. The Planning Commission’s findings and evidence rely on the 5.9 feet per second (“ft/s”) floodway velocity shown on cross-section E as within the center of the floodway, but this Site is not within the floodway. Rather, the Site is located within the “floodway fringe,” on the right over bank, where cross-section E clearly shows that the flood velocity is 1.93 ft/s. Federal Flood Emergency Management Agency (“FEMA”) Technical Bulletin 1.01 provides in relevant part:

“The Community Flood Insurance Study contains a Floodway Data Table that includes data on mean velocities (in feet per second) within the floodway at each cross-section along the river or stream. The mean averages the higher channel velocities with lower velocities and over bank areas that are within the floodway. ***Generally, velocities at sites outside of the floodway are lower than the mean floodway velocities listed in the Floodway Data Table.*** For example, the mean floodway velocity at cross-section is four feet per second, the velocities outside the floodway are likely less than that value. If in doubt about the floodway velocity or in areas where the mean floodway velocity may exceed five feet per second, contact an engineer knowledgeable in hydraulics and hydrology to determine flood velocities at the building site.”
(Emphasis added)

The Applicant’s substantial evidence demonstrates that the Site is within the right over bank area that is expected to have a floodway velocity at cross-section E of 1.93 ft/s, much less than the 5.9 ft/s relied upon by the Planning Commission.

B. The Applicant’s substantial evidence demonstrates that it is feasible to comply with crawlspace design in MMC 18.104.150(g)(i) and the Applicant agrees with proposed condition of approval 2(c) as contained in the November 19, 2019 Recommended conditions of Approval (**Exhibit 2**). This condition requires that the Applicant “shall provide documentation by a professional engineer, certified floodplain manager, or other approved professional certified in compliance with all relevant NFIP policies, Oregon Metro Title 3 and Milwaukie Municipal Code Title 18.” The Applicant has previously stated that all of the staff-recommended conditions of approval to the Planning Commission are feasible and the Applicant agrees with the conditions of approval (Applicant’s August 16, 2019 letter at Page 3; Applicant’s October 24, 2019 appeal at Page 2).

C. The Applicant’s substantial evidence demonstrates that the foundation design criteria in MMC Section 18.04 are satisfied.

D. The Applicant's substantial evidence demonstrates that the approval criteria for Residential Cluster Development in MMC Section 19.402, are satisfied, especially considering the definition of the word "practicable" in MMC 19.201, as follows:

"Practicable" means capable of being realized after considering cost, existing technology, logistics and other relevant considerations; such as ecological functions, scenic views, natural features, existing infrastructure, and/or adjacent uses." (Emphasis added)

The Applicant's oral and written testimony, including Exhibit 1 to the Applicant's August 6, 2019 letter, demonstrates that it is not practicable to avoid development in the Water Quality Resource ("WQR") and/or the Habitat Conservation Area ("HCA"), nor is there a practicable alternative that will avoid disturbance of designated natural resources. As a consequence, the proposed development activity is required to mitigate for adverse impacts to the resource area. The Applicant's wetlands scientist's July 23, 2019 letter explains why it is feasible to mitigate the impacts on the resource areas by restoring Elk Rock Island.

E. Milwaukie Comprehensive Plan ("MCP") Chapter 3, Objective 1, Policy 3, provides "the finished elevations of the lowest floor of buildings and streets will be a minimum of 1.0 foot above the 100-year flood elevation." The City Council can find that the Applicant has agreed that the Applicant will adjust the finished floor elevations in the homes to one foot above flood elevation.

F. This Application is a subject to the Needed Housing Statute ORS 197.307(4) because it is on land zoned for residential use and proposes detached single-family dwellings. The Needed Housing Statute requires that a clear and objective path for development of housing but there is no clear and objective approval path for development on the Site because it is subject to the Natural Resource Overlay Zone. MMC 19.402.3.A provides that that MMC Section 19.402 applies to all properties containing WQR and HCA land. MCC Section 19.402 contains subjective standards that may not be applied to a housing application under ORS 197.307(4). Finally, ORS 197.522(3) requires the City prior to making a final decision on the Application to allow the Applicant to either offer an amendment to the Application or to propose conditions of approval that would make the Application consistent with the applicable plan and land use regulation.

G. The City Council can find that even though this area is subject to two overlay zones and is within the floodplain, the Comprehensive Plan anticipates that it can accommodate dwelling units. MCP, Chapter 4, "Land Use, Objective #1-Builaable Land, Planning Concept," states in relevant part "Bearing in mind that it is technically possible to locate structures on almost any type of terrain, special regulations are justified on these lands to ensure [lands with natural hazards] to ensure adequate consideration of potential physical problems." The City Council can find that those special regulations are those found in Title 18, Section 19.401 and Section 19.402. Further, MCP Land Use Policy #1 states in relevant part: "Through its regular zoning, building and safety enforcement process, the City will implement those policies in

Special Policies Classification areas and direct urban development toward more suitable areas through density transfer.” The City Council can find that the City has implemented this policy through the various land use regulations standards that apply to this site and that density transfer is not a requirement, although the Applicant proposes to transfer density from Elk Rock Island to the other portions of the site.

4. The City Council can adopt the Planning Department’s proposed findings in support of the Application contained in the October 10, 2019 Planning Commission Packet as the basis to approve the Application.

The Planning Department prepared findings demonstrating that the Application complied with all of the relevant approval criteria. The relevant approval criteria include MMC 18.04.150, “Required Standards for Development in a Flood Hazard Area,” MMC 19.401, “Approval Criteria for Land Within the Willamette Greenway Overlay Zone,” and MMC 19.402, “Approval Criteria for Natural Resources,” including MMC 19.402.12, “Approval Criteria for Impact Evaluation and Analysis Including Alternatives Impact Evaluation and Analysis,” and MMC 19.402.14.C, “Approval Criteria for Residential Cluster Development.” Although the Planning Department did not adopt these findings, they demonstrate that the Applicant’s substantial evidence satisfied the relevant approval criteria.

The Planning Commission did not deny the variance Applications. The City Council can approve the variance applications. Even if the City Council were to deny the variance applications, the other Applications are still subject to the Needed Housing Statutes, and ORS 197.522(3) would require the City Council to either allow the Applicant to amend the Application to account for the denied variances, or to impose a condition of approval requiring the Applicant to conform to the clear and objective standards to which the variances are requested.

5. Response to Staff Report to City Council and the Planning Commission Decision.

A. Flood velocities on the Site are much less than the middle of the Willamette River Channel.

Much of the basis for the Planning Commission’s decision to deny the Application and the City Council’s concern about safety has to do with the floodway velocity. However, the City Council can find that the Planning Commission erred in its decision by concluding that development will occur in an area where high flood velocities are likely, an error repeated by the Staff Report to the City Council at Page 9.

The City Council can find that the development is not within an area where high flood velocities are likely. The Planning Commission relied on this erroneous fact to support its finding that the Applicant failed to satisfy MMC 18.04.150(a)(i), (ii), (g)(1), (iii) and (viii). Mr. Ken Valentine, a registered professional engineer with the State of Oregon, testified before both the Planning Commission and the City Council that the area of development, which is within the floodplain and not within the floodway, is subject to much lower velocities from those found in the center of the floodway. Mr. Valentine submitted an exhibit containing six pages previously found in

the record. Mr. Valentine also noted that the model for construction of the Tillicum Bridge upstream from this site relied on the HES-RAS model which reflects the information he provided to the City Council in his oral and written testimony.

The key to understanding why the development site is subject to much lower flood velocities is found by reviewing each page in Mr Valentine's exhibit shown to the City Council (**Exhibit 3**). The first page shows cross-section E, which includes the site. The Site is partly within the floodplain and not at all within the floodway. The second page shows the floodway data for cross-section E in the Willamette River Floodway. The mean flood velocity is shown as 5.9 ft/s but this applies to the floodway, not the Site area proposed for development. The third page shows that the Planning Commission relied upon the floodway velocity for the floodway and not the right over bank area, the floodway fringe, which is the area proposed for development. Figure 1, "Floodway Schematics," the third page in the exhibit, shows that this area could be used for development by ground elevation. The fourth page of the exhibit shows cross-section E at the right over bank, the Site of this development, with an average velocity of 1.93 ft/s. This velocity, where the development is proposed to occur, is far less than the floodway velocity relied upon by the Planning Commission. The final pages of the exhibit notes that buildings on the site are proposed to be designed to accommodate the 1996 floodway, balanced cut and fill is proposed for the entire area below the 1996 flood event, access to this site is designed for the flood event, and that no dead storage is proposed in the stormwater facility.

Mr. Valentine's evidence is more credible since it specifically addresses the area where development will occur, as opposed to the middle of the floodway where development is not proposed to occur. Thus, the City Council can find that the Planning Commission erred in relying on a much a higher floodway velocity than actually applies to the Site.

B. Other standards in MMC 18.04.150 are satisfied by the Application.

The Staff Report to the City Council also faulted the Applicant for failing to provide "complete design documentation." However, complete design documentation is not required to determine compliance with relevant conditions of approval. Design documents are a ministerial matter that the Oregon Land Use Board of Appeals ("LUBA") and the Oregon courts have consistently held are proper for conditions of approval and such conditions are required by ORS 197.522(3). Conditions of approval are the Applicant's burden to satisfy. In the event the Applicant is unable to do so, the Applicant will not be able to obtain building permits and the land use approval will become void.

The Staff Report to the City Council also noted that the Applicant is required to have all enclosed areas below the base flood elevation ("BFE") reviewed by a design professional for hydrodynamic loading. As noted above, such design details are appropriate to be implemented through a condition of approval.

Mr. Valentine has testified that the finished floor elevations and living areas will be one foot above the 1996 flood elevation and the access road will be one foot above the 100-year flood elevation.

The Staff Report to the City Council also relies on the incorrect floodway velocity by concluding that the Applicant's proposed design relied on the absence of adequate documentation regarding hydrodynamic loads that are likely in the area of development. However, Mr. Valentine's evidence is the more credible of the two sets of evidence because it specifically addressed the Site where development is proposed, which is not in the middle in the floodway.

The Staff Report to the City Council also noted that the Applicant "insisted" on utilizing foundation designs that are discouraged by federal guidelines and did not consider minimizing flood damages through utilizing pier, post or piling foundations. First, Mr. Valentine and Mr. Gillis testified to the City Council that they would accept such provisions as conditions of approval. Second, Mr. Valentine's August 5, 2019 letter (Exhibit 3 to Applicant's August 6, 2019 letter) (**Exhibit 4**) notes that crawlspaces are allowed in areas with less than flood velocities of 5 ft/s. MMC 18.104.150(g)(i). The Applicant will meet FEMA Technical Bulletin 11's crawlspace requirements. MMC 18.04.150(g) provides that below-grade crawlspaces are allowed subject to the Technical Bulletin.

Even if this area were subject to greater flood velocities, MMC 18.04.150(g)(i) allows crawlspace construction where "the design is reviewed by a qualified design professional, such a registered architect or professional engineer." In other words, crawlspace construction is allowed in this area because floodway velocity will be less than 5 ft/s but even if it were, the approval criteria recognizes that crawlspaces are allowed where reviewed by a qualified design professional such as a registered architect or professional engineer.

Additionally, the City Council can find that the Planning Commission erred in its other findings as to why the Applicant did not satisfy the relevant provisions of MMC 18.04.150 as explained in the Applicant's appeal.

a. MMC 18.04.150(a), "Anchoring."

The Planning Commission erroneously relied upon the wrong flood velocity and in so doing, incorrectly found that this standard is not satisfied. Therefore, the City Council can find that MMC 18.04.150(a)(i) and (ii) are capable of being satisfied by a clear and objective condition of approval, such as Staff-recommended condition of approval 2(c).

b. MMC 18.04.150(b), "Construction Materials and Methods."

The City Council can find that, as with the above standards, the Planning Commission erroneously concluded that this site was subject to high flood velocities. With or without that consideration, the City Council can find that the standards can be satisfied through condition of approval 2.

c. MMC 18.04.150(c), "Utilities."

The City Council can find the Planning Commission noted that the Applicant proposed that all new water supply and sanitary sewer systems would be designed to minimize or eliminate

infiltration of floodwaters, as required by this standard. The Planning Commission gratuitously noted that there was an inherent risk associated with locating water supply and sanitary sewer systems in an area that was susceptible to flooding but “inherent risk” is not an approval standard. As long as the Applicant demonstrates compliance with the standard, the City Council can find that the standard is satisfied.

d. MMC 18.04.150(e), “Review of Building Permits.”

The important part of this standard is that the City must conclude that the building permits shall ensure that “proposed construction will be reasonably safe from flooding. The test of reasonableness is a local judgment including use of historical data, high water marks, photographs of past flooding, etc., where available.” The City Council can find that the best evidence is that produced by Mr. Valentine and Mr. Gillis, which show a lower flood velocity and historic flooding on the Site. Because of this evidence, the standards in MMC Title 18 can be satisfied. The City Council can find that the proposed construction will be reasonably safe from flooding.

e. MMC 18.04.150(f), “Balanced Cut and Fill.”

The Planning Commission found that the Applicant failed to prove that there would be balanced cut and fill. However, Mr. Valentine’s August 5, 2019 letter (**Exhibit 4**) states that “the preliminary plans have demonstrated that the project will not have a net increase of fill in the floodplain.” Thus, the City Council can find that the site will have balanced cut and fill. The Planning Commission found that the Applicant had not demonstrated that the proposed foundation type was feasible to use in a floodplain zone and that crawlspaces must be raised one foot above the BFE. On the contrary: Mr. Valentine’s August 5, 2019 letter at Page 2 demonstrates that the proposed crawlspaces are appropriate for the site.

f. MMC 18.04.150(g), “Crawlspace Construction.”

This section contains eight (8) subsections. Each of the subsections is satisfied by substantial evidence in the record and can be implemented through conditions of approval. The Planning Commission’s error was relying on a higher flood velocity than the more likely flood velocity for this Site. Substantial evidence provided by Mr. Valentine demonstrates that these standards are capable of being satisfied.

g. MMC 18.04.160(a), “Residential Construction.”

The City Council can find that it is feasible to meet this standard based on substantial evidence in the whole record.

h. Conclusion.

For all of the above reasons, the City Council can find that the Applicant has satisfied MMC Chapter 18 through substantial evidence and that the standards can be assured through conditions

of approval including those in the recommended conditions of approval provided by the Staff at the November 19, 2019 appeal hearing. The Applicant will accept a condition of approval requiring a “no rise” analysis based on Mr. Valentine’s November 19, 2019 testimony.

All of the above standards relate to the City Council’s need to find that the site can be safely developed. The Applicant’s evidence before the City Council is that this is the case. By approving the Application with the Staff-recommended conditions of approval, the City Council places the burden on the Applicant to demonstrate through building plans that the conditions are satisfied. If the Applicant fails to do so, the site will not be developed and the approval will become void.

C. MMC Section 19.402, “Natural Resources.”

The principal issue regarding these standards is whether the Applicant satisfied the residential cluster development criteria in MMC 19.402.14.C, “Residential Cluster Development.” First, the City Council can find that the correct maximum density based on the calculation in MMC 19.402.14.C.1 is twelve dwelling units to the acre (**Exhibit 1**).

The approval criteria for a residential cluster development are found in MMC 19.402.14.C.4.a-c. Notably, MCC 19.402.14.C.4.c provides “if the Planning Commission finds that the criteria in Subsection 19.402.14.C.4.a are met, it **shall approve** the residential cluster development, subject to any conditions established pursuant to Subsection 19.402.14.C.4.b.” Emphasis added.

The principal area of contention is the standards in MMC 19.402.12.B.1.a-c: the “avoid, minimize and mitigate” standards. Each of the standards contains either the qualification “to the extent practicable,” or “no practicable alternative.” As noted above, “practicable” is defined to include cost. The Applicant’s oral and written testimony is that it is not practicable to develop an alternative meeting all of the standards staying entirely outside of the resource area and, considering cost, able to be developed. The Applicant’s substantial evidence is that the proposed development activity avoids intrusion of development into the WQR and HCA areas “to the extent practicable” and that the proposed development, considering the mitigation on Elk Rock Island, is less detrimental to the designated natural resources than other alternatives. Alternatives involving a significantly different development or one that proposes less development are not practicable due to cost.

In a question by Councilor Batey and an answer by Mr. Gillis regarding a nine dwelling unit alternative, Councilor Batey asked if it would be true that the construction would occur above the height of the street. Mr. Gillis answered “no” because the dwelling units would be built into the hillside and would result in a “wall of townhomes blocking the view of the river and failing to meet applicable requirements for accessways on 19th Street.” Mr. Gillis noted that even with this alternative, some development would still occur in the HCA because Sparrow Street could not be extended without tree removal and the City told the Applicant it did not want Sparrow Street developed. Mr. Gillis noted that the same amount of fill would be required for this alternative as for the Residential Cluster Application and, further, that impact on WQR and HCA areas would not be minimized by that alternative.

Additionally, the Applicant's substantial evidence demonstrates that because there is no practicable alternative that avoids disturbance of the designated natural resource, the proposed activity minimizes detrimental impacts to the extent practicable by not proposing development on Elk Rock Island. Finally, the Applicant's substantial evidence demonstrates that the proposed activity adequately mitigates for adverse impacts to the resource area pursuant to the required mitigation plan.

These standards do not require an applicant to submit an alternative development plan that is not practicable due to cost or, as would be the case here, provide "skinny" attached dwellings that would block the view of the Willamette River. The Applicant's proposed development is practicable in terms of avoidance, minimization and mitigation. The City Council can find that this standard is satisfied.

Additionally, the Planning Commission did not find the Applicant failed to satisfy the mitigation requirement in MMC 19.402.11.B. The Applicant proposes that the Elk Rock Island be mitigated for the loss of resource area to accommodate the ten new dwelling units. The Applicant's substantial evidence demonstrates that mitigation is feasible to achieve. The Applicant agreed to a ten-year mitigation monitoring program. Recommended condition of approval 2(b)(v). No substantial evidence contradicts the feasibility for the Applicant to achieve the required mitigation. The Planning Commission simply noted that the island was subject to periodic flooding and the mitigation plants would be susceptible to damage. However, a ten-year monitoring program is more than sufficient to assure replacement of plants. Furthermore, the Planning Commission erred by stating that the Applicant failed to provide information on how the mitigation area will be accessed to perform the required work. The Applicant's wetlands scientist testified to the Planning Commission at the July 23, 2019 public hearing that during periods of low water, the island can be reached on foot, whereas in periods of higher water, the island can be reached by boat. His July 23, 2019 letter explained the mitigation proposal **(Exhibit 5)**. No substantial evidence contradicts the Applicant's substantial evidence that it is feasible to reach the island to maintain the mitigation plan. The Planning Commission noted that the mitigation area was appropriate and satisfied MMC 19.402.11.

6. The non-variance Applications are subject to the Needed Housing Statutes, including the Applicant's right in ORS 197.522(3) to either amend the Application or conditions of approval.

The City Council can find that this Application is subject to the Needed Housing Statutes for the following reasons. The Applicant's July 16, 2019 letter at Page 1 expressly raised the Needed Housing Statutes, including ORS 197.522. The Applicant's September 3, 2019 letter at Page 6 expressly addresses why ORS 197.307(4) applies to this Application.

First, there is no dispute that the Application is on land zoned for residential use and that detached single-family housing is proposed. ORS 197.307(4).

The Needed Housing Statutes also include ORS 227.173(2), which requires that any clear and objective standards to be clear and objective on the face of the ordinance. In the event of an

appeal of the City's decision, ORS 197.831 places the burden of proof on the City to demonstrate that the approval standards, conditions and procedures are capable of being imposed only in a clear and objective manner.

Second, as explained above, the City's 2016 Housing Needs Assessment identifies single-family detached housing as a Needed Housing type. The Housing Assessment Figure 5.3, "Projected Future Need for NEW Housing Units (2036)" at Page 34; states "of the new units *needed*, roughly 71% are projected to be ownership units. . ." (emphasis added) (2016 Housing Needs Assessment at Page 35); "Needed Unit Types" referring to the mix of needed unit types in the 2016 Housing Needs Assessment Figure 5.3 (2016 Housing Needs Assessment, *Id.*). Thus, the Site qualifies as "needed housing" under ORS 197.303(1).

Third, because detached single-family houses are a Needed Housing type and the Application is on land zoned for residential use, the City must provide a clear and objective development path. There is no clear and objective development path for the following reasons:

MMC Section 19.402, "Natural Resources," contains discretionary approval criteria and applies to all development on land containing WQR or HCA designations. MMC 19.402.3.A. MMC 19.402.8.A.1 provides that any activity that is allowed in the base zone is not exempt or permitted as a Type I or II use. Single-family detached residential development is not allowed as a Type I use (MMC 19.402.6) or as a Type II use (MMC 19.402.7). Therefore, the Application is subject to the Type III process in MMC 19.402.8. MMC 19.402.12, "General Discretionary Review," applies to the Application. Notwithstanding that the Applicant applied for a Residential Cluster Development under MMC 19.402.14.C, there is no clear and objective path for land containing WQR or HCA designations. Even developing one new single-family dwelling triggers MMC Section 19.402.

Further, MMC 17.12.040, "Approval Criteria for Preliminary Plat," contains the approval criteria for a land division. MMC 17.12.040.A.1, 2, 3, 4, and 5 all contain subject approval criteria. Additionally, MMC 17.12.040.B, "Conditions of Approval," is discretionary and ORS 197.307(4) requires the City apply to only clear and objective conditions regulating the development of Needed Housing, which may not have the effect, either in themselves or cumulatively, of discouraging Needed Housing through unreasonable cost or delay.

In this case, applying the subjective standards in the MMC to this Application is prohibited by ORS 197.307(4) and has the effect of discouraging Needed Housing through unreasonable cost by reducing the number of dwelling units and increasing the development cost of the proposed housing. The City Council can find that the Applicant does not have the option of proceeding under a clear and objective path as provided for in ORS 197.307(4) and, therefore, ORS 197.307(6) providing for a subjective path is not applicable.

The City Council asked whether the Applicant's position would require the City to approve a twelve-story high building. The answer is no. Dimensional standards in base zoning districts, such as maximum height, are clear and objective standards and may be applied by the City.

The City Council seemed to suggest that the Applicant is entitled to develop only a single dwelling. As explained above, even a single dwelling is subject to the discretionary criteria in MMC Section 19.402. However, as explained elsewhere in this letter, the Applicant disagrees with the new density calculation provided by the Planning Director at the November 19, 2019 public hearing. This letter explains the correct density calculation provides that the Applicant can develop twelve single-family dwellings.

The City also retained the services of Attorney Ty Wyman and he produced a memorandum dated November 18, 2019. First, Mr. Wyman seems to assert in his memorandum that the Statewide Planning Goals (the “Goals”) are applicable here. Because this Application is not a post-acknowledgment amendment, the Goals are not applicable.

Second, Mr. Wyman asserts that the revisions to ORS 197.303(1) and 307(4) “does not work from within the existing system.” This argument is perplexing because statutes are always applicable to land use decisions and the City has the obligation to comply with the Needed Housing Statutes.

Third, Mr. Wyman seems to assert that *Warren v. Washington County*, ____ Or LUBA ____ (2018), *aff’d* 296 Or App 595 (2019), *rev. den.* ____ Or ____ (2019) “nullifies” the City’s Statewide Planning Goal 5 protections. This argument is incorrect. All the Court of Appeals’ decision in *Warren* required is that Washington County follow the statutes and apply only clear and objective standards to Needed Housing applications.

Finally, Mr. Wyman asserts that the City could deny the Application because of the Applicant’s five variance requests. The Applicant agrees that variances are not subject to the Needed Housing Statutes because LUBA has said that the clear and objective path is to follow the dimensional standards for which a variance might be sought. However, the City Council can approve the Application without the variances and they must still apply the Needed Housing Statutes to the remaining applications. Attached is a copy of LUBA’s decision in *Warren v. Washington County* for the City Council’s information (**Exhibit 6**). LUBA’s decision in *Warren* explains that the legislature deliberately chose to favor the production of housing, called for in Goal 10, above local government standards that are not clear and objective. LUBA found that this policy choice is entirely consistent with the Statewide Planning Goals. *Warren* also confirmed the interplay between ORS 197.307(4) and 197.307(6), noting that Washington County, just like the City, does not have an alternative discretionary process.

Mr. Wyman missed the most important point of the *Warren* decision. *Warren* did not apply buildable lands, which is the City’s defense, because ORS 197.307(4) no longer requires land to be “needed housing” as defined by ORS 197.303(1) to be subject to ORS 197.307(4). The Needed Housing Statute applies to all proposals for the development of housing, whether they are for needed housing or not.

7. RESPONSES TO TESTIMONY SUBMITTED TO THE CITY COUNCIL.

A. November 19, 2019 letter from North Clackamas Watershed Council (the “Council”).

The City Council should reject the arguments contained in this letter for the following reasons.

First, the letter cites to both MMC 19.202.4.C and 12.202.4. The citation to MCC 12.202.4 is incorrect. However, regardless of the letter’s misunderstanding of the MMC, the argument about density does not support the Planning Director’s calculation that only one dwelling unit is allowed. No one disputes that the minimum density for this site is twelve dwelling units per acre. MMC 19.202.4.C provides that the minimum allowed density is both the minimum required and the maximum allowed.

Second, the second full paragraph on Page 2 of the letter contains new evidence outside of the Planning Commission record. The sentence beginning with the words, “A simple, two-story, bar-shaped...” is not evidence found in the Planning Commission record. Therefore, the Applicant requests that the City Council strike this portion of the letter and not consider this fact further.

Finally, the letter asserts that it is possible that a housing project on lands protected by certain Statewide Planning Goals may be denied by clear and objective criteria but such is not the case in this Application because the City has not applied clear and objective approval criteria.

For these reasons, the Watershed Counsel’s letter cannot be a basis for denying the Application.

B. November 19, 2019 Email from Christopher Roberts.

Mr. Roberts asserts that the defined term “practicable” in MMC 19.202 as applied to the alternatives analysis by the Applicant is incorrect. The definition of “practicable” includes consideration of cost and substantial evidence before the City Council demonstrates that it is not practicable to develop an alternative project that is entirely outside of the WQR or HCA that would allow the Applicant to do so from a cost perspective.

Mr. Roberts also asserts that because the property is within the floodplain, it should be denied. However, the relevant MMC provisions do not require denial for a project in the floodplain; they require compliance with the approval standards.

The City Council can find that Mr. Roberts’ email is not a basis for denial of the Application.

C. November 15, 2019 Email from Theresa Silver.

Ms. Silver argues that the Application should be denied in the “best interest of the neighborhood, to preserve green space and to prevent the creation of houses that would be at serious risk in a flood.”

First, the “best interest of the neighborhood” is not an approval criterion. Second, there is no “green space” on the property; MCP Map 6 shows that the site is committed to urban use. Finally, substantial evidence in the whole record demonstrates that the proposed dwelling units will not be at serious risk in a flood.

D. Undated Email from Priscilla Elliott.

First, the Applicant asks that the City Council strike the photo attached to Ms. Elliott’s email. The photo is not part of the Planning Commission record.

Ms. Elliott cites MMC 19.402.12.B.1.a and asserts that the Applicant is incorrect that its proposal is not the only “practicable” alternative. The City Council can find that of all the alternatives considered, the Applicant’s alternative has no more adverse impacts than other alternatives and is the only practicable alternative considering all of the factors in the definition of “practicable,” including cost.

Additionally, Ms. Elliott asserts that the appeal incorrectly stated that the Planning Commission’s decision only identified certain provisions of the MMC as the basis for denial. The City Council can find that this is correct. The Planning Commission did not find other bases for denial.

Ms. Elliott also asserts that the Fire Department will not be able to provide access to the site. Ms. Elliott is incorrect because the record demonstrates two things. First, the Fire Department did not object to the Application. Second, the Application is designed to provide appropriate access for emergency vehicles.

The City Council can reject Ms. Elliott’s arguments.

E. November 10, 2019 Email from Beth Mills.

Ms. Mills cites no relevant approval criteria.

The City Council can reject Ms. Mills’ arguments.

F. November 15, 2019 Email from Beth Lorio.

Ms. Lorio’s email cites no relevant approval criteria.

The City Council can reject Ms. Lorio’s arguments.

G. November 15, 2019 Email from Kathy L. Jones.

Ms. Jones’ email cites no relevant approval criteria.

The City Council can reject Ms. Jones’ arguments.

H. November 19, 2019 Email from Victoria Mendez.

Ms. Mendez's email cites no relevant approval criteria.

The City Council can reject Ms. Jones' arguments.

I. Undated letter from Steve Gerken.

a. Mr. Gerken asserts that the Appellant filed an untimely appeal. The City Council can find that the Applicant filed a timely appeal of the Planning Commission's October 9, 2019 decision on October 24, 2019 pursuant to MMC 19.1010.1.A-.C. The City did not reject the appeal as untimely. The City Council can find that the appeal was timely filed.

b. Mr. Gerken asserts that MCP Map 6 does not show the area as committed to urban development. He is incorrect because the map shows precisely that. Further, Mr. Gerken asserts that MCP Chapter 3, Objective 1, Goal Statement, prohibits development in this area. Again, Mr. Gerken is incorrect. Taken together, the relevant provisions of the MMC and MCP allow development within the floodplain, provided approval standards are met but as noted elsewhere in this letter, those approval standards may only be clear and objective. Mr. Gerken asserts that discussion of provisions of the MCP have no bearing on the Planning Commission's denial of the Application but because the City Council may consider new issues raised and because the City Council might address relevant provisions of the MCP, this final written argument may discuss those provisions.

c. Mr. Gerken asserts that the Application is not subject to the Needed Housing Statutes. However, he is incorrect and fails to explain why the Needed Housing Statutes would not apply to this Application, contrary to LUBA's and the Oregon Court of Appeals' holdings in *Warren v. Washington County*.

d. Mr Gerken asserts that the Applicant misapplied the flood hazard regulations. Mr. Gerken is incorrect for two reasons. First, the record contains substantial evidence demonstrating how the Applicant has satisfied relevant provisions. Second, Mr. Gerken asserts that the Planning Commission correctly determined that elevation data was available for this Site but the elevation data is relevant to the flood velocity and the best flood velocity evidence is that provided by Mr. Valentine.

e. Mr. Gerken asserts that the Applicant has failed to comply with the balanced cut and fill requirement. This is contrary to Mr. Valentine's evidence which states that the Site will have balanced cut and fill. The same is true for Mr. Gerken's response to the crawlspace criteria, which Mr. Valentine has repeatedly addressed.

f. Mr. Gerken asserts that Mr. McConnaughey's evidence regarding mitigation by plantings on Elk Rock Island should not be relied upon. Mr. Gerken's recitation of the facts are incorrect and do not reflect the record. The Planning Commission expressly found that mitigation was appropriate.

g. Mr. Gerken asserts that the Applicant's evidence regarding the alternative analysis is incorrect. Mr. Gerken asserts that the word "cost" in the alternatives analysis does not consider profit or loss. Mr. Gerken has no basis for this assertion because the standard is very clear that one of the considerations for practicable is cost. Further, the other alternatives have the same or more impacts on WQR and HCA areas than does the alternative proposed by the Applicant.

The City Council can find that Mr. Gerken's letter is not a basis for denial of the Application, especially because the City Council must apply the Needed Housing Statutes to the Application and virtually all of the criteria cited by Mr. Gerken are subjective.

J. Response to November 19, 2019 oral staff report.

Mr. Egner presented the Staff Report to the City Council. First, Mr. Egner stated that since the Application had been submitted, the Staff had talked with the Oregon Department of Land Conservation and Development ("DLCD") and that administrative agency asked for a full floodplain development permit. Mr. Egner's report regarding the conversation with DLCD and its request for a floodplain development permit is new evidence outside of the Planning Commission record. Therefore, it must be stricken pursuant to MMC 19.1010.3.B, which prohibits the presentation of new evidence by any party. The testimony regarding the conversation with DLCD is new evidence as the word "evidence" is defined in ORS 197.763(9)(b) ("evidence means facts, documents, data or other information offered to demonstrate compliance or non-compliance with the standards believed by the proponent to be relevant to the decision").

Additionally, Mr. Egner told the City Council that he believed the City Council could find that MMC Title 18 was satisfied by conditioning the Applicant's performance for the requirements of Title 18. Finally, Mr. Egner told the City Council that he thought the Application "fit as good as anything could" on the site.

8. CONCLUSION.

The Applicant appreciates the City Council's concern that this Site be developed in a way that is safe from flooding; the Applicant desires the same result. However, the decision on this Application cannot be made outside of the approval criteria which are subject to the Needed Housing Statutes. By applying the clear and objective criteria and conditions of approval, the City Council can approve this Application.

For all of the reasons contained in the Applicant's oral and written evidence and argument, the City Council can find that the Applicant has met its burden of proof to demonstrate that the Planning Commission erred by denying the Application. The Planning Commission can approve the Application with the Staff-recommended modified conditions of approval.

Mr. Mark Gamba, Mayor
November 26, 2019
Page 17

Very truly yours,



Michael C. Robinson

MCR/jmhi
Enclosures

cc: Mr. Matt Gillis (*via email*) (*w/enclosure*)
Ms. Vera Kolas (*via email*) (*w/enclosure*)
Mr. Denny Egner (*via email*) (*w/enclosure*)
Mr. Justin Gericke (*via email*) (*w/enclosure*)
Mr. Ken Valentine P.E. (*via email*) (*w/enclosure*)

PDX\134393\246818\MCR\26656004.1

EXHIBITS

- Exhibit 1** Staff Report Density Calculation
- Exhibit 2** Recommended conditions of approval, revised November 19, 2019
- Exhibit 3** Slides presented to the City Council on November 19, 2019 by Mr. Ken Valentine
- Exhibit 4** Letter dated August 5, 2019 by Mr. Ken Valentine
- Exhibit 5** Letter dated July 23, 2019 by Mr. John McConnaughey
- Exhibit 6** *Warren v. Washington County*, ____ Or LUBA ____ (LUBA No. 2018-089, November 14, 2018)

8. Minimum Vegetation	35% min.	83.6%	Complies with standard.
9. Frontage	35 ft	240 ft along 19 th Ave. 680 ft along Sparrow St.	Complies with standard.
10. Density	7.0-8.7 units/net acre	12 dwelling units	Per Finding 9-b, the development is proposed as a cluster development in accordance with the provisions of Section 19.402.14. The density allowed for the gross property area would be 25-32 dwelling units based on the ratio of 7-8.7 dwelling units per the base R-5 zone. The proposed density of 12 dwellings is 3.28 dwellings per gross acre.
11. Transportation Requirements	Yes	Requesting adjustment to sidewalk width, planting strip requirement.	As conditioned, application will comply.

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

9. MMC 19.400 Overlay Zones and Special Areas

a. MMC 19.401 Willamette Greenway Overlay Zone

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

(1) MMC Subsection 19.401.5 Procedures

MMC 19.401.5 establishes procedures related to proposed uses and activities in the Willamette Greenway zone. Development in the Willamette Greenway zone requires conditional use review, subject to the standards of MMC Section 19.905 and in accordance with the approval criteria established in MMC Subsection 19.401.6.

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

Recommended Conditions of Approval
(REVISED ~~August 6~~ November 19, 2019)
Working Draft – for discussion purposes only
File #NR-2018-005, Elk Rock Estates

Conditions

1. Conditional Use Permit

As per MMC Subsection 19.905.6, the City will issue a conditional use permit upon approval of an application to establish a conditional use (including the Willamette Greenway conditional use). The applicant must record the conditional use permit with the Clackamas County Recorder's Office and provide a copy to the City prior to developing the property.

2. Prior to the approval of any building, the following shall be resolved:

- a. The applicant shall submit a Construction Management Plan (CMP) that satisfies the requirements of MMC 19.402.9 and shows the following:
 - i. The CMP must establish root protection zones (RPZs) around trees in WQR/HCA adjacent to any approved work area. Per 19.402.9, the RPZ shall extend from the trunk to the outer edge of the tree's canopy, or as close to the outer edge of the canopy as is practicable for the approved project.
 - ii. Clarify the location of all staging and access areas, and ensure that all temporary disturbance areas have been identified and accounted for in the mitigation plan.
- b. The applicant shall provide a detailed planting plan that includes the following:
 - i. Identifies existing native trees/shrubs to be retained,
 - ii. A typical planting scheme (40 x 40') – note that vine maple is not a tree; tall shrubs may not be substituted for trees,
 - iii. Details regarding site preparation and maintenance including timing and frequency for weed control,
 - iv. Plans for mitigation improvements including site access, where signage will be posted, and how irrigation will be provided across the slough.
 - v. An updated mitigation monitoring and maintenance plan and monitoring report forms. Extended on-going monitoring, including a repair and restoration program, is required to address flood damage. The timeframe for this extended monitoring program is 10 years.
- c. The applicant shall provide documentation by a professional engineer, certified floodplain manager, or other approved professional certifying compliance with all relevant NFIP policies, Oregon Metro Title 3, and Milwaukie Municipal Code Title 18.

- d. Submit a final storm water management plan to the City of Milwaukie Engineering Department for review and approval. The plan shall be prepared in accordance with Section 2 – Stormwater Design Standards of the City of Milwaukie Public Works Standards. In the event the storm management system contains underground injection control devices, submit proof of acceptance of the storm system design from the Department of Environmental Quality.
- e. Analyze the effect of onsite detention to downstream peak flows. If downstream peak flows are shown not to increase with this development, then on-site detention will not be required. Stormwater facilities must be designed to mitigate flooding impacts.
- f. Modify the design of the stormwater facility and area proposed for floodplain cut to achieve an appearance that integrates better with this natural environment. Provide mitigation plantings in this area.
- g. The Willamette River is identified as salmonid habitat; as such, fish passage needs to be considered with new development. Provide fish passage from the low-point of the proposed stormwater facility to the Willamette River, or obtain a statement from a qualified state or federal agency that the proposed stormwater facility is exempt from appropriate fish protection measures.
- h. Submit an operation and maintenance plan for all private stormwater facilities. Include legal documents to ensure continued maintenance and contingency in the event the proposed homeowner's association is ever dissolved.
- i. Provide plans clearly indicating the 34.5 ft NGVD contour (38.0 ft NAVD) of the Metro 1996 areas of inundation. ~~Note that 34.5 ft NGVD, or 38.0 ft NAVD, is considered Base Flood Elevation (BFE) for this project.~~ No net fill can occur within either flood management areas found on site.
- j. Provide plans clearly indicating the bankful elevation contour. Excavation below the bankful elevation shall not count towards floodplain compensatory cut.
- k. Provide separate balanced cut and fill calculations for each flood management area. Include any soil enhancement for the mitigation area in the total fill calculations.
- l. Revise plans for all portions of Private Drive 1 and Private Drive 2 to be at least one foot above ~~design BFE~~ 36.4 NAVD.
- m. Provide documentation on current market value and cost of improvements for existing buildings. All improvements classified as substantial improvements in the flood hazard areas must follow all NFIP requirements for substantial improvements in flood hazard areas.
- n. All right-of-way improvement on SE 19th Ave shall conform with the Island Station Neighborhood Greenway plan. This includes a full street improvements with 15-foot wide pavement, an ADA route identified with tactile warning strips, sharrow pavement markings, 6-inch wide flush mount curb, 3-foot wide load bearing gravel shoulders, and improvements in the identified flexible zone including street trees and acceptable Low Impact Development facility across the site frontage.

- g. Record a deed restriction for all garage spaces with floors below BFE to prevent conversion to any use that is not strictly parking, storage, or access. Record a deed protecting all areas serving as compensatory excavation for balanced floodplain cut and fill.

Record a deed restriction to maintain view corridors between buildings so that Elk Rock Island, the slough, and/or the Willamette River from the street system.

Additional Requirements

1. Prior to any earth disturbance activity, the applicant shall obtain an erosion control permit from the City.
2. At the time of submission of any building permit application, final plans submitted for building permit review shall be in substantial conformance with plans approved by this action, which are the plans stamped received by the City on June 24 and July 3, 2019, except as otherwise modified by these conditions.
3. Limitations on Development Activity
Development activity on the site shall be limited to 7:00 a.m. to 10:00 p.m. Monday through Friday and 8:00 a.m. to 5:00 p.m. Saturday and Sunday, as per MMC Subsection 8.08.070.(I).
4. Landscape Maintenance
As per MMC Subsection 19.402.11.B.9, a minimum of 80% of all required mitigation plantings for WQR or HCA disturbance shall remain alive on the second anniversary of the date the planting is completed. An annual report on the survival rate of all plantings shall be submitted for 2 years.
5. Submit full-engineered plans for construction of all required public improvements on SE 19th Ave, reviewed and approved by the City of Milwaukie Engineering Department.
6. Obtain a right-of-way permit for construction of all required public improvements listed in these recommended conditions of approval.
7. Pay an inspection fee equal to 5.5% of the cost of the public improvements.
8. Provide a payment and performance bond for 100 percent of the cost of the required public improvements.
9. Install all underground utilities, including stubs for utility service prior to surfacing any streets.
10. Clear vision areas shall be maintained at all driveways and accessways and on the corners of all property adjacent to an intersection.
11. Provide a final approved set of electronic "As Constructed" drawings to the City of Milwaukie prior to final inspection.

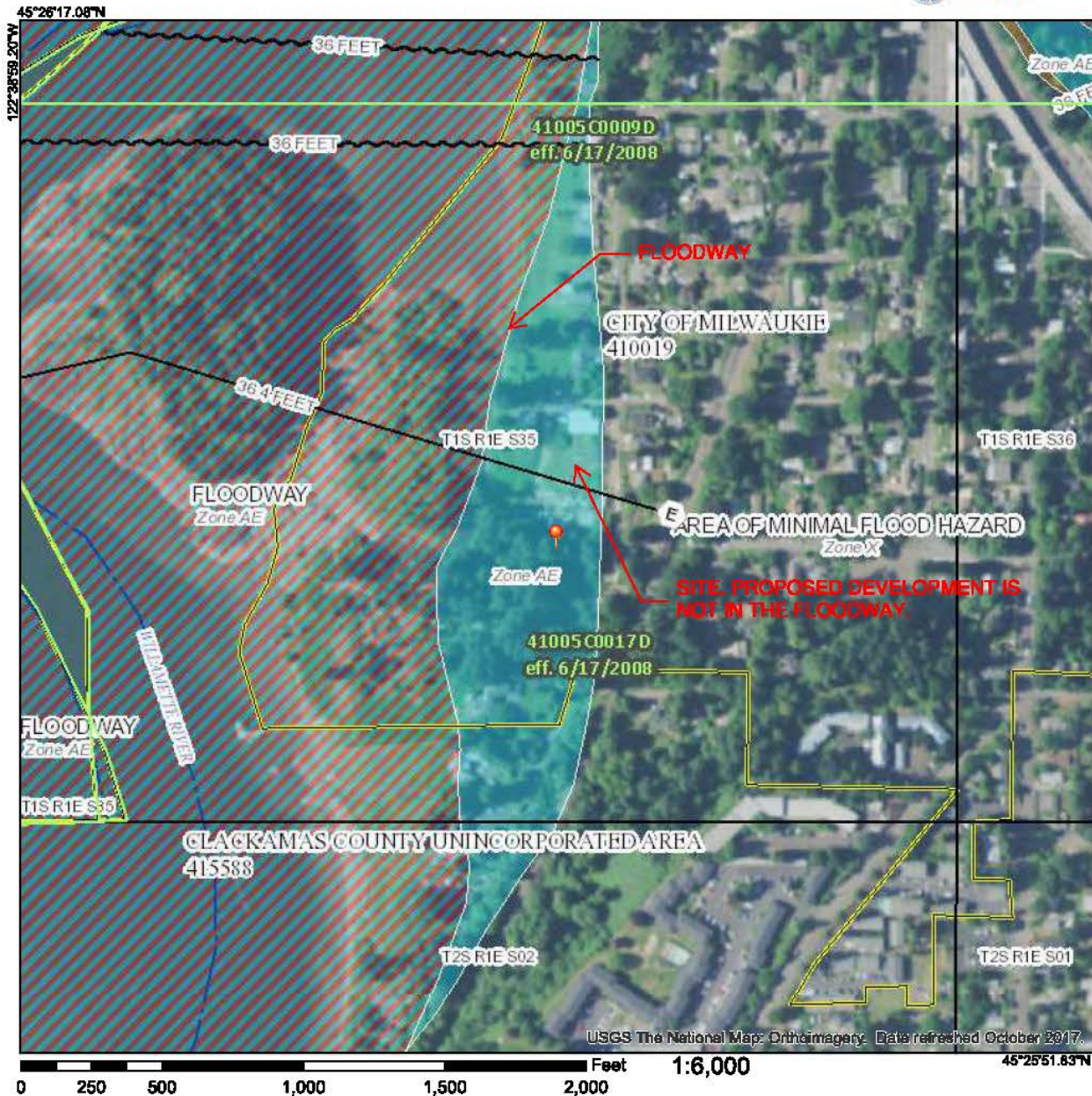
12. Remove all signs, structures, or vegetation in excess of three feet in height located in "vision clearance areas" at intersections of streets, driveways, and alleys fronting the proposed development. Prior to the removal of any vegetation, applicant shall confirm with the Engineering department the location of clear vision areas and if the vegetation removal is required to comply with clear vision standards.

13. Expiration of Approval

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

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

National Flood Hazard Layer FIRMette



Legend

SEE FIRM REPORT FOR DETAILED LEXEND AND INDEX MAP FOR FIRM PANEL LAYOUT

SPECIAL FLOOD HAZARD AREAS	Without Base Flood Elevation (BFE) Zone A, V, AE
	With BFE or Depth Zone AE, AD, AH, VE, AH
	Regulatory Floodway
OTHER AREAS OF FLOOD HAZARD	0.2% Annual Chance Flood Hazard, Areas of 1% annual chance flood with average depth less than one foot or with drainage areas of less than one square mile Zone X
	Future Conditions 1% Annual Chance Flood Hazard Zone X
	Area with Reduced Flood Risk due to Levees. See Notes. Zone X
	Area with Flood Risk due to Levees Zone D
OTHER AREAS	NO SCREEN Area of Minimal Flood Hazard Zone X
	Effective LOMRs
GENERAL STRUCTURES	Area of Undetermined Flood Hazard Zone D
	Channel, Culvert, or Storm Sewer
OTHER FEATURES	Levee, Dike, or Floodwall
	Cross Sections with 1% Annual Chance Water Surface Elevation
MAP PANELS	Coastal Transect
	Base Flood Elevation Line (BFE)
	Limit of Study
	Jurisdiction Boundary
	Coastal Transect Baseline
	Profile Baseline
	Hydrographic Feature
	Digital Data Available
	No Digital Data Available
	Unmapped
	The pin displayed on the map is an approximate point selected by the user and does not represent an authoritative property location.

This map complies with FEMA's standards for the use of digital flood maps if it is not void as described below. The basemap shown complies with FEMA's basemap accuracy standards.

The flood hazard information is derived directly from the authoritative NFHL web services provided by FEMA. This map was exported on 6/3/2019 at 6:19:12 PM and does not reflect changes or amendments subsequent to this date and time. The NFHL and effective information may change or become superseded by new data over time.

This map image is void if the one or more of the following map elements do not appear: basemap imagery, flood zone labels, legend, scale bar, map creation date, community identifiers, FIRM panel number, and FIRM effective date. Map images for unmapped and unmodernized areas cannot be used for regulatory purposes.

The mean velocity the city is citing is the mean velocity in the floodway.

FLOODING SOURCE		FLOODWAY			BASE FLOOD WATER-SURFACE ELEVATION			
CROSS SECTION	DISTANCE ¹	WIDTH (FEET)	SECTION AREA (SQUARE FEET)	MEAN VELOCITY (FEET PER SECOND)	REGULATORY	WITHOUT FLOODWAY FEET (NAVD)	WITH FLOODWAY	INCREASE
WILLAMETTE RIVER								
A	91,661	964/460 ²	58,628	6.4	34.7	34.7	35.4	0.7
B	94,161	985/390 ²	63,554	5.9	35.3	35.3	36.0	0.7
C	96,691	815/220 ²	51,043	7.3	35.6	35.6	36.3	0.7
D	98,381	1,325/500 ²	85,767	4.4	36.3	36.3	37.0	0.7
E	100,861	1,519/1,020 ^{2&3}	63,590	5.9	36.4	36.4	37.0	0.6
F	104,979	955	52,697	7.1	36.7	36.7	37.4	0.7
G	105,719	778	47,756	7.9	36.7	36.7	37.4	0.7
H	106,469	1,005	62,300	6.0	37.4	37.4	38.1	0.7
I	110,312	895	43,115	8.7	37.6	37.6	38.1	0.5
J	111,912	550	44,879	8.4	38.1	38.1	38.9	0.8
K	113,540	520	31,029	12.1	39.3	39.3	40.0	0.7
L	115,130	820	54,496	6.9	42.7	42.7	43.4	0.7
M	118,034	578	37,630	10.0	44.0	44.0	44.7	0.7
N	122,034	1,440	64,809	5.8	46.1	46.1	46.8	0.7
O	125,434	800	46,296	8.1	46.2	46.2	46.9	0.7
P	126,834	1,370	55,501	6.8	46.8	46.8	47.5	0.7
Q	129,034	1,230	52,785	7.1	47.2	47.2	47.9	0.7
R	131,034	1,335	48,241	7.8	47.7	47.7	48.4	0.7
S	143,020	888	42,725	8.0	74.5	74.5	74.7	0.2
T	145,970	1,040	47,541	7.2	74.9	74.9	75.1	0.2
U	149,170	1,050	51,473	6.6	75.2	75.2	75.3	0.1
V	165,070	665	31,973	10.3	84.3	84.3	85.3	1.0
W	168,300	1,450	66,319	4.9	86.4	86.4	87.3	0.9
X	170,950	1,057	47,397	6.9	86.6	86.6	87.5	0.9
Y	174,825	1,100	52,109	6.3	87.5	87.5	88.4	0.9
Z	176,685	705	37,988	8.6	87.5	87.5	88.4	0.9

¹ Stream distance in feet above mouth
² Width/width within study area
³ Values calculated from original model prior redelineation

TABLE 5	FEDERAL EMERGENCY MANAGEMENT AGENCY CLACKAMAS COUNTY, OR AND INCORPORATED AREAS	FLOODWAY DATA
		WILLAMETTE RIVER

The floodways presented in this study were computed for certain stream segments on the basis of equal-conveyance reduction from each side of the floodplain. Floodway widths were computed at cross sections. Between cross sections, the floodway boundaries were interpolated. The results of the floodway computations are tabulated for selected cross sections (see Table 3, Floodway Data). In cases where the floodway and 1-percent-annual-chance floodplain boundaries are either close together or collinear, only the floodway boundary is shown.

The area between the floodway and 1-percent-annual-chance floodplain boundaries is termed the floodway fringe. The floodway fringe encompasses the portion of the floodplain that could be completely obstructed without increasing the WSEL of the base flood more than 1 foot at any point. Typical relationships between the floodway and the floodway fringe and their significance to floodplain development are shown in Figure 1.

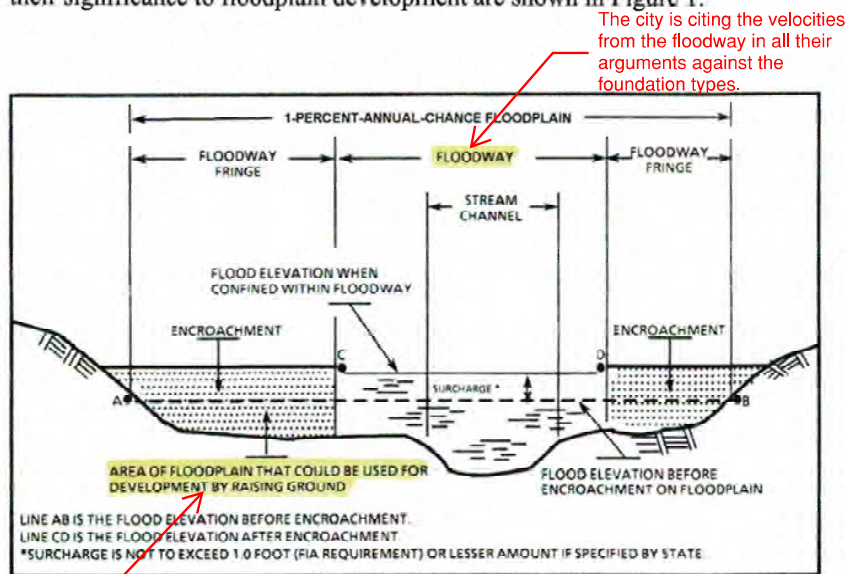


Figure 1. Floodway Schematic

This paragraph comes from FEMA Technical Bulletin 11.01 cited by the City.

WILLAMETTE RIVER CROSS SECTION 'E' OR RIVER MILE 19.1
HEC-RAS MODEL OUTPUT

Plan: DEM Willamette River Upper Portland RS: 19.1 Profile: 100-yr

E.G. Elev (ft)	36.84	Element	Left OB	Channel	Right OB
Vel Head (ft)	0.54	Wt. n-Val.	0.060	0.035	0.060
W.S. Elev (ft)	36.30	Reach Len. (ft)	2300.00	2480.00	2200.00
Crit W.S. (ft)		Flow Area (sq ft)	162.44	59326.75	9191.02
E.G. Slope (ft/ft)	0.000133	Area (sq ft)	162.44	59326.75	9191.02
Q Total (cfs)	375000.00	Flow (cfs)	153.87	357152.90	17693.23
Top Width (ft)	1951.43	Top Width (ft)	14.25	1335.39	601.79
Vel Total (ft/s)	5.46	Avg. Vel. (ft/s)	0.95	6.02	1.93
Max Chl Dpth (ft)	104.80	Hydr. Depth (ft)	11.40	44.43	15.27
Conv. Total (cfs)	32522960.0	Conv. (cfs)	13344.7	30975120.0	1534497.0
Length Wtd. (ft)	2473.28	Wetted Per. (ft)	26.89	1375.62	607.76
Min Ch El (ft)	-68.50	Shear (lb/sq ft)	0.05	0.36	0.13
Alpha	1.16	Stream Power (lb/ft s)	2225.00	0.00	0.00
Frctn Loss (ft)	0.18	Cum Volume (acre-ft)	461.16	50430.75	2894.99
C & E Loss (ft)	0.07	Cum SA (acres)	75.23	1028.68	163.34

NOTES TO USERS

This map is for use in administering the National Flood Insurance Program. It does not necessarily identify all areas subject to flooding, particularly from local drainage sources of small size. The community map repository should be consulted for possible updated or additional flood hazard information.

To obtain more detailed information in areas where **Base Flood Elevations** (BFEs) and/or **floodways** have been determined, users are encouraged to consult the Flood Profiles and Floodway Data and/or Summary of Stillwater Elevations tables contained within the Flood Insurance Study (FIS) report that accompanies this FIRM. Users should be aware that BFEs shown on the FIRM represent rounded whole-foot elevations. These BFEs are intended for flood insurance rating purposes only and should not be used as the sole source of flood elevation information. Accordingly, flood elevation data presented in the FIS report should be utilized in conjunction with the FIRM for purposes of construction and/or floodplain management.

Coastal Base Flood Elevations shown on this map apply only landward of 0.0' North American Vertical Datum of 1988 (NAVD 88). Users of this FIRM should be aware that coastal flood elevations are also provided in the Summary of Stillwater Elevations table in the Flood Insurance Study report for this jurisdiction. Elevations shown in the Summary of Stillwater Elevations table should be used for construction and/or floodplain management purposes when they are higher than the elevations shown on this FIRM.

Boundaries of the **floodways** were computed at cross sections and interpolated between cross sections. The floodways were based on hydraulic considerations with regard to requirements of the National Flood Insurance Program. Floodway widths and other pertinent floodway data are provided in the Flood Insurance Study report for this jurisdiction.

Certain areas not in Special Flood Hazard Areas may be protected by **flood control structures**. Refer to Section 2.4 "Flood Protection Measures" of the Flood Insurance Study report for information on flood control structures for this jurisdiction.

The **projection** used in the preparation of this map was Universal Transverse Mercator (UTM), zone 10. The **horizontal datum** was NAD83, GRS1980 spheroid. Differences in datum, spheroid, projection or UTM zones used in the production of FIRMs for adjacent jurisdictions may result in slight positional differences in map features across jurisdiction boundaries. These differences do not affect the accuracy of this FIRM.

Flood elevations on this map are referenced to the North American Vertical Datum of 1988. These flood elevations must be compared to structure and ground elevations referenced to the same **vertical datum**. For information regarding conversion between the National Geodetic Vertical Datum of 1929 and the North American Vertical Datum of 1988, visit the National Geodetic Survey website at <http://www.ngs.noaa.gov/> or contact the National Geodetic Survey at the following address:

NGS Information Services
NOAA, NGS12
National Geodetic Survey
SSMC-3, #5022
1315 East-West Highway
Silver Spring, MD 20910-3282

To obtain current elevation, description, and/or location information for **bench marks** shown on this map, please contact the Information Services Branch of the National Geodetic Survey at (301) 713-3242, or visit its website at <http://www.ngs.noaa.gov/>.

Base map information shown on this FIRM was derived from multiple sources. High resolution color orthophotos produced by Merrick & Co., Pictures, Inc., and Clean Water Services covered portions of the county. USGS Digital Quadrangles at a scale of 1:12000 or less dated 6/20/94 covered the remainder of the county.

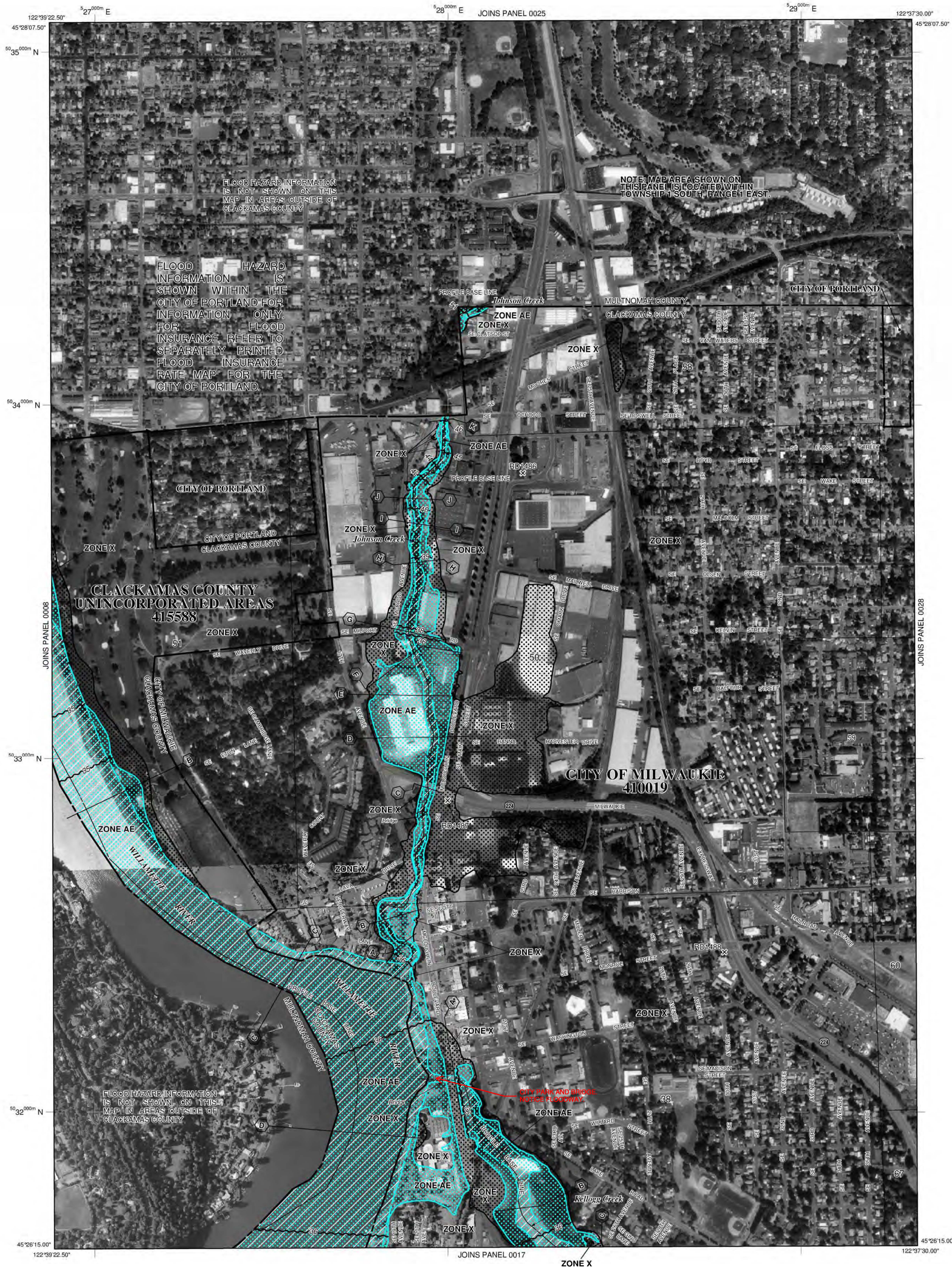
This map reflects more detailed and up-to-date **stream channel configurations** than those shown on the previous FIRM for this jurisdiction. The floodplains and floodways that were transferred from the previous FIRM may have been adjusted to conform to these new stream channel configurations. As a result, the Flood Profiles and Floodway Data tables in the Flood Insurance Study report (which contains authoritative hydraulic data) may reflect stream channel distances that differ from what is shown on this map.

Corporate limits shown on this map are based on the best data available at the time of publication. Because changes due to annexations or de-annexations may have occurred after this map was published, map users should contact appropriate community officials to verify current corporate limit locations.

Please refer to the separately printed **Map Index** for an overview map of the county showing the layout of map panels; community map repository addresses; and a Listing of Communities table containing National Flood Insurance Program dates for each community as well as a listing of the panels on which each community is located.

Contact the **FEMA Map Service Center** at 1-800-358-9616 for information on available products associated with this FIRM. Available products may include previously issued Letters of Map Change, a Flood Insurance Study report, and/or digital versions of this map. The FEMA Map Service Center may also be reached by Fax at 1-800-358-9620 and its website at <http://www.msc-fema.gov/>.

If you have **questions about this map** or **questions concerning the National Flood Insurance Program** in general, please call 1-877-FEMA MAP (1-877-336-2627) or visit the FEMA website at <http://www.fema.gov/>.



LEGEND

SPECIAL FLOOD HAZARD AREAS (SFHAs) SUBJECT TO INUNDATION BY THE 1% ANNUAL CHANCE FLOOD

The 1% annual chance flood (100-year flood), also known as the base flood, is the flood that has a 1% chance of being equaled or exceeded in any given year. The Special Flood Hazard Area is the area subject to flooding by the 1% annual chance flood. Areas of Special Flood Hazard include Zones A, AE, AH, AO, AR, A99, V and VE. The Base Flood Elevation is the water-surface elevation of the 1% annual chance flood.

- ZONE A** No Base Flood Elevations determined.
- ZONE AE** Base Flood Elevations determined.
- ZONE AH** Flood depths of 1 to 3 feet (usually areas of ponding); Base Flood Elevations determined.
- ZONE AO** Flood depths of 1 to 3 feet (usually sheet flow on sloping terrain); average depths determined. For areas of alluvial fan flooding, velocities also determined.
- ZONE AR** Special Flood Hazard Area formerly protected from the 1% annual chance flood by a flood control system that was subsequently decertified. Zone AR indicates that the former flood control system is being restored to provide protection from the 1% annual chance or greater flood.
- ZONE A99** Area to be protected from 1% annual chance flood by a Federal flood protection system under construction; no Base Flood Elevations determined.
- ZONE V** Coastal flood zone with velocity hazard (wave action); no Base Flood Elevations determined.
- ZONE VE** Coastal flood zone with velocity hazard (wave action); Base Flood Elevations determined.

FLOODWAY AREAS IN ZONE AE
The floodway is the channel of a stream plus any adjacent floodplain areas that must be kept free of encroachment so that the 1% annual chance flood can be carried without substantial increases in flood heights.

OTHER FLOOD AREAS
ZONE X Areas of 0.2% annual chance flood; areas of 1% annual chance flood with average depths of less than 1 foot or with drainage areas less than 1 square mile; and areas protected by levees from 1% annual chance flood.

OTHER AREAS
ZONE X Areas determined to be outside the 0.2% annual chance floodplain.
ZONE D Areas in which flood hazards are undetermined, but possible.

COASTAL BARRIER RESOURCES SYSTEM (CBRS) AREAS

OTHERWISE PROTECTED AREAS (OPAs)

CBRS areas and OPAs are normally located within or adjacent to Special Flood Hazard Areas.

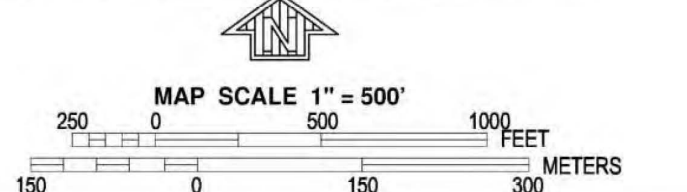
- 1% annual chance floodplain boundary
- 0.2% annual chance floodplain boundary
- Floodway boundary
- Zone D boundary
- CBRS and OPA boundary
- Boundary dividing Special Flood Hazard Areas of different Base Flood Elevations, flood depths or flood velocities.
- Base Flood Elevation line and value; elevation in feet*
- Base Flood Elevation value where uniform within zone; elevation in feet*

* Referenced to the North American Vertical Datum of 1988 (NAVD 88)

- Cross section line
- Transect line
- Geographic coordinates referenced to the North American Datum of 1983 (NAD 83)
- 1000-meter Universal Transverse Mercator grid ticks, zone 10
- 5000-foot grid ticks: Oregon State Plane coordinate system, north zone (FIPSZONE 3601), Lambert Conformal Conic
- Bench mark (see explanation in Notes to Users section of this FIRM panel)
- River Mile
- MAP REPOSITORIES
- Refer to Map Repositories list on Map Index
- EFFECTIVE DATE OF COUNTYWIDE FLOOD INSURANCE RATE MAP
- June 17, 2008
- EFFECTIVE DATE(S) OF REVISION(S) TO THIS PANEL

For community map revision history prior to countywide mapping, refer to the Community Map History table located in the Flood Insurance Study report for this jurisdiction.

To determine if flood insurance is available in this community, contact your insurance agent or call the National Flood Insurance Program at 1-800-638-6620.



PANEL 0009D

FIRM
FLOOD INSURANCE RATE MAP
CLACKAMAS COUNTY,
OREGON
AND INCORPORATED AREAS

PANEL 9 OF 1175
(SEE MAP INDEX FOR FIRM PANEL LAYOUT)

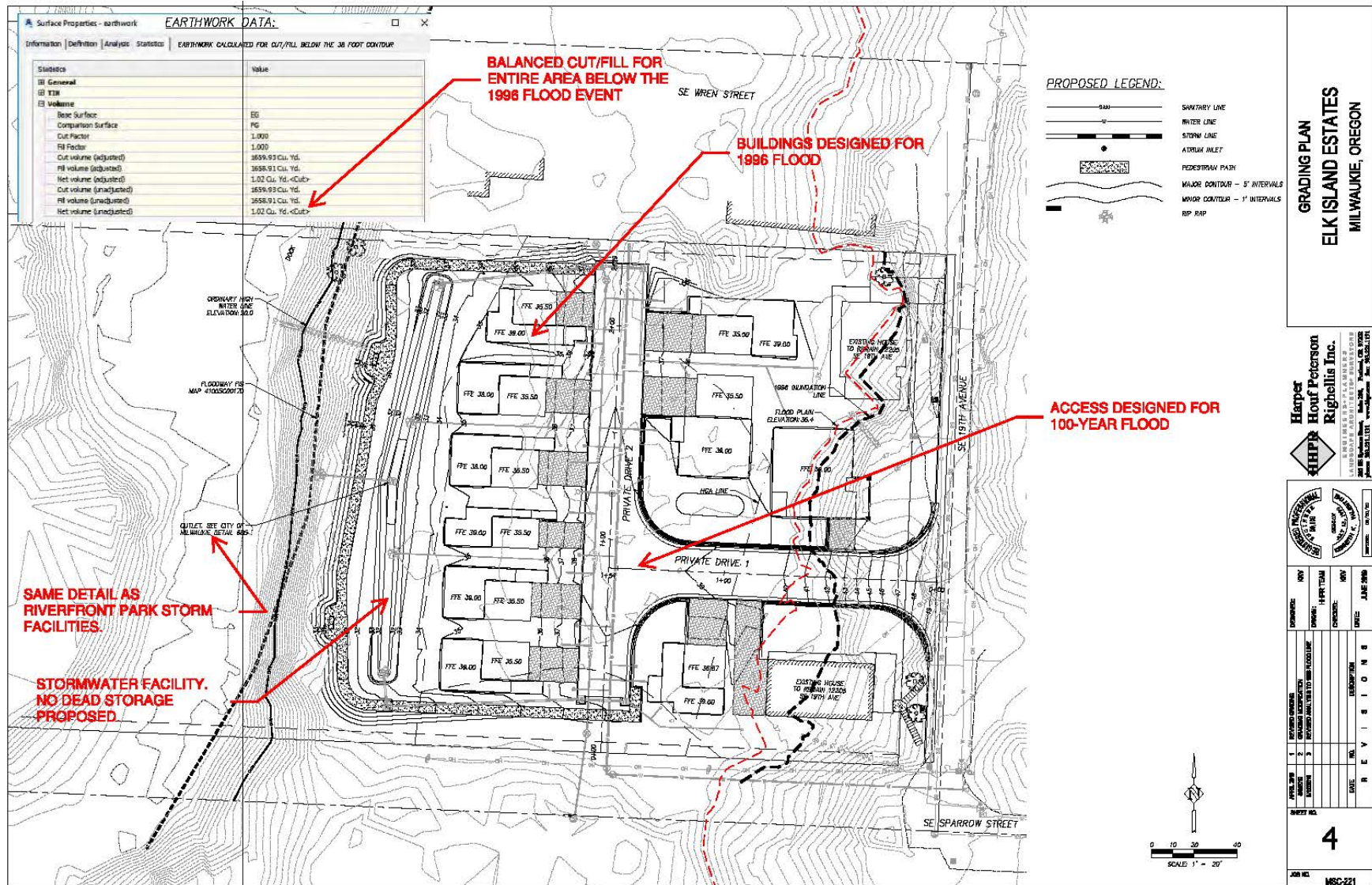
CONTAINS:	NUMBER	PANEL	SUFFIX
COMMUNITY			
CLACKAMAS COUNTY	415588	0009	D
MILWAUKIE, CITY OF	410019	0009	D

Notice to User: The **Map Number** shown below should be used when placing map orders; the **Community Number** shown above should be used on insurance applications for the subject community.



MAP NUMBER
41005C0009D
EFFECTIVE DATE
JUNE 17, 2008

Federal Emergency Management Agency



Job No.: MSC-221
Date: August 5, 2019
To: Vera Kolias, AICP
City of Milwaukee
From: Ken Valentine, PE



Project/Subject: Elk Rock Estates – Planning Commission Hearing

Vera,

During the planning commission hearing several issues and comments were made that I would like to respond to. There are also several code issues that we feel should be addressed for clarity.

1. MC 18.04.150 (F) states that any excavation below bankfull stage shall not be counted toward compensating fill. The MC does not define “bankfull”; however, during the hearing staff stated that Metro defines bankfull as the 2-year event.

Response: The applicant team respectfully disputes staff’s findings that water quality facility earthwork cannot be included in the cut/fill calculations. These improvements are perceived by staff as below the bankfull elevation. However, based on the definitions provided in the Metro Code and OAR, the applicant believes the earthwork associated with these facilities is not below the bankfull elevation.

Metro Title 10 (fff) states that “top of bank” means the same thing as “bankfull stage” defined in OAR 141-085-0510(5). OAR 141-085-0510(5) states “bankfull stage” means the two-year recurrence flood elevation. The 2-year flow in the Willamette River is approximately 329,000 cfs. The bank full stage was determined to be approximately elevation 29 (NAVD 88) by routing the event through a HECRAS hydraulic model. This number will be confirmed during the final stage of design. The lowest cut elevation as proposed in the preliminary design is at elevation 31 (NAVD 88). Therefore all of the proposed cut is above the bank full stage and should be counted toward the balanced cut/fill calculations. We request the following condition of approval: “The applicant shall show that the cut/fill calculations meet the intentions of MC 18.04.150(F).”

2. 100-year event vs 1996 flood. The comp plan objective #1 (3) states that the finished elevations of the lowest floor of buildings and streets will be a minimum of 1.0 foot above the 100 year flood event. The base flood as designated on maps always includes the letter A. Section 18.04.030 states “base flood” means the flood having a one percent chance of being equaled or exceeded in any given year. Section 18.04.160 (A) states, “New construction and substantial improvement of any residential structure shall have the lowest floor, including basement, elevated one foot above “base flood elevation”.”

Response: The MC and comp plan provide clear language referencing the base flood elevation relates to the FEMA base flood elevation. The comp plan nor the MC list the 1996 flood elevation

when referring to the finish floor elevations or roads. The preliminary design, as previously submitted, met the standard of one foot above the base flood elevation. The City indicated just before the hearing that the buildings should be designed to be one foot above the 1996 flood contrary to all code flood references related to finish floor elevations. The 1996 flood is not the base flood and was somewhere between the base flood and the 500 year flood. The base flood has a discharge rate of 375,000 cubic feet per second (cfs), the 500-year event has a discharge rate of 450,000 cfs and the 1996 event had a peak discharge of 459,000 cfs. The developer has agreed to adjust the finish floor elevations of the homes to one foot above the 34.5 (NGVD) 1929 in an effort to address the concerns for mitigation flood impacts, despite the code inconsistencies. However, the driveway that provides access to the homes is designed to be one foot above the 100-year base flood elevation, as stated in the comp plan and the definition of “base flood” in the MC. Since Comprehensive Plan objective #1 identifies only streets and the lowest floors of buildings are subject to this requirement, more discretion and flexibility can be used in the requirement for the base flood elevation of the driveway. The design team requests that the City approve the project with a condition that the grading meets the language referencing the 100-year flood plain base flood elevation defined in the MC and comprehensive plan.

3. Balanced Cut/Fill. 18.04150 (F) provides language providing direction for placement of fill or structures that displaces greater than 10 cubic yards of flood storage area. The codes states that no NET fill in any floodplain is allowed. Section 18.04.050(F)(2)(d)(1) states that the proposed excavation fill not increase flood impacts for surrounding properties as determined through hydrologic and hydraulic analysis.

Response: The preliminary plans have demonstrated that the project will not have a NET increase of fill in the floodplain. During the final design process a “no rise” analysis will be prepared in accordance with FEMA’s procedures for “No-Rise” Certification process. The developer requests that the project be approved with the condition to certify a “No-Rise” in accordance with standard engineering practice and that the encroachment will not increase flood levels within the community during the occurrence of the base 100-year flood discharge.

We have included a cut/fill exhibit to assist staff in understanding the proposed grading plan and how the proposed grading plan meets the cut/fill requirements.

4. Foundations and crawlspaces. MC 18.04.030 defines a basement as any areas of the building having its floor subgrade below grade on all sides. This section also states “lowest floor” means the lowest floor of the lowest enclosed area (including basement and any crawlspace that is below grade). The code seems to indicate that the crawlspace floor is the lowest floor and must be elevated one foot above the base flood elevation. However, MC 18.04.150 (G) states that below grade crawlspaces are allowed subject to FEMA Technical Bulletin 1101. Section 18.04.150 (G)(2) states the crawlspace is an enclosed area below the base flood elevation (BFE) and, as such, must have openings that equalize hydrostatic pressures by allowing the automatic entry and exit of flood waters. The MC states that crawlspace construction is not allowed in areas with flood velocities greater than 5 feet per second UNLESS the design is reviewed by a qualified design professional, such as a registered architect or professional engineer. The code does not outright prohibit crawlspaces below the BFE or in areas with flood velocities greater than 5 feet per second. The code requires that the foundations and crawlspaces are designed to resist hydrostatic pressures.

Response: The project intends to utilize traditional stem wall foundations with crawlspaces where feasible. The foundations will be designed in accordance with FEMA Technical bulletin 1101.



The crawl spaces below the BFE will not be more than two feet below the adjacent exterior grade and the interior grade of the crawlspace will not exceed four feet at any point. If, for any reason, the final design finds these conditions cannot be met, alternate foundations will be proposed in accordance with FEMA guidelines. The exact type of foundation and crawlspace should not be considered for this land use submittal. The design team requests approval of the project with a condition to meet the MC foundation requirements.

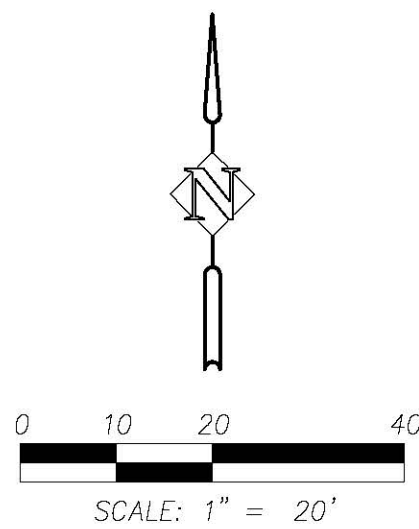
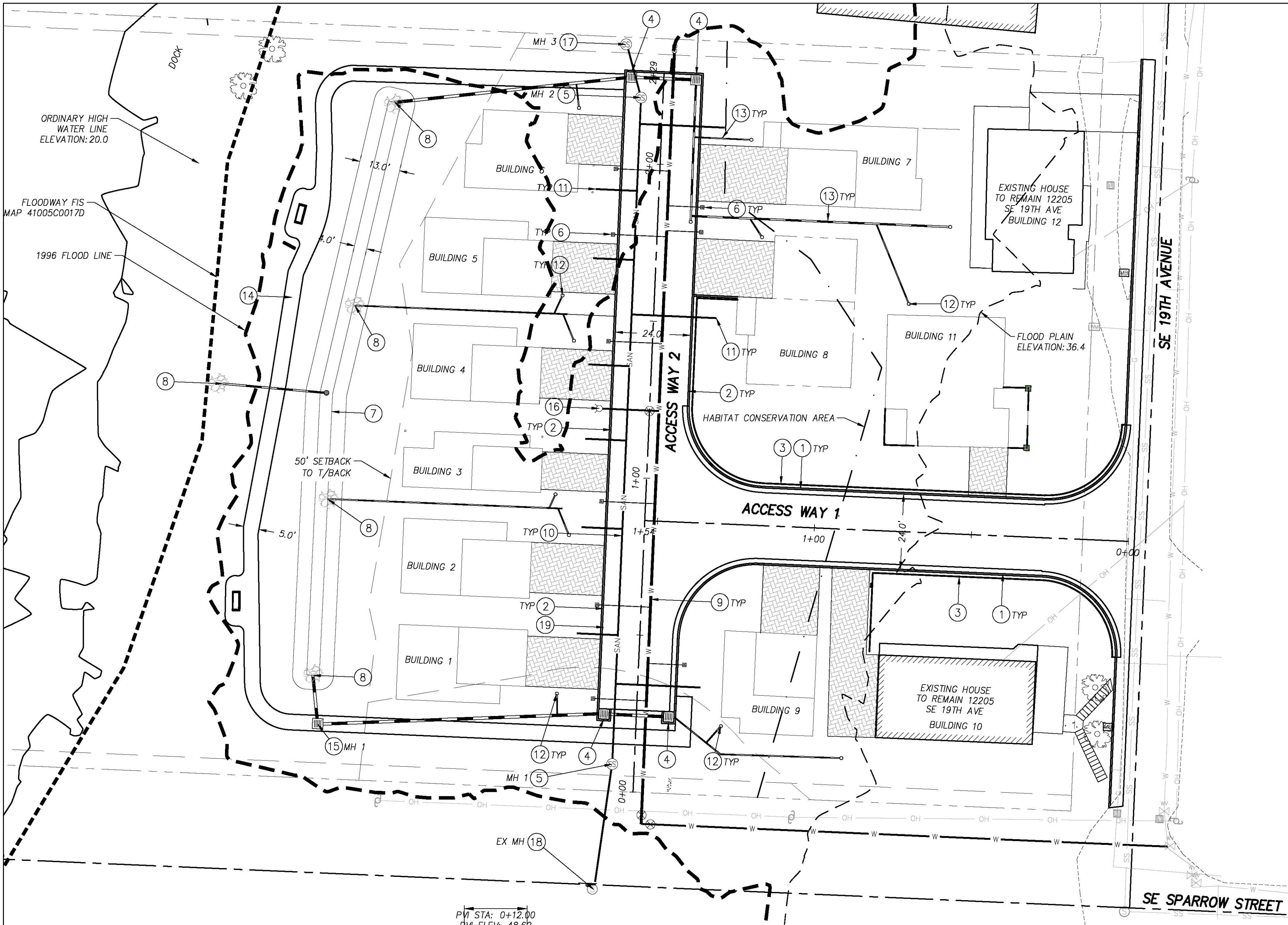
5. General Floodplain Standards

The project has proposed improvements within the regulated floodplain and has demonstrated that it can be constructed to comply with all requirements. The access has been designed to be one foot above the 100-year base flood elevation (BFE) and the proposed structures will be set one foot above the 1996 flood elevation of 38 msl NAVD 1988. These standards are higher than any other jurisdiction in the metro area. Typically roadways are not required to meet this standard and driveways are never required to unless they include a bridge over a regulated floodplain. Bridges are required to have the bottom chord one foot above the BFE. Buildings are required to have their lowest habitable floor elevation to be one foot above the BFE. In this case the finish floors are proposed to be set higher than the highest flood event ever recorded for the Willamette River. The proposed design exceeds regional and national standards. The proposed river model has already been approved by FEMA for a Trimet project. The model will be further refined and will be submitted to FEMA during the Letter of Map Revision process.

The design team has provided a preliminary design with ample evidence to prove that the project can be designed to meet the municipal code and comprehensive plan. We request that the City approve the application with conditions of approval.

Sincerely,

Ken K Valentine
Ken Valentine, PE

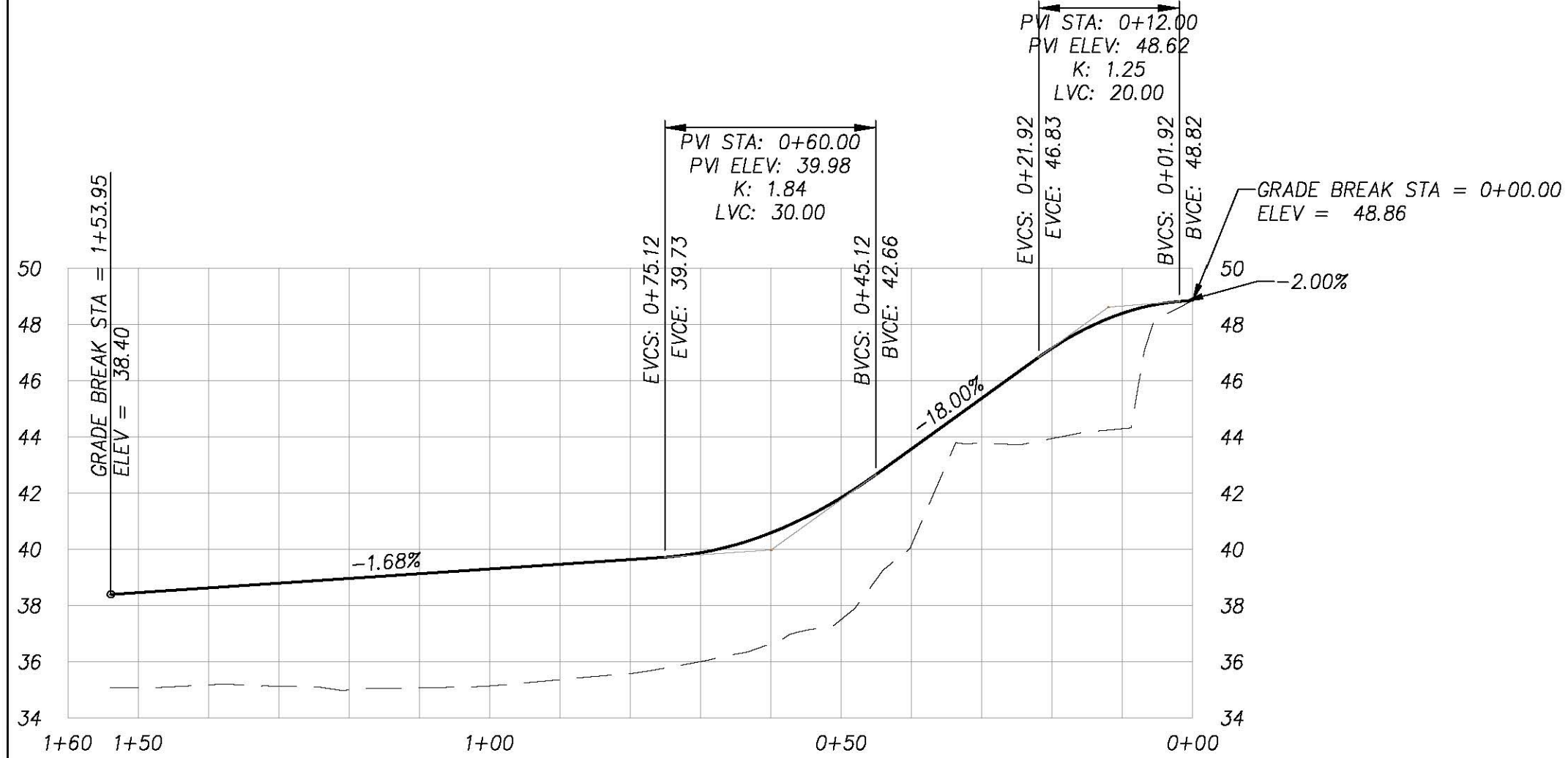


CONSTRUCTION NOTES:

- 1 INSTALL STANDARD CURB AND GUTTER.
- 2 INSTALL MOUNTABLE CURB.
- 3 INSTALL MODULAR BLOCK RETAINING WALL.
- 4 INSTALL STANDARD CATCH BASIN.
- 5 INSTALL 48" STANDARD SANITARY MANHOLE
- 6 INSTALL WATER METER
- 7 CONSTRUCT WATER QUALITY SWALE. SEE SHEET 6 FOR DETAIL.
- 8 CONSTRUCT STORM WATER OUTFALL WITH RIPRAP
- 9 INSTALL 8" WATER LINE
- 10 INSTALL 8" SANITARY SEWER LINE
- 11 INSTALL SANITARY SEWER LATERAL
- 12 INSTALL STORM CLEANOUT
- 13 INSTALL STORM SEWER LATERAL
- 14 CONSTRUCT PEDESTRIAN TRAIL
- 15 INSTALL 48" STANDARD STORM MANHOLE
- 16 INSTALL FIRE HYDRANT
- 17 INSTALL STANDARD 48" SANITARY MANHOLE OVER EXTG. 8" SANITARY LINE. PLUG AND ABANDON EXTG. SANITARY PIPE TO THE SOUTH. CONTRACTOR TO POTHOLE AND VERIFY LOCATION AND ELEVATION PRIOR TO CONSTRUCTION.
- 18 CONNECT TO EXTG. SANITARY MANHOLE. PLUG AND ABANDON EXTG. SANITARY PIPE TO THE NORTH.
- 19 ABANDON EXTG. SANITARY SEWER IN PLACE, REMOVE PORTIONS OF PIPE THAT ARE IN CONFLICT WITH PROPOSED FACILITIES.

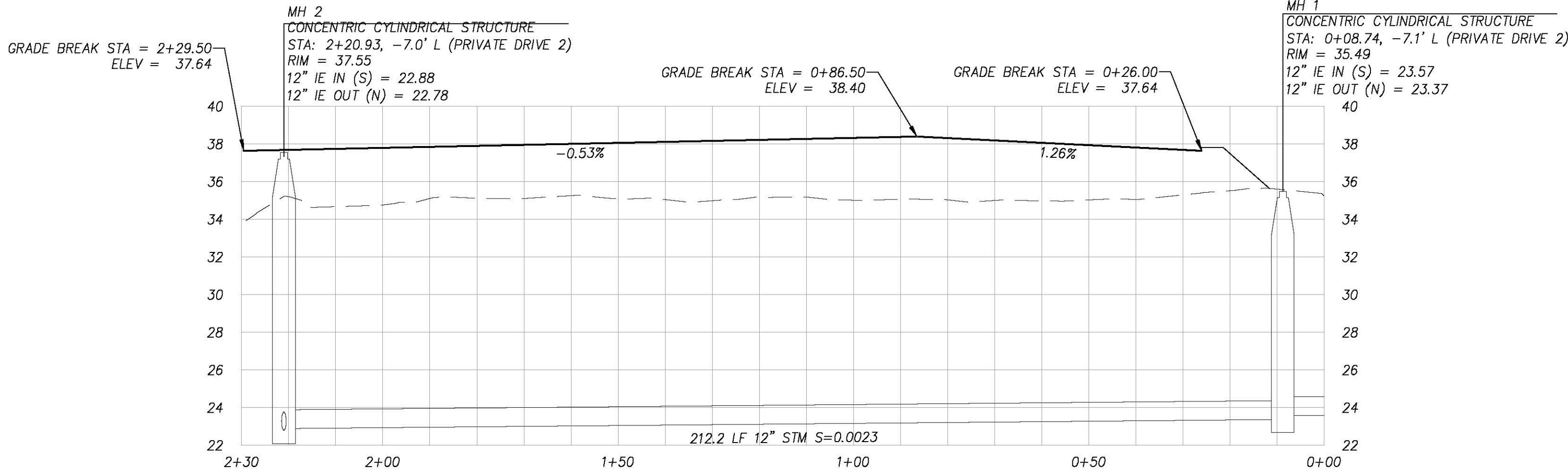
PROPOSED LEGEND:

- SAN SANITARY LINE
- W WATER LINE
- STORM LINE
- CURB
- ATRIUM INLET
- PEDESTRIAN PATH
- MAJOR CONTOUR - 5' INTERVALS
- MINOR CONTOUR - 1' INTERVALS
- STORM MANHOLE
- SANITARY MANHOLE
- CLEANOUT
- CATCH BASIN
- FIRE HYDRANT



ACCESS WAY 1

SCALE: 1" = 20' (HORIZ.)
1" = 5' (VERT.)

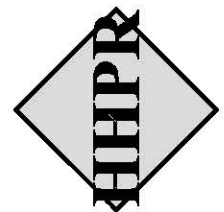


ACCESS WAY 2

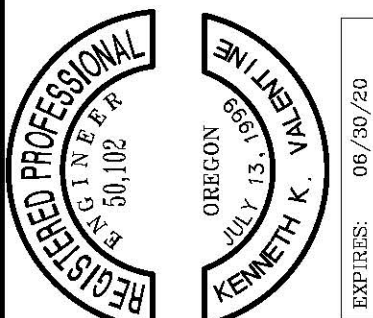
SCALE: 1" = 20' (HORIZ.)
1" = 5' (VERT.)

SITE AND UTILITY PLAN
ELK ISLAND ESTATES
MILWAUKIE, OREGON

Harper Houf Peterson
Righellis Inc.



ENGINEERS+PLANNERS
LANDSCAPE ARCHITECTS+SURVEYORS
205 SE Spokane Street, Suite 200, Portland, OR 97202
phone: 503.221.1131 www.hhp.com fax: 503.221.1171

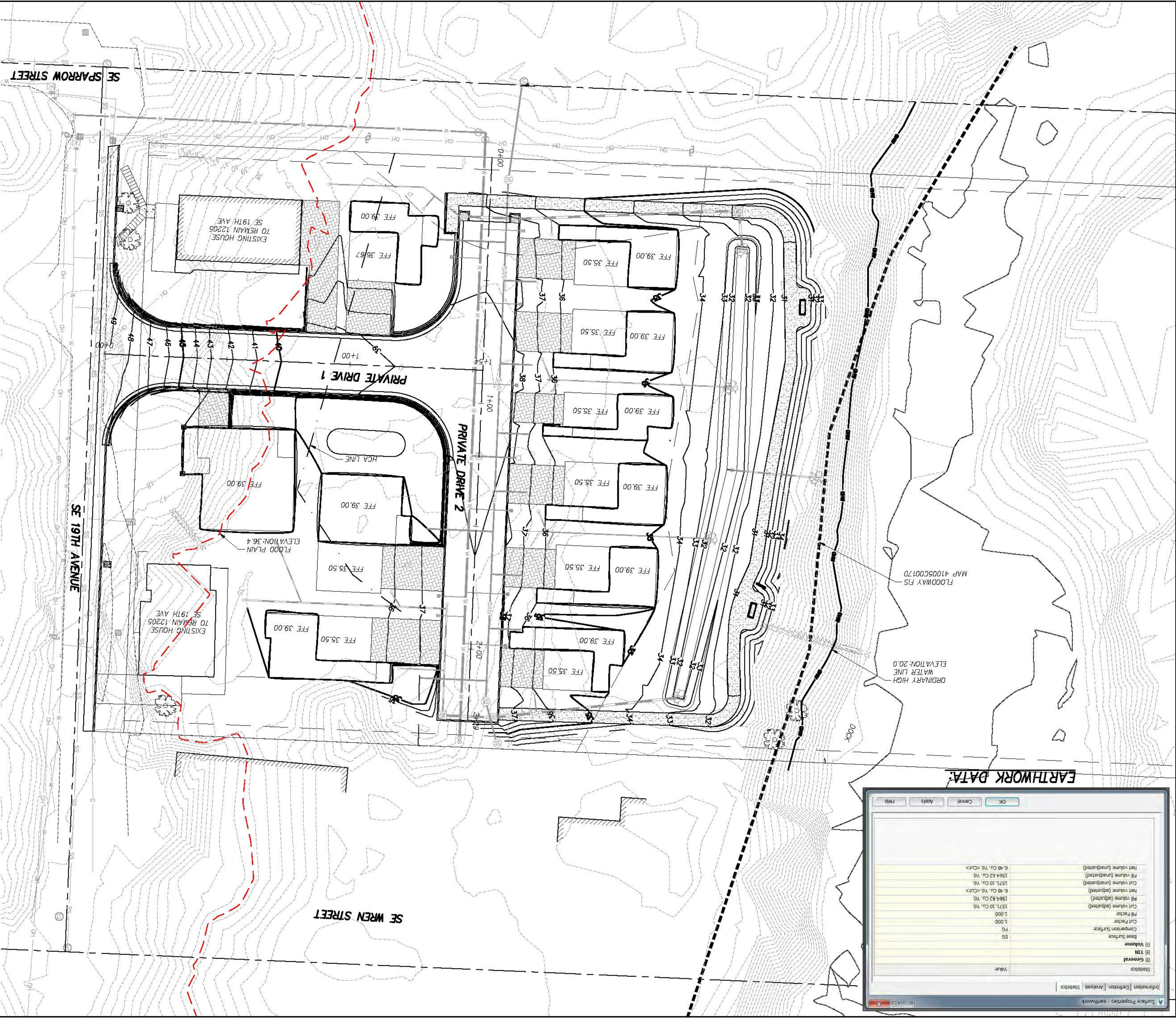


DESIGNED:	KKV
DRAWN:	HHPR TEAM
CHECKED:	KKV
DATE:	JUNE 2019

APRIL 2019	REVIS	NO.	DESCRIPTION
1	1		REVISED GRADING
2	2		GRADING MODIFICATION

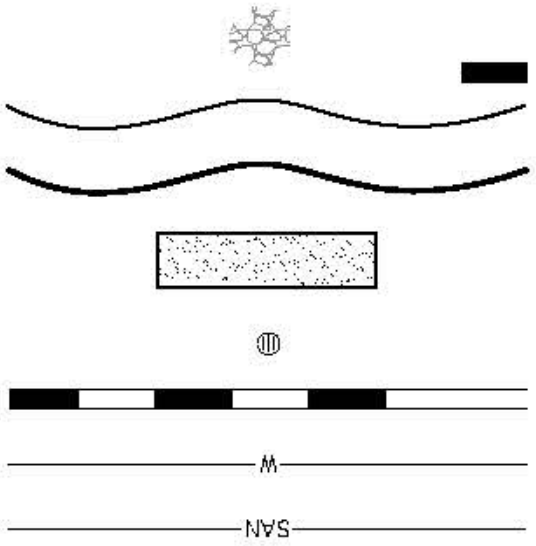
SHEET NO. 3

JOB NO. MSC-221



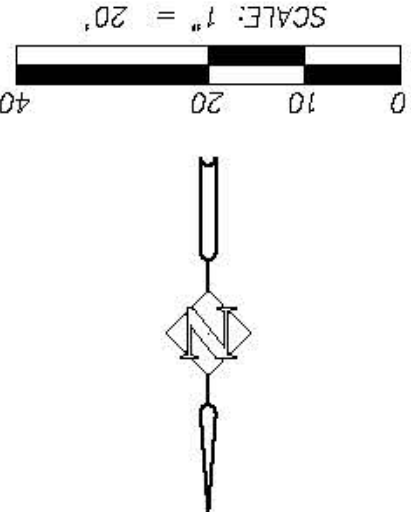
EARTHWORK DATA:

Statistics	Value
General	
TIM	
Volume	
Base Surface	EG
Comparison Surface	PG
Fill Factor	1.000
Net volume (adjusted)	1571.10 Cu. Yd.
Fill volume (adjusted)	1564.62 Cu. Yd.
Net volume (adjusted)	6.48 Cu. Yd. <cut>
Fill volume (unadjusted)	1571.10 Cu. Yd.
Fill volume (unadjusted)	1564.62 Cu. Yd.
Net volume (unadjusted)	6.48 Cu. Yd. <cut>



PROPOSED LEGEND:

- SANITARY LINE
- WATER LINE
- STORM LINE
- ATRIUM INLET
- PEDESTRIAN PATH
- MAJOR CONTOUR - 5' INTERVALS
- MINOR CONTOUR - 1' INTERVALS
- RIP RAP



JOB NO.		MSC-221	
SHEET NO.		4	
APRIL 2019	1	REVISED GRADING	
8/5/2019	2	GRADING MODIFICATION	
DATE	NO.	DESCRIPTION	
R	E	V	I
S	I	O	N
S			
DESIGNED:		KKV	
DRAWN:		HHPR TEAM	
CHECKED:		KKV	
DATE:		JUNE 2019	
REGISTERED PROFESSIONAL ENGINEER No. 13,182 KIMBERLY K. VENTURA 06/20/20 EXPIRES: 06/30/20			

Harper Houf Peterson Righellis Inc.

ENGINEERS+PLANNERS
LANDSCAPE ARCHITECTS+SURVEYORS
205 SE Spokane Street, Suite 200, Portland, OR 97202
phone: 503.221.1131 www.hhp.com fax: 503.221.1171

GRADING PLAN
ELK ISLAND ESTATES
MILWAUKEE, OREGON

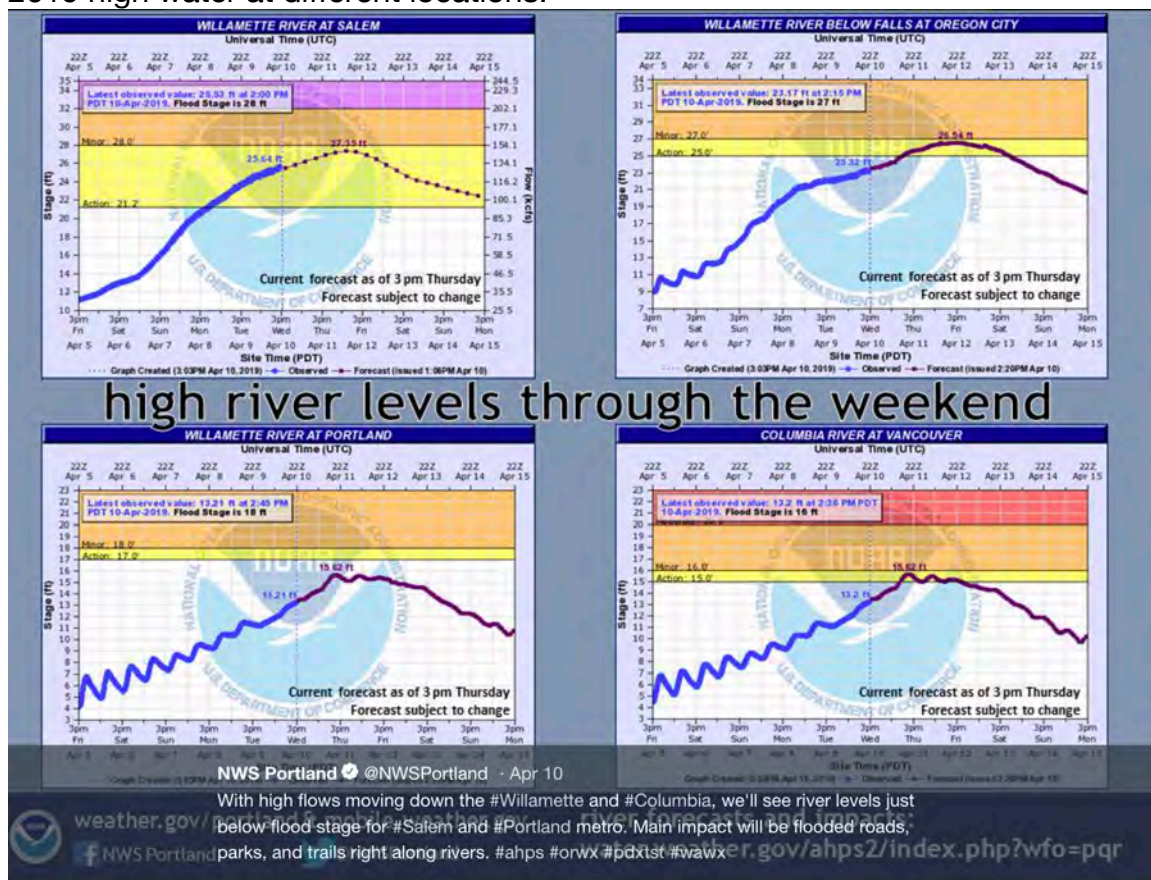
Planning Commission Questions and Responses.

How often would the storm water facility be inundated by flood waters?

The only time we know that area was flooded was in the 1996 flood. The 96' flood was estimated to be around the flow volume of a 500-year flood event. The site where bio swell is to be located has not been flooding since 1996. The bio swell is designed per the Milwaukie municipal code.

Flooding of mitigation site. - It was stated at the planning commission that the mitigation site was under water half the year. This is not correct; our site was still above water in April 2019 high water as seen in the photos below. This data shows that mitigation site would rarely flood. It would probably only flood once every 5-10 years based off the cresting data from the National Weather Service.

There is no direct data to the flooding of the mitigation site. There is only data from Oregon City below the falls and downtown Portland. Based on the Data found from the national weather service; I believe there is only 2-3 events in the last 20 years (possibly 4-5 events since 1996) that may have possibly flooded the mitigation site , based on Aprils photos of the mitigation site, and recent cresting data from National Weather Service. This graph represents the April 2019 high water at different locations.



The pictures below show our mitigation site still above water during the April High Water event.



April 2019



Recent Crests

- (1) 29.00 ft on 01/22/2012
- (2) 28.34 ft on 01/14/2006
- (3) 27.65 ft on 01/11/2006
- (4) 27.52 ft on 01/02/2006
- (5) 23.06 ft on 11/27/1999
- (6) 29.56 ft on 12/30/1998
- (7) 36.79 ft on 01/02/1997
- (8) 46.04 ft on 02/09/1996
- (9) 29.30 ft on 02/26/1986

Oregon City Data

Recent Crests

- (1) 17.30 ft on 03/30/2017
- (2) 17.20 ft on 06/02/2011
- (3) 28.55 ft on 02/09/1996
- (4) 18.90 ft on 02/24/1986
- (5) 20.10 ft on 02/21/1982

[Show More Recent Crests](#)

Portland Cresting Data

Question from staff report- What Remodeling will be done to existing houses?

We have already done a cosmetic remodel to 12225 se 19th ave. We fixed the electrical and cleaned it up so it is nice and livable. We currently have no plan to do any additional remodeling at this time. If we decided to do a remodel we would only be putting a staircase in to the lower level. Approximately 10K of cost. And do some cosmetic upgrades.

12205- We will eventually remodel this house, but it will only be to put a staircase in between the levels (approximately 10k) and do some minor cosmetic upgrades. It's already in great condition inside.

I would expect less than 40K to be put into each house if we decided to remodel them in the future.

Views from Elk Rock Island and the Spring Water Park?

Although the city stated they interpreted the view criteria to be from 19th, we will have little to no view impact from Elk Rock Island and the Spring Water Park Trail. This was actually taken the day before the planning commission hearing by John from ETC Environmental. This question was asked at the planning commission, and this photo shows the private island would block views of the

development from Elk Rock. You can only see houses that are a few lots north of the site. So there should be little to no impact to views from Elk Rock Island.



Views From the Springwater Park Trail?

There will be very little to no impact to views from Springwater Park Trail. The photos below taken from the closest two view points from the trail and show that the trees and foliage already block the views of the proposed development site.



Dear Honorable Planning Commission,

We have been working on this project for the past 2 years to create a beautiful development that blends with the neighborhood and meets all the code criteria. I have spent over \$200,000 in engineering and associated costs to create the best possible project for the neighborhood, while meeting the code criteria. We have submitted hundreds of pages of documentation, and engineering reports. We have continuously adjusted the plans to work with the city and make sure we meet all the code criteria. Our documentation is very thorough, but it is meant for planning approval and we will have final engineering completed per Milwaukie Municipal Code prior to issuance of building permits. Our documentation has proven we can meet all the code criteria. I ask that you would please approve this project with conditions.

Thanks
Matt Gillis



Environmental Technology Consultants

A Division of Sisul Enterprises, Inc.

PO Box 821185, Vancouver, WA 98682

(360) 696-4403 Fax: (503) 657-5779

WA Landscape Contractors License #: ENVIRTC023RB

Web: www.etcEnvironmental.net

www.SisulEngineering.com

Email: etc@etcEnvironmental.net

July 23, 2019

To: Matthew Gillis
Gillis Properties, LLC

RE: ETC response to the Planning Commission Staff Report dated July 16, 2019
REF: Master File #NR-2018-005 (12205 & 12225 SE 19th Ave).

Dear Mr. Gillis,

I have commented on the above referenced staff report for items which are in my involvement with the project, which are HCA and mitigation items. I have copied the verbiage from the staff report, then provided comment following each item.

Mitigation

In the final proposed alternative, the applicant proposes to mitigate for natural resource impacts in the western portion of the parcels to the west of the slough (see Figure 7). The overall concept is to plant a wide variety of native shrubs, trees and groundcover with the aim that suitable species will establish and others may not. As noted by ESA, the proposed mitigation site appears suitable **but is anticipated to be challenging because of its position in the Willamette River floodplain**, periodic flooding, the existing extent of weeds, and presence of shallow bedrock in some areas. Despite the potential challenges, ESA notes that several of the native shrubs and trees are anticipated to establish given adequate irrigation and maintenance. However, it is unknown if the majority of the plantings will thrive in these conditions.

RESPONSE: The island currently supports a number of large trees and shrubs. We note that restoration work on Elk Rock faced these same challenges, yet it appears to be a success.

Restoration plantings usually have a high failure rate, some trial and error is almost always required to determine what plants will thrive in a given location. A lot of effort and persistence is required to make it work.

5.1 Page 13

Based on the analysis and inventory of this area, ESA has recommended that the total area of **41,708** sq ft should be used while preserving existing native trees and saplings as well

as the standing dead trees (snags) which provide perches for birds. The total mitigation would consist of 385 trees and 1,925 shrubs so the entire mitigation area would likely need to be used.

RESPONSE: We can comply and expand the mitigation to include all of the estimated available space of 41,708 SQFT. ETC has recommended this as the mitigation is more likely to be successful if all the vegetation is managed in the area, rather than artificially constraining the efforts to a defined 38,500 SQFT area. Recommend this be a condition of approval.

Because the island area is largely fill material with a compacted clay mix soil, the applicant states that the entire area will be **plowed up** with new mulch and compost brought in to prepare the soils for planting.

RESPONSE: The mitigation plan does not propose to do any plowing. This is a misinterpretation of what was proposed. Plowing the entire area would be a mistake in our opinion.

The soils appear to be suitable on-site, although site preparation and weed control will need to be thorough and will require several site visits and treatments. The fact that there are Oregon ash and black cottonwood saplings/trees on-site means that there are suitable conditions for these native plants. Floodplains can support wooded areas and the species that generally thrive in floodplains include Oregon ash, black cottonwood, willows, and red alder. Oak trees can also handle winter flooding as long as the soils dry out in the summer. Some plant loss and mortality should be expected due to flooding. The code requires 80% survival so an ongoing maintenance program would be needed.

RESPONSE: Mulch and compost are standard materials required by many jurisdictions as it increases the survivability of mitigation plantings, and provides erosion control for disturbed soils. However if the city determines that this material needs to be included in a floodplain no-net-rise analysis, we can address this by mulching materials already on site. We would mulch invasive species and woody debris already on site, and so not bring in new materials that may cause floodplain issues. This is doable, however ETC recommends bringing in mulch. Mulch is not generally considered a fill material for floodplain no-net-rise considerations, as mulch will float away with a flood rather than displacing water.

The applicant should provide information about how they will access the mitigation area to perform the required work. Given that this area is separated from the development portion of the site by the slough, a detailed plan that shows access points is necessary. Should the outstanding issues regarding the alternatives analysis and access to the mitigation area for the planting work be resolved, several conditions of approval are recommended, including the following:

RESPONSE: Foot access is available in the summer time using the same Spring Park pathways that provide public access to Elk Rock Island. Winter access, or when bringing in equipment can be accomplished using boats launched from a number of private and public docks and boat launches near the site. A map showing these access points will be provided.

- Provide a detailed planting plan that shows existing native trees/shrubs to be

retained, a typical planting scheme (40 x 40'), and details on site preparation and maintenance including timing and frequency for weed control. Show mitigation site access, where signage will be posted and how irrigation will be provided across the slough.

RESPONSE: This should be a final condition of approval, as the survey work to locate the existing native trees and shrubs will require considerable blackberry removal, which will need to be done as part of the mitigation work.

- Submit a revised planting list that reflects that vine maple is not a tree and tall shrubs should not be substituted for trees.

RESPONSE: Vine maples will be moved from the tree list to the shrub list, and numbers in both lists adjusted accordingly.

- Submit a revised mitigation monitoring report that replaces the proposed criteria for total percent cover of native species stratum with "the percent cover of invasive herbaceous species shall be no greater than 20%." This is the average of the options provided which were either 10 percent or 30 percent based on the extent of woody vegetation.

RESPONSE: The revised report format will simplify the DSL protocols per the above.

- Remove trash and debris from transient camps that have been established on site.

RESPONSE: Trash and debris will be removed from the site.

- Submit an updated mitigation monitoring and maintenance plan and monitoring report forms. Extended on-going monitoring, including a repair and restoration program, is required to address flood damage. The timeframe for this extended monitoring program is 10 years.

RESPONSE: The maintenance plan will be expanded to show that the mitigation will be repaired, if practicable, following catastrophic events such as fire or flood.

Extending the monitoring program beyond 2 years is not required by the MMC.

If an extended monitoring period is required, responsibility for this will be transferred to the HOA, and funded by HOA dues. ETC recommends that the HOA's CCRs be written to detail how HOA dues will be set aside to fund the restoration efforts. We have seen HOAs struggle with the management of common areas.

5.1 Page 14

Summary of Issues

As noted above, the application does not adequately address all code requirements.

A summary of the issues or deficiencies is provided below:

1. Staff questions whether there is an alternative that provides 12 units that are built closer to 19th Ave, that provides parking from below, and that are clustered as much as possible away from the HCA and the floodplain.

RESPONSE:

2. Is the proposed mitigation area appropriate given its propensity to flood and its current natural state?

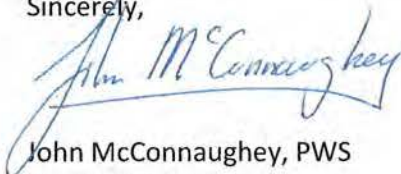
RESPONSE: Many restoration projects target riparian and other flood prone areas. These areas represent some of the most valuable habitats in the area, and that they are in harms way should not and does not preclude them from consideration as mitigation or restoration sites.

Examples of other projects in harms way are the restoration efforts ongoing the Spring Park Natural Area and on Elk Rock Island. This mitigation project has the potential to complement and expand on these efforts.

The mitigation area currently is mostly populated by plant species considered invasive and undesirable by the MMC. This has been documented by the City's consultant. Unfortunately this is the "natural state" of many abandoned properties in the area, and considerable public monies have been expended in efforts to remove invasive species and replace them with native species. Elk Rock and Spring Park are examples of such areas where restoration efforts are ongoing.

5.1 Page 15

Sincerely,



John McConnaughey, PWS
Wetland Scientist

1 BEFORE THE LAND USE BOARD OF APPEALS
2 OF THE STATE OF OREGON
3

4 JILL WARREN,
5 *Petitioner,*
6

7 vs.

11/14/18 AM 11:35 LUBA

8
9 WASHINGTON COUNTY,
10 *Respondent,*
11

12 and
13

14 VENTURE PROPERTIES, INC.,
15 *Intervenor-Respondent.*
16

17 LUBA No. 2018-089
18

19 FINAL OPINION
20 AND ORDER
21

22 Appeal from Washington County.
23

24 Kenneth P. Dobson, Portland, filed the petition for review and argued on
25 behalf of petitioner.
26

27 No appearance by Washington County.
28

29 Michael C. Robinson, Portland, filed the response brief. Garrett H.
30 Stephenson, Portland, argued on behalf of intervenor-respondent. With them on
31 the brief was Schwabe, Williamson & Wyatt P.C.
32

33 RYAN, Board Chair; BASSHAM, Board Member; ZAMUDIO, Board
34 Member, participated in the decision.
35

36 AFFIRMED

11/14/2018
37

1 You are entitled to judicial review of this Order. Judicial review is
2 governed by the provisions of ORS 197.850.

NATURE OF THE DECISION

Petitioner appeals a hearings officer's decision approving a six-lot subdivision.

REPLY BRIEF

Petitioner moves for permission to file a reply brief to respond to new matters raised in the response brief. Intervenor-respondent Venture Properties, Inc. (intervenor) objects that Section 2 of the reply brief challenges a finding that petitioner failed to challenge in the petition for review. Because the issues that Section 2 of the reply brief and intervenor's objection to it address are not germane to our disposition of the appeal, and because resolving the dispute would lengthen an already long opinion, we allow the reply brief.

FACTS

Intervenor applied for approval of a six-lot subdivision on land located in the county. The subject property is a 2.8-acre parcel zoned R-5 (Residential 5 Units Per Acre).¹ The property is located between SW Birch Street and SW Cedarcrest Street, 200 feet to the west of SW 80th Avenue, in the Metzger Progress area of the county. Ash Creek runs through the property, and

¹ The R-5 zone allows development at a density of "no less than four units per acre, except as permitted by Section 300-2 or by 302-6.2[.]" Washington County Community Development Code (CDC) 302-6.1. The staff report concluded that the minimum density allowed on the site is 11 units and the maximum is 14 units. Record 791.

1 approximately the northern half of the subject property is included on the
2 Metzger-Progress Community Plan map of Significant Natural Resources (SNR
3 Map) as “Wildlife Habitat” and “Water Areas and Wetlands and Fish and
4 Wildlife Habitat.”² The SNR Map is part of the county’s Statewide Planning Goal
5 5 (Natural Resources, Scenic and Historic Areas, and Open Spaces) (Goal 5)
6 program.

7 The property is included within Metro’s Urban Growth Boundary (UGB)
8 and is included in Metro’s 2014 Buildable Lands Inventory (Metro BLI). *See*
9 *Warren v. Washington County*, 76 Or LUBA 295, 304 (2017) (granting
10 intervenor’s motion to take official notice of the Metro ordinance that adopted
11 the Metro BLI for the region, and concluding that the subject property is included
12 in the Metro BLI).³ Clean Water Services (CWS) is the regional sewerage agency
13 in the area in which the subject property is located. CWS regulations require

² Washington County Community Development Code (CDC) 422-2.2 describes “Water Area and Wetlands and Fish and Wildlife Habitat” as “Water areas and wetlands that are also fish and wildlife habitat.”

CDC 422-2.3 describes “Wildlife Habitat” as “Sensitive habitats identified by the Oregon Department of Fish and Wildlife, the Audubon Society Urban Wildlife Habitat Map, and forested areas coincidental with water areas and wetlands.”

³ Intervenor previously submitted an application to develop a six-lot subdivision on the property, and the county approved the application. The county’s decision was appealed to LUBA and we remanded the decision. After our decision in *Warren*, 76 Or LUBA 295, intervenor withdrew the application and submitted a new application for a similar six-lot subdivision.

1 “vegetated corridors” up to 50-feet wide adjacent to permanent streams (CWS
2 Vegetated Corridors), including Ash Creek, to include enhancement plantings.

3 Intervenor proposed to subdivide the property into six lots averaging
4 approximately 6,000 square feet each, along with a private street to access three
5 of the lots, and to set aside approximately 58 percent of the property from
6 development. Intervenor’s proposal includes Tract A, containing approximately
7 64,317 square feet of natural resource area, consisting of the Ash Creek
8 floodplain and associated wetlands and vegetated corridors, and Tract B, an open
9 space tract containing 6,247 square feet of wildlife habitat.

10 The hearings officer approved the application, and this appeal followed.

11 **FIRST ASSIGNMENT OF ERROR**

12 The hearings officer concluded that ORS 197.307(4) (2017) prohibits the
13 county from applying criteria in CDC Chapter 422, and specifically, CDC 422-
14 3.6, CDC 422-3.4, and CDC 422-3.3A, because the applicable criteria in those
15 provisions are not “clear and objective.” In her first assignment of error,
16 petitioner argues that ORS 197.307(4) (2017) does not prohibit the county from
17 applying provisions of CDC Chapter 422, for several reasons that we set out in
18 more detail below. We first set out and discuss the statutes at ORS 197.295 to
19 197.314, including ORS 197.307(4) (2017), before turning to petitioner’s
20 assignment of error.

1 **A. ORS 197.295-197.314 – The Needed Housing Statutes**

2 The statutes that are set out at ORS 197.295 to ORS 197.314 are commonly
3 referred to as the Needed Housing Statutes. With their initial enactment in 1981,
4 those statutes incorporated into law the “St. Helens’ Policy,” which was adopted
5 as a policy by the Land Conservation and Development Commission (LCDC) in
6 1979. *See The Robert Randall Co. v. City of Wilsonville*, 15 Or LUBA 26 (1986)
7 (so explaining).

8 ORS 197.296(2) through (7) impose planning obligations on Metro and
9 certain cities, and require them to provide for a supply of buildable land that is
10 sufficient to meet the projected housing needs for the relevant 20-year planning
11 period. Statewide Planning Goal 10 (Housing) (Goal 10) also requires the city to
12 inventory buildable lands for residential use. Regional and local governments that
13 are subject to these requirements must (1) inventory the existing supply of
14 buildable lands within the UGB; (2) project housing need for the relevant
15 planning period based on population growth and other factors; and then (3) if the
16 existing inventory is inadequate to accommodate housing needs, take specified
17 actions necessary to ensure there is an adequate supply of buildable land within
18 the UGB during that planning period.

19 ORS 197.303(1) (2017) sets out the definition for “needed housing.”⁴ The
20 buildable lands inventory and housing capacity analysis required by ORS

⁴ ORS 197.303(1) (2017) provides:

1 197.296(3)(a) must include a determination of the number of units and amount
2 of land needed for each “needed housing” type listed in ORS 197.303(1)(a)-(e).
3 ORS 197.296(3)(b). ORS 197.307(3) requires that local governments must plan
4 for and permit “needed housing” “in one or more zoning districts or in zones
5 described by some comprehensive plans as overlay zones with sufficient
6 buildable land to satisfy that need.”

“As used in ORS 197.307, ‘needed housing’ means all housing on land zoned for residential use or mixed residential and commercial use that is determined to meet the need shown for housing within an urban growth boundary at price ranges and rent levels that are affordable to households within the county with a variety of incomes, including but not limited to households with low incomes, very low incomes and extremely low incomes, as those terms are defined by the United States Department of Housing and Urban Development under 42 USC 1437a. ‘Needed housing’ includes the following housing types:

- “(a) Attached and detached single-family housing and multiple family housing for both owner and renter occupancy;
- “(b) Government assisted housing;
- “(c) Mobile home or manufactured dwelling parks as provided in ORS 197.475 to 197.490;
- “(d) Manufactured homes on individual lots planned and zoned for single-family residential use that are in addition to lots within designated manufactured dwelling subdivisions; and
- “(e) Housing for farmworkers.”

1 As we discuss below, ORS 197.307(4) (2017) restricts the standards,
2 conditions and procedures that local governments may apply when considering
3 development applications for housing. A local government may not subject
4 “housing, including needed housing” to standards, conditions, and procedures
5 that are not “clear and objective.” ORS 197.307(4) (2017).⁵ We refer to this
6 provision in this opinion as the clear and objective requirement.⁶

⁵ ORS 197.307(6) allows a local government to adopt an alternative approval process for applications for needed housing, if the alternative approval process authorizes a density that is greater than the density authorized under the “clear and objective standards” described in ORS 197.307(4). In other words, a local government may adopt an alternative approval process that includes discretionary standards and that allows for greater density than would otherwise be allowed if only “clear and objective” standards applied to a development application, as long as development continues to be allowed under clear and objective standards at a density at or above the density authorized in the zone. There is no dispute that the county has not adopted such an alternative approval process.

⁶ Relatedly, ORS 227.173(2) and ORS 215.416(8)(b) provide for cities and counties, respectively, that:

“When an ordinance establishing approval standards is required under ORS 197.307 to provide only clear and objective standards, the standards must be clear and objective on the face of the ordinance.”

Further, ORS 197.831 places the burden on the local government to demonstrate, before LUBA, that standards and conditions imposed on needed housing that are required to be clear and objective “are capable of being imposed only in a clear and objective manner.”

1 **B. ORS 197.307(4) (2017) (Senate Bill 1051)**

2 In 2017, the legislature enacted and the Governor signed Senate Bill 1051
3 (SB 1051), which amended several statutes, including, as relevant here, ORS
4 197.307(4). Prior to the enactment of SB 1051, ORS 197.307(4) provided:

5 “Except as provided in subsection (6) of this section, a local
6 government may adopt and apply only clear and objective standards,
7 conditions and procedures *regulating the development of needed*
8 *housing on buildable land described in subsection (3) of this section.*
9 The standards, conditions and procedures may not have the effect,
10 either in themselves or cumulatively, of discouraging needed
11 housing through unreasonable cost or delay.” (Emphasis added.)

12 Among many other changes, SB 1051 amended ORS 197.307(4), as follows:

13 “Except as provided in subsection (6) of this section, a local
14 government may adopt and apply only clear and objective standards,
15 conditions and procedures regulating the development of housing,
16 including needed housing. The standards, conditions and
17 procedures: *

18 “(a) May include, but are not limited to, one or more provisions
19 regulating the density or height of a development.

20 “(b) May not have the effect, either in themselves or cumulatively,
21 of discouraging needed housing through unreasonable cost or
22 delay.” (Emphasis added.)

23 SB 1051 made two changes to the statute that are relevant here. (First) SB 1051
24 deleted the requirement that, in order for ORS 197.307(4) to apply and allow the
25 local government to apply only clear and objective standards, the proposed
26 development must be “needed housing” as defined in ORS 197.303(1). The
27 statute now applies to “the development of housing, including needed housing[.]”

1 Second, SB 1051 deleted the phrase “on buildable land.” The extent and meaning
2 of that second legislative choice is the central dispute in this appeal.

3 **C. First Assignment of Error**

4 During the proceedings below, intervenor argued that ORS 197.307(4)
5 (2017) prohibited the hearings officer from applying various provisions of CDC
6 Chapter 422 that were not “clear and objective” within the meaning of the statute.
7 The hearings officer agreed, concluding that:

8 “[T]he removal of ‘needed’ from the statute made it broadly
9 applicable to housing in general, and not only to ‘needed housing’
10 under the needed housing statute and its implementing rules.
11 Further, the removal of ‘on buildable land’ from the end of the
12 statute also broadened the statute’s applicability to all land, and not
13 only ‘buildable land’ as defined under Oregon law.” Record 12.

14 **1. Buildable Land**

15 In her first assignment of error, petitioner argues that ORS 197.307(4)
16 (2017) does not apply to intervenor’s proposed development because according
17 to petitioner, the portion of the property that is subject to resource protection
18 standards is not “buildable land” as defined in ORS 197.295(1). At the outset, we
19 note that petitioner does not identify the standard of review as required by OAR
20 661-010-0030(4)(d), but merely argues that the hearings officer’s interpretation
21 “was in error[]” and lists the reasons. Petition for Review 22. There is no dispute

1 that the challenged decision is a limited land use decision. ORS 197.015(12). We
2 review challenges to limited land use decisions pursuant to ORS 197.828.⁷

3 In her first assignment of error, petitioner argues that the portion of the
4 property that is identified as “Water Area and Wetlands and Fish and Wildlife
5 Habitat” and “Wildlife Habitat” is not “buildable land.” Petition for Review 21;
6 *see* n 2. Petitioner argues that notwithstanding the changes made in SB 1051, the

⁷ ORS 197.828 provides:

- “(1) The Land Use Board of Appeals shall either reverse, remand or affirm a limited land use decision on review.
- “(2) The board shall reverse or remand a limited land use decision if:
 - “(a) The decision is not supported by substantial evidence in the record. The existence of evidence in the record supporting a different decision shall not be grounds for reversal or remand if there is evidence in the record to support the final decision;
 - “(b) The decision does not comply with applicable provisions of the land use regulations;
 - “(c) The decision is:
 - “(A) Outside the scope of authority of the decision maker; or
 - “(B) Unconstitutional; or
 - “(d) The local government committed a procedural error which prejudiced the substantial rights of the petitioner.”

1 clear and objective requirement continues to apply only in circumstances where
2 housing is proposed for development “on buildable land” as defined in ORS
3 197.295(1).⁸ That is so, petitioner argues, for several reasons.

4 First, petitioner argues that although ORS 197.307(4) (2017) no longer
5 includes the phrase “on buildable land,” LCDC’s rule that implements Goal 10,
6 at OAR 660-008-0015, continues to include the phrase, and therefore limits the
7 application of ORS 197.307(4)(2017)’s to “buildable land.”⁹ Second, petitioner
8 argues that ORS 197.307(3) continues to include the phrase “buildable land,” and
9 argues the continuing reference in ORS 197.307(3) to “buildable land” provides

⁸ Petitioner does not argue that the application is not an application for “needed housing” as defined in ORS 197.303(1) (2017), or that it is not an application for “housing” within the meaning of ORS 197.307(4) (2017).

⁹ Petitioner cites the definition of “buildable land” in the rule that implements Goal 10 generally, rather than the definition of “buildable land” that applies to cities and counties within the Metro UGB. As relevant here, LCDC’s rule that implements Goal 10 for cities and counties within the Metro UGB, at OAR 660-007-0005(3), defines “Buildable Land” as:

“[R]esidentially designated land within the Metro urban growth boundary, including both vacant and developed land likely to be redeveloped, that is suitable, available and necessary for residential uses. * * * Land is generally considered ‘suitable and available’ unless it:

“ * * * * *

“(b) Is subject to natural resource protection measures determined under Statewide Planning Goals 5, 6 or 15[.]”

1 context for interpreting the legislature’s intended meaning in deleting the phrase
2 “on buildable land” in ORS 197.307(4) (2017).

3 Petitioner additionally argues that the legislative history of SB 1051 does
4 not include any expressions of the legislature’s intent to prohibit the county from
5 applying subjective standards contained in CDC provisions that implement the
6 county’s Goal 5 program to intervenor’s application for a residential subdivision.
7 In support, petitioner points to a statement from a senator that petitioner argues
8 provides evidence that the legislature did not intend to prohibit the county from
9 applying standards adopted to protect Goal 5 resources:

10 “Operative July 1, 2018, [SB 1051] will require cities and counties
11 to approve an application if clear and objective development
12 standards for needed housing are met; it expands the definition of
13 needed housing to include affordable housing and housing on land
14 zoned for residential use; the land must be zoned for residential use;
15 cities and counties may not require developers to build below
16 density or height requirements authorized in local zoning code if it
17 has the effect of reducing density unless it is necessary for health,
18 safety, or habitability, *or to comply with statewide planning goals.*
19 * * *. This bill will not compromise the quality or integrity of the
20 state’s land use process.” Record 128 (emphasis added).

21 Finally, petitioner argues that the hearings officer’s interpretation of the statute
22 would violate the canon of construction to avoid “absurd results” that are
23 inconsistent with the apparent policy of the legislature, by prohibiting the county
24 from applying discretionary code provisions that are intended to protect Goal 5
25 resources. *See State v. Vasquez-Rubio*, 323 Or 275, 283, 917 P2d 494 (1996)
26 (stating that canon).

1 Intervenor responds that the express language of SB 1051 is unambiguous,
2 and that SB 1051's deletion of the phrase "on buildable land" from ORS
3 197.307(4) expressly eliminated any previous requirement that may have existed
4 that the local government must determine whether property that is the subject of
5 a proposal to develop needed housing is "buildable land" as defined in ORS
6 197.295(1).¹⁰ Intervenor argues that the continuing reference in ORS 197.307(3)
7 to "buildable land" is not context for interpreting the unambiguous language in
8 ORS 197.307(4) (2017), because ORS 197.307(3) does not apply to development
9 applications for needed housing.

10 As context, intervenor also cites ORS 197.307(5), which was enacted long
11 before SB 1051 was enacted in 2017, and contains two specific exemptions from
12 the clear and objective requirement. ORS 197.307(5) provides:

13 "The provisions of subsection (4) of this section do not apply to:

14 "(a) An application or permit for residential development in an
15 area identified in a formally adopted central city plan, or a

¹⁰ As noted above, in *Warren v. Washington County*, 76 Or LUBA 295, we held that the subject property's inclusion in Metro's BLI meant that:

"[a]t least some portion [of the property] has previously been determined by Metro to be 'buildable land' as defined in ORS 197.295(1). Accordingly, petitioners may not, in an appeal of the county's decision approving a subdivision of that land, argue that no part of the subject property is 'buildable land,' because that would amount to an impermissible collateral attack on Metro's decision to include at least portions of the subject property in the BLI." *Id.* at 304.

1 regional center as defined by Metro, in a city with a
2 population of 500,000 or more.

3 “(b) An application or permit for residential development in
4 historic areas designated for protection under a land use
5 planning goal protecting historic areas.”

6 Intervenor argues that ORS 197.307(5) demonstrates the legislature knows how
7 to exempt certain areas and resources from the reach of ORS 197.307(4), and it
8 did not do so for lands designated for natural resource protection in SB 1051.

9 Intervenor also points out that petitioner’s argument relies in part on an
10 LCDC rule that has not yet been amended since SB 1051 was enacted, and that
11 any inconsistency between the rule and SB 1051 is resolved in favor of the
12 legislative enactment and not the rule. In response to petitioner’s arguments
13 regarding the legislative history of SB 1051, intervenor points to legislative
14 history that supports a construction of SB 1051 that is consistent with the hearings
15 officer’s interpretation. Intervenor cites testimony from the chief sponsors of the
16 house companion version of SB 1051, House Bill (HB) 2007. That testimony
17 explains that HB 2007 was intended to “increase housing supply by removing
18 barriers to development at the local level,” and to ensure that housing is built on
19 land zoned residential at the density permitted in the local zoning code, “unless
20 doing so poses a risk to health, safety, or habitability.” Record 138-39.

21 In construing the meaning of a statute, our task is to determine the
22 legislature’s intent in adopting the statute, looking at the text, context, and
23 legislative history of the statute, and resorting, if necessary, to maxims of
24 statutory construction. *PGE v. Bureau of Labor and Industries*, 317 Or 606, 610-

1 12, 859 P2d 1143 (1993), *as modified by State v. Gaines*, 346 Or 160, 171-72,
2 206 P3d 1042 (2009). For the reasons set forth below, we think the hearings
3 officer's conclusion that ORS 197.307(4) (2017) prohibits him from applying
4 standards in the CDC that are not clear and objective to intervenor's application
5 is correct.

6 SB 1051 removed the phrase "on buildable land" from the previous version
7 of ORS 197.307(4). The express removal of the phrase "on buildable land" from
8 ORS 197.307(4) disconnected any previous link that may have existed between
9 a property's inclusion on a buildable lands inventory or qualification as
10 "buildable land" pursuant to ORS 197.295(1) from the requirement to apply only
11 clear and objective standards to an application to develop housing. Now, ORS
12 197.307(4) applies the clear and objective requirement to all land proposed for
13 "the development of housing, including needed housing."

14 Context for interpreting a statute can include "other provisions of the same
15 statute and other related statutes." *PGE*, 317 Or at 611. We do not think that the
16 fact that ORS 197.307(3) continues to use the phrase "buildable land" is
17 particularly relevant context for reviewing the meaning of ORS 197.307(4)
18 (2017).¹¹ ORS 197.307(3) is concerned with estimating housing demand and land

¹¹ ORS 197.307(3) provides:

"When a need has been shown for housing within an urban growth boundary at particular price ranges and rent levels, needed housing shall be permitted in one or more zoning districts or in zones

1 supply, and imposes a planning mandate on local governments that requires local
2 governments to allow needed housing “in one or more zoning districts or in zones
3 described by some comprehensive plans as overlay zones with sufficient
4 buildable land to satisfy that need.” ORS 197.307(4), differently, cabins the
5 standards and criteria that a local government may apply when considering an
6 application for the development of housing to those that are “clear and objective.”
7 The two sections of ORS 197.307 address different concerns, and ORS
8 197.307(3) continues to require local governments to allow needed housing in
9 “one or more zoning districts” that include “sufficient buildable land to satisfy”
10 the need for “housing within an urban growth boundary at particular price ranges
11 and rent levels[.]”

12 However, ORS 197.307(5), the section that immediately follows the clear
13 and objective requirement in ORS 197.307(4), provides some context for
14 interpreting SB 1051. ORS 197.307(5)(b) contains an existing exemption from
15 the clear and objective requirement in ORS 197.307(4) for one category of
16 protected Goal 5 resources – historic resources. The existence of that statute
17 demonstrates that the legislature knows how to create specific exemptions to the
18 clear and objective requirement, and in particular to exempt some Goal 5
19 resources from the clear and objective requirement. *Bridgeview Vineyards, Inc.*
20 *v. State Land Board*, 211 Or App 251, 263-64, 154 P3d 734, rev den 340 Or 690

described by some comprehensive plans as overlay zones with
sufficient buildable land to satisfy that need.”

1 (2007). The legislature has not created an exemption from the clear and objective
2 requirement for other Goal 5 resources, or other areas, except the two specified
3 in ORS 197.307(5)(a) and (b).

4 LCDC's current rules that continue to implement the previous version of
5 ORS 197.307(4) do not assist us in interpreting the meaning of the statute,
6 because the amended version of the statute controls over an inconsistent
7 unamended rule. *State v. Newell*, 238 Or App 385, 392, 242 P3d 709 (2010).
8 Finally, the legislative history of SB 1051 tends to support the hearings officer's
9 interpretation. The chief sponsor of the bill stated that the goal of the legislation
10 was to build more housing units unless a safety or health issue exists. Record 139.

11 The staff measure summary explains that:

12 "Currently, cities and counties are required to have a set of clear and
13 objective development standards for 'needed housing.' *The measure*
14 *strengthens existing statute by clarifying that jurisdictions must*
15 *approve an application if it meets the clear and objective standards*
16 *outlined within the city or county comprehensive plan or zoning*
17 *ordinances. The measure updates the definition of 'needed housing'*
18 *to include affordable housing and housing built on land zoned for*
19 *residential use so local jurisdictions can assess whether they are*
20 *[providing] sufficient affordable housing when completing their*
21 *housing needs assessments. In addition, the measure maintains*
22 *existing exemptions from clear and objective standards for Central*
23 *City Portland, or regional centers as defined by Metro, and historic*
24 *areas, and the ability for developers to use a discretionary process."*
25 Record 145 (Emphases added.)

26 The staff measure summary evidences a legislative recognition of maintaining
27 the two existing exemptions from the clear and objective requirement.

1 application. Accordingly, petitioner's arguments provide no basis for reversal or
2 remand of the decision.

3 Generally, approval standards are clear and objective if they do not impose
4 "subjective, value-laden analyses that are designed to balance or mitigate
5 impacts[.]" *Rogue Valley Assoc. of Realtors v. City of Ashland*, 35 Or LUBA 139,
6 158 (1998), *aff'd* 158 Or App 1, 970 P 2d 685, *rev den* 328 Or 549 (1999). Even
7 if petitioner had challenged the hearings officer's finding that CDC 422-3.6 is
8 not clear and objective, CDC 422-3.6 requires the county to consider whether the
9 proposed development will "seriously interfere" with fish and wildlife habitat
10 and if so, to mitigate impacts from the proposed development. Such a standard
11 requires the county to conduct a "subjective, value-laden analysis designed to
12 balance or mitigate impacts," which ORS 197.307(4) prohibits.

13 The first assignment of error is denied.

14 **SECOND ASSIGNMENT OF ERROR**

15 CDC 422-3.4 in general requires the county to determine whether a
16 proposed modification to a degraded riparian corridor will result in an
17 "enhancement," and defines "enhancement" as:

18 "a modification, as a result of which no later than five (5) years after
19 completion of the project, the quality and/or quantity of the natural
20 habitats is measurably improved in terms of animal and plant species
21 numbers, number of habitat types and/or amount of area devoted to
22 natural habitat."

23 In her second assignment of error, petitioner argues that the hearings officer erred
24 in concluding that CDC 422-3.4 is not "clear and objective" and that it could not

1 is free to make, and as ORS 197.307(5) demonstrates, the legislature knows how
2 to limit the clear and objective requirement when it so desires.

3 In conclusion, we construe ORS 197.307(4) (2017) as prohibiting the
4 county from applying any standards, conditions and procedures that are not clear
5 and objective to intervenor's application to develop a six-lot residential
6 subdivision, without regard to whether intervenor's property is "buildable land"
7 within the meaning of ORS 197.295(1).

8 **2. CDC 422-3.6**

9 CDC 422-3.6 requires the applicant to demonstrate that "the proposed use
10 will not seriously interfere with the preservation of fish and wildlife areas and
11 habitat identified in the Washington County Comprehensive Plan, or how the
12 interference can be mitigated." The hearings officer concluded that CDC 422-3.6
13 is not "clear and objective," and therefore that he could not apply it to intervenor's
14 application. Record 67-68. The hearings officer also adopted alternative findings
15 that the application satisfies CDC 422-3.6. Record 60-67.

16 In a portion of her first assignment of error, we understand petitioner to
17 argue that the hearings officer is bound by previous findings that CDC 422-3.6
18 was not satisfied, which the hearings officer adopted in approving a previous
19 application for development of a subdivision on the property. *See* n 3. However,
20 petitioner does not challenge the hearings officer's finding that CDC 422-3.6 is
21 not clear and objective and that therefore it could not be applied to intervenor's

1 On balance, the legislative history tends to support the interpretation of SB
2 1051 that the hearings officer adopted. The statement from a senator that
3 petitioner quotes in her brief does not address the issue of whether the clear and
4 objective requirement applies to buildable land. It merely indicates that that
5 particular senator believed the amendments to the statute would not affect the
6 “quality or integrity of the state’s land use process.” Record 128.

7 Finally, although we do not think it is necessary to refer to canons of
8 construction to ascertain the meaning of SB 1051 because the text and context
9 resolve the issue, we disagree with petitioner’s characterization that the hearings
10 officer’s interpretation will produce “absurd results.” Petition for Review 30. *See*
11 *Craven v. Jackson County*, 135 Or App 250, 254, 898 P2d 809, *rev den* 321 Or
12 512 (1995) (“[a] party’s disagreement with a legislative policy, however deeply
13 felt, does not render the legislation absurd.”); *Southwood Homeowners v. City*
14 *Council of Philomath*, 106 Or App 21, 24, 806 P 2d 162 (1991) (the absurd results
15 canon should be used sparingly, because it comes with a risk of judicial
16 displacement of legislative policy on the basis of speculation that legislature
17 could not have meant what it said). The legislative purpose behind SB 1051 was
18 “to increase housing supply by removing barriers to development at the local
19 level.” Record 138. That choice may have inadvertently or purposefully resulted
20 in local governments being prohibited from applying subjective standards to
21 proposals for development of housing, including subjective standards that were
22 adopted to protect Goal 5 resources. However, that is a choice that the legislature

1 be applied to intervenor's application.¹² Record 59. Petitioner reiterates her
2 arguments in the first assignment of error that the clear and objective requirement
3 does not apply because portions of the property are not "buildable land." Petition
4 for Review 35. We reject those arguments for the same reasons described above.

5 The hearings officer found that CDC 422-3.4 is not clear and objective
6 because it does not guide the decision maker as to how or what constitutes habitat
7 that is "measurably improved." Record 59-60. We agree with the hearings officer
8 that the county's standard that requires the county to determine whether habitat
9 is "measurably improved" will occur, but which does not include any objective
10 benchmarks for measuring improvement, is not "clear and objective." *Rogue*
11 *Valley Assoc. of Realtors*, 35 Or LUBA at 158.

12 Petitioner also argues that some provisions of CDC 422-3.4 are clear and
13 objective, such as the requirement for an applicant to submit an Animal Life
14 Census and the requirement for the county to submit the application to the Oregon
15 Department of Fish and Wildlife (ODFW) for comment. However, the ultimate
16 question that CDC 422-3.4(A) requires the county to answer is whether an
17 "enhancement" will result in habitat that is "measurably improved in terms of
18 animal and plant species numbers, number of habitat types and/or amount of area

¹² Petitioner does not identify the standard of review as required by OAR 661-010-0030(4)(d) but states that "The Hearings Officer's refusal to apply CDC 422-3.4 was error for the following reasons." Petition for Review 34. As noted, the challenged decision is a limited land use decision and we review challenges to limited land use decisions pursuant to ORS 197.828.

devoted to natural habitat” in five years. Without any benchmarks for measurement included in the standard, it is not “objective.”

The second assignment of error is denied.

THIRD ASSIGNMENT OF ERROR

CDC 422-3.3 is a companion standard to CDC 422-3.4, discussed above. As relevant here, CDC 422-3.3 prohibits “new or expanded alteration of the vegetation or terrain” in the Riparian Corridor (as defined in CDC Section 106) or in an area designated as “Water Areas and Wetlands and Fish and Wildlife Habitat,” except in the circumstances set out in CDC 422-3.3(A)(1)-(7). *See* n 2. As relevant here, CDC 422-3.3(A)(7) allows an “enhancement” in the Riparian Corridor (as defined in CDC 106), or an area designated as Water Areas and Wetlands and Fish and Wildlife Habitat, in two circumstances. First, it allows “enhancement” if that area “has been degraded” as demonstrated by the concurrence of an ODFW biologist. That “enhancement,” however, must “conform[] to the definition and criteria listed in [CDC] 422-3.4.” Second, it allows “enhancement or alteration” of a non-degraded portion of the area if that work is “in conjunction with or needed to support the enhancement of the degraded area.”

As explained above, the hearings officer determined that the term “enhancement” and the provisions of CDC 422-3.4 governing enhancement are not “clear and objective.” In the third assignment of error, petitioner again argues that the “clear and objective requirement” does not apply because the property is

1 not buildable land. Petitioner also again argues that the term “enhancement” is
2 not a “standard” as that term is used in ORS 197.307(4) (2017), and therefore it
3 is not subject to the clear and objective requirement. We reject both of those
4 arguments for the reasons explained above.

5 The remainder of petitioner’s third assignment of error is difficult to
6 follow. However, we understand petitioner to argue that the county’s conclusion
7 that the portion of the property that includes the CWS Vegetated Corridor area
8 south of Ash Creek is “degraded” as that term is used in CDC 422-3.3(A)(7) is
9 not supported by substantial evidence in the record.¹³ That is so, according to
10 petitioner, because a letter that ODFW issued subsequent to a prior letter that
11 concluded that the CWS Vegetated Corridor south of Ash Creek is “degraded”
12 clarified that ODFW’s earlier letter did not intend to serve as “concurrence”
13 within the meaning of CDC 422-3.3(A)(7). Petition for Review 41. We
14 understand intervenor to respond that the hearings officer’s conclusion that the
15 area proposed for enhancement is “degraded” is supported by substantial
16 evidence in the record.

¹³ The hearings officer’s findings regarding CDC 422-3.3 are not particularly clear, but we understand the hearings officer to also have concluded that CDC 422-3.3 did not apply to intervenor’s proposal because a condition of approval prohibits encroachment into the Water Areas and Wetlands and Fish and Wildlife Habitat and therefore, no “enhancement” can occur within that area. Record 58. The hearings officer also found that the CWS Vegetated Corridor area south of Ash Creek was “degraded” due to the presence of non-native plant species. Record 61.

1 Although we need not address this aspect of petitioner's third assignment
2 of error because we agree with the hearings officer that CDC 422-3.4 and CDC
3 422-3.3 are not "clear and objective," under our standard of review in ORS
4 197.828(2)(a), we conclude that the "decision is [] supported by substantial
5 evidence in the record." ORS 197.828(2)(a) provides that LUBA is authorized to
6 reverse or remand a limited land use decision if the "decision is not supported by
7 substantial evidence in the record." ORS 197.828(2)(a) further provides that
8 "[t]he existence of evidence in the record supporting a different decision shall not
9 be grounds for reversal or remand if there is evidence in the record to support the
10 final decision[.]" ODFW's letter at Record 125 is evidence in the record to
11 support the hearings officer's conclusion that the CWS Vegetated Corridor south
12 of Ash Creek is "degraded" within the meaning of CDC 422-3.3(A)(7), if the
13 county was not prohibited from applying that section.

14 The third assignment of error is denied.

15 The county's decision is affirmed.

City Council Final written argument:

As stated by staff at the 11-19-19 city council hearing:

"This proposed development fits about as good as anything could fit in this neighborhood and on that site."

The above statement clearly shows, that this proposed development should be approved with conditions because it is the best option for the site. The above statement by staff also shows that there is no better alternative. Thus we have come to the best alternative for the site. The statements from staff below also show this should be approved because it does meet all the discretionary review criteria

As Stated in the Staff Report: "As noted above the application appears to adequately mitigate for the impacts to the HCA."

The Staff Report States: **"As conditioned, the development meets MMC 18 and is recommended for approval.** Remaining issue can be addressed through the permitting Process."

As stated by staff: "Development on this degraded portion of the site, using technology to address floodplain issues, and mitigating and enhancing nearly one acre of land adjacent to the slough and to Elk Rock (including removal of invasive and nuisance species and planting hundreds of trees and shrubs) appears to meet the spirit and intent of MMC 19.402."

The previous staff report states: The overall views from the public right of way toward the river are limited today and do not appear significant enough to preclude approval of the WG conditional use application.

As stated by staff, **"The applicant has responded admirably to the challenges presented by this site. Twelve units are proposed in a manner that meets the code requirements for floodplain development while also mitigating for impacts to the natural resources by restoring native vegetation to the west of the slough."**

The variances in this development are not needed, they just create a better project. We would happily remove the variance requests although as seen below staff found them to be reasonable. **Please add removal of the variances as a condition of approval. We can meet the code without the variances.**

From July 23rd staff report: "The height variance request is reasonable given the proposed home design, that the structures will comply with the measured height limit, and that the first floor is effectively not usable as living space."

From July 23rd staff report: "However, the remaining requested variances do not result in significant impacts."

Natural resource cluster developments are required to have a 25-ft setback from all property lines. The proposed 20-ft setback for a proposed new home, rather than 25 ft, will have no impact on surrounding properties because it matches the existing setback of #12225 SE 19th Ave. The proposed 20-ft setback in addition to the existing unimproved 40- ft Sparrow St right-of-way retains the goal of the setback in a natural resources cluster development by creating a buffer to the adjacent property.

The detached homes with garage door widths exceeding the maximum 50% of the width of the street-facing façade will not be visible from 19th Ave. The proposed homes are designed to be narrow, at approximately 18 ft to 24 ft wide. The proposed design includes garage doors with a wood stained appearance and glazing to better fit into the surrounding environment."

Calculation of Permitted Number of Dwelling Units

a. The maximum number of dwelling units proposed for a residential cluster development shall not exceed the number of dwelling units otherwise permitted for the residential zoning district in which the parcel is located. The number of units allowed on a parent lot may be transferred to one or more newly created lots or parcels on the site. The cumulative density for all lots or parcels shall not exceed the density allowed for the parent lot.

The density allowed for the gross property area would be 25-32 dwelling units based on the ratio of 7-8.7 dwelling units per the base R-5 zone. The proposed density of 12 dwellings is 3.28 dwellings per gross acre.

b. The number of permitted dwelling units on a site shall be calculated in the following manner:

(1) Measure the gross area of the proposed cluster development site in acres and tenths of an acre.

Gross site area is 3.66 acres per assessors records.

(2) From the gross area, subtract the area of public streets, other publicly dedicated improvements, and common open space (whether or not it is conveyed pursuant to Subsection 19.402.14.C.2.c), measured in acres and tenths of an acre. The remainder shall be the net buildable area.

Common area consisting of HCA/ WQR and area to the west of the slough is 1.58 acres, leaving 2.08 acres of net buildable area.

(3) Convert the net buildable area from acres to square feet, using the equivalency of 43,560 sq ft = 1 acre.

Net buildable area is 90, 605 sq. ft.

(4) Divide the net buildable area by the smallest minimum lot size (in square feet) per unit for a dwelling unit permitted in the zoning district. This figure shall be rounded to the nearest lower number to establish the maximum number of dwelling units permitted in the cluster development.

$90,605 / 5000 = 18.12$ dwelling units maximum. 12 units are proposed.

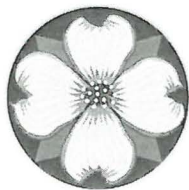
Due to the floodplain calculations per MCC (as seen below), the minimum density is 12, and the maximum density is 12. It is the same density criteria for subdivisions or a cluster development.

19.202.4 Density Calculations

C. Discrepancy between Minimum Required and Maximum Allowed Density

In situations where the calculation of maximum allowed density results in a number smaller than the calculation of minimum required density, the result from the minimum allowed density is both the minimum required and maximum allowed density.

Please approve this application with conditions of approval because it has demonstrated that the proposed development meets all the code criteria including the discretionary criteria, and should be conditioned per needed housing law.



PUBLIC HEARING ATTENDANCE SIGN-UP SHEET

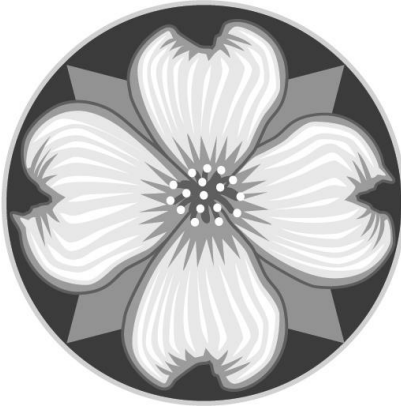
If you wish to have standing and/or to be on the mailing list for Council information from tonight's hearing, please sign-in below.

12/3/19

**5. A. Appeal of Elk Rock Island Development
(continued from 11/19/19)**

Land Use File No. AP-2019-003

NAME	ADDRESS	PHONE	EMAIL
Rod Smith	Pass along to Ann		Smith.Rod33@Gmail



RS Agenda Item

6

Other Business

COUNCIL STAFF REPORT

To: Mayor and City Council
Ann Ober, City Manager

Date Written: Nov. 21, 2019

Reviewed: Leila Aman, Community Development Director, and
David Levitan, Senior Planner

From: Christina Fadenrecht, Housing and Economic Development Associate

Subject: **Extension of Housing Emergency and Renter Protection Measures**

ACTION REQUESTED

Adopt resolutions to extend the city's declared housing emergency for a six-month period, with a new expiration date of June 4, 2020, and maintain the renter protection measures in Milwaukie Municipal Code (MMC) 5.60, which require landlords to provide 90 days' notice to renters for no-cause evictions.

HISTORY OF PRIOR ACTIONS AND DISCUSSIONS

April 19, 2016: Council approved [Ordinance 2117](#), which authorized the Council to declare a Housing Emergency in the city; adopted [Resolution 46-2016](#), which declared a Housing Emergency in the city for a period of one year from the effective date of the resolution; and approved [Ordinance 2118](#), MMC 5.60 (Renter Protections), which requires landlords to provide 90 days' notice to tenants prior to a no-cause eviction.

March 7, 2017: Council held a work session to discuss whether to maintain the renter protection measures in MMC 5.60 and to extend the city's declared housing emergency for an additional six months.

April 18, 2017: Council adopted [Resolution 46-2017](#), maintaining the renter protection measures in MMC 5.60.

May 2, 2017: Council adopted [Resolution 52-2017](#), adopting three Council Goals for the 2017-2018 Biennium. Goal 1: Housing was directly related to housing affordability.

December 5, 2017: Council adopted [Resolution 94-2017](#), maintaining the renter protection measures in MMC 5.60 for a period of one year or until the metropolitan region's vacancy rate rises above 4%, whichever comes first.

July 17, 2018: Council adopted [Resolution 62-2018](#), approving the Milwaukie Housing Affordability Strategy (MHAS).

December 4, 2018: Council adopted [Resolution 101-2018](#), maintaining the renter protection measures in MMC 5.60 for a period of one year or until the metropolitan region's vacancy rate rises above 4%, whichever comes first.

June 4, 2019: Council adopted [Resolution 41-2019](#), extending the city's declared housing emergency for an additional six months and [Resolution 42-2019](#), maintaining rent protection measures in MMC 5.60 for a period of one year or until the metropolitan region's vacancy rate rises above 4%, whichever comes first and until further legal analysis of Senate Bill (SB) 608 has occurred.

ANALYSIS

Housing Emergency

On April 19, 2016, Council unanimously approved Ordinance 2117, which authorized the Council to declare a housing emergency, and adopted Resolution 46-2016, which declared a housing emergency in Milwaukie for a period of one year from the effective date of the resolution. Section 2 of Ordinance 2117 states that the "initial duration of a housing emergency shall not exceed one year, but may be extended in six-month increments." The housing emergency has since been extended five times (April 18 and December 5, 2017; June 5 and December 4, 2018; and June 4, 2019), and is currently scheduled to expire on December 4, 2019.

When the housing emergency was declared, Milwaukie and the rest of the Portland metropolitan region was experiencing a rapid increase in rental rates and home sale prices. US Census data showed that the region had the highest rent increase (11.3%) and lowest vacancy rate (2.4%) in the nation for the 12-month period ending in December 2015. The regional housing market has cooled somewhat in recent years and vacancy rates have fluctuated (more detail is provided below in the discussion of the 90 day no cause eviction ordinance). These fluctuations can be attributed to seasonal variations, and, as previously noted, thousands of units of new supply in Portland that periodically come online, much of which was entitled as developers sought to get projects approved before Portland's inclusionary zoning ordinance took effect in early 2017.

During the same period, Milwaukie consistently outperformed the region and continues to experience a very tight rental market. According to the Multifamily NW Fall 2019 Survey, which represents property owners and property managers whose members manage over 200,000 rental units between Medford and Southwest Washington, Milwaukie had the second lowest vacancy rate (3.5%), tied with West Vancouver, of 20 areas within the Portland region. Milwaukie's vacancy rate did rise to 4.1% in Multifamily NW's Spring 2019 survey (the overall rate for the region was 4.95%).

Since the declaration of the housing emergency, the city has dedicated significant time and resources to topics related to housing and housing affordability. In December 2016, the city completed a [Housing Needs Analysis](#) (HNA) and [Housing Strategies Report](#), which provide the technical analysis and foundation required by Statewide Planning Goal 10 to support the city's Comprehensive Plan update. The HNA found that 45% of Milwaukie renters spent more than 30% of their income on housing (the generally accepted "housing affordability quotient"), with 22% of renters spending more than 50% of their income on housing (which qualifies as being "severely rent burdened").

In March 2018, the state legislature passed House Bill (HB) 4006, which required Oregon Housing and Community Services (OHCS) to monitor the percent of severely rent-burdened households in each Oregon jurisdiction. Communities that have at least 25% of their renter households classified as severely rent-burdened are required to hold public meetings and report information to OHCS and the Department of Land Conservation and Development (DLCD). Twenty-seven

percent of Milwaukie's renter households were found to be severely rent-burdened in 2018. In response, the city held a housing forum on December 6, 2018, to discuss ways to improve housing affordability in Milwaukie. In November 2019, data from OHCS showed that the percent of Milwaukie renter households that were severely rent-burdened dropped to 23.6% as of January 2019, just below the threshold that requires reporting and public meetings. However, with nearly ¼ of all renter households still spending more than 50% of their income on housing costs, housing affordability continues to be a major issue in Milwaukie.

Recognizing the importance of the issue, Council included housing affordability as one of its three goals for the 2017-2018 Biennium and directed the city manager to work with partners to develop housing options that are affordable for Milwaukians at every income level and stage of life. Beginning in late 2017, the city worked with Portland State University's Institute of Portland Metropolitan Studies to create actions and strategies to address this goal, in the form of a Milwaukie Housing Affordability Strategy (MHAS). Council adopted the MHAS on July 17, 2018.

As Council and city staff continue to implement actions and strategies outlined in the MHAS, including updated goals and policies for the Comprehensive Plan's housing chapter, pinned down by [Resolution 50-2019](#) on July 16, staff is recommending that Council extend the declared housing emergency for a period of six months (until June 4, 2020). Staff will continue to monitor the local housing market and will check in frequently with Council to receive direction on priorities and strategies for addressing the current housing affordability crisis.

90 Day No Cause Eviction Ordinance

On April 19, 2016, Council approved Ordinance 2118, creating MMC 5.60, which requires landlords to provide tenants with 90 days' notice for no-cause evictions (excluding week-to-week tenancies). No-cause evictions are defined as evictions that are carried out for reasons other than those listed as "for cause" under Oregon Revised Statutes (ORS) 90.392. For cause evictions include, but are not limited to, failure to pay rent or a material violation of the rental agreement. MMC 5.60 outlines the applicability of the 90 day no-cause eviction provision as well as possible punitive damages for violating the provision, and superseded the 30 days' notice that was required by state law for no-cause evictions as codified in ORS 90.427.

Section 2 of Ordinance 2118 states that Council "shall reconsider the protections herein if the Portland metropolitan region's residential vacancy rate rises above 4%, or after one year, whichever comes first." When Ordinance 2118 was approved, the most recent Census quarterly rental vacancy rate for the Portland Metropolitan region was 2.4% for the 4th quarter of 2015. In the three years since the ordinance was approved, the metropolitan region's vacancy rate has fluctuated above and beneath the 4% threshold on several occasions. The vacancy rate peaked at 6.7% in the second quarter of 2017, dropped to 2.4% by the fourth quarter of 2018, rose to 5.6% for first quarter of 2019 and in this last third dropped to 4.7%. However, as staff noted above, the Census' regional vacancy rate is sensitive to surges in new supply that come online during specific quarters, and Milwaukie's vacancy rate has consistently been below the regional rate. The tables below illustrate the fluctuations.

Census Rental Vacancy Data (Portland Metropolitan Region)

	Quarter 1	Quarter 2	Quarter 3	Quarter 4	Yearly Average
2019	5.6	4.1	4.7	---	4.8
2018	3.6	4.8	4.5	2.4	3.8
2017	3.9	6.7	6.2	2.6	4.9
2016	6.6	4.9	5.6	3.1	5.1
2015	2.7	3.5	5.1	2.4 **	3.4

** Most recent data when housing emergency and no cause eviction adopted in April 2016

MultiFamily NW Rental Vacancy Data (Milwaukie-specific, ~2,000 unit sample size; regionwide in parentheses)

	Spring	Fall	Yearly Average
2019	4.2 (5.0)	3.5 (4.4)	3.9 (4.7)
2018	4.1 (4.8)	3.0 (4.4)	3.6 (4.6)
2017	3.7 (4.0)	4.2 (4.4)	4.0 (4.1)
2016	3.5 (3.5)	3.8 (3.7)	3.7 (3.6)
2015	1.9 (3.1)	2.3 (2.9)	2.1 (3.0)

On February 28, Oregon Governor Kate Brown signed SB 608, which established a maximum yearly rent increase (7% plus inflation) for housing units built before 2004 and aimed to prohibit no-cause evictions beyond the first year of tenancy. There are some exceptions to the ban on no-cause evictions, including owner-occupied duplex tenancies; if the landlord moves into the unit; and if major renovations are needed. SB 608 does require that landlords provide 90 days' notice in these situations, and to pay relocation costs in the amount of one month's rent (landlords with four or fewer units do not have to pay relocation costs).

With the passage of SB 608 and the apparent prohibition of no-cause evictions statewide (with the listed exemptions), staff asked the city attorney whether Ordinance 2118 should be repealed. The city attorney noted that the Oregon State Bar's Real Estate and Land Use Section has had numerous conversations about SB 608, and that attorneys have raised concerns about how some of the ownership and other exemption provisions have some ambiguity that could lessen the intended protections of SB 608. Given this, the city attorney has recommended that Council hold off on repealing Ordinance 2118 until additional analysis and interpretation of the bill occurs. Based on this guidance, staff is recommending that Council adopt a resolution maintaining the renter protection measures in MMC 5.60 for this period and agree to review the ordinance every six-months and until the city attorney can further evaluate the protections offered under SB 608.

BUDGET IMPACTS

The community development department has adequate staffing to continue this work with no additional budget impacts.

WORKLOAD IMPACTS

Staff will continue to monitor the local housing market for vacancy rate trends.

COORDINATION, CONCURRENCE, OR DISSENT

Representatives from several local, county, and state housing agencies, and other community partners, have been involved in the discussion of Milwaukie's declared housing emergency and measures that have been taken to address the emergency, including the declaration of the housing emergency and adoption of the 90-day no-cause eviction ordinance.

STAFF RECOMMENDATION

Staff recommends that Council adopt the attached resolutions, which extend the city's declared housing emergency for a six-month period, with a new expiration date of June 4, 2020, and maintain the renter protection measures in MMC 5.60, which requires landlords to provide 90 days' notice to renters for no-cause evictions. Until staff is advised to repeal the ordinance, Council is asked to direct staff to modify Ordinance No. 2118 for the renter protection measures to be reconsidered under criteria reflective of the consistent market trends for reconsideration every six-months along with the housing emergency, instead of based on the 4% vacancy rate threshold.

ALTERNATIVES

1. Council may choose to let the declared housing emergency expire on December 4, 2019, and/or develop an ordinance that revokes the renter protection measures in MMC 5.60.
2. Council may choose to adopt the 90-day No-cause Eviction Ordinance permanently, or until further analysis of SB 608 deems a repeal necessary.

ATTACHMENTS

1. NEW: Resolution extending the city's declared housing emergency until June 4, 2020
2. NEW: Resolution to Maintain the Renter Protection Measures in MMC 5.60
3. Ordinance 2117
4. Ordinance 2118



COUNCIL RESOLUTION No.

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON,
EXTENDING THE DECLARED HOUSING EMERGENCY FOR A PERIOD OF SIX MONTHS,
PURSUANT TO ORDINANCE 2117.**

WHEREAS, Council approved Ordinance 2117 on April 19, 2016, which granted Council the authority to declare a housing emergency to address housing needs affecting the health, safety, and welfare of city residents; and

WHEREAS, in response to a combination of low vacancy rates and rapidly increasing rents and home sales prices, Council adopted Resolution 46-2016, which declared a housing emergency in the City of Milwaukie with an effective date of April 19, 2016; and

WHEREAS, Section 2 of Ordinance 2117 states that the initial duration of a housing emergency shall not exceed one year, but may be extended in six-month increments; and

WHEREAS, Council has adopted resolutions extending the housing emergency on four previous occasions, most recently on June 4, 2019; and

WHEREAS, Council adopted the Milwaukie Housing Affordability Strategy (MHAS) on July 17, 2018 and has directed staff to implement policies and programs that improve housing affordability in the city.

Now, Therefore, be it Resolved by the City Council of the City of Milwaukie, Oregon, that the housing emergency established by Resolution 46-2016 is extended for a period of six months, with a new expiration date of June 4, 2020.

Introduced and adopted by the City Council on **December 3, 2019**

This resolution is effective immediately.

Mark F. Gamba, Mayor

ATTEST:

APPROVED AS TO FORM:

Scott S. Stauffer, City Recorder

Justin D. Gericke, City Attorney



COUNCIL RESOLUTION No.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, MAINTAINING THE RENTER PROTECTION MEASURES IN MILWAUKIE MUNICIPAL CODE (MMC) 5.60, PURSUANT TO ORDINANCE 2118.

WHEREAS, Council approved Ordinance 2118 on April 19, 2016, which established new regulations for no cause evictions in MMC 5.60 and declared an emergency; and

WHEREAS, Section 2 of Ordinance 2118 states that Council shall reconsider the protections in MMC 5.60 should the Portland metropolitan region's residential vacancy rate rise above 4% or in one year, whichever comes first; and

WHEREAS, the region's vacancy rate rose to 4.7% for the third quarter of 2019; and

WHEREAS, Milwaukie's vacancy rate has been consistently lower than the region's, with a Fall 2019 survey from Multifamily NW showing a local rate of 3.5%; and

WHEREAS, the state legislature adopted Senate Bill (SB) 608 in February 2019, which aimed to prohibit no-cause evictions in most situations; and

WHEREAS, based on concerns about potential legal ambiguity in SB 608, the city attorney recommended that the city maintain the additional renter protection measures provided in MMC 5.60 until a more thorough legal analysis of SB 608 has occurred.

Now, Therefore, be it Resolved by the City Council of the City of Milwaukie, Oregon, that the renter protection measures outlined in MMC 5.60 are maintained.

Introduced and adopted by the City Council on **December 3, 2019**.

This resolution is effective immediately.

Mark F. Gamba, Mayor

ATTEST:

APPROVED AS TO FORM:

Scott S. Stauffer, City Recorder

Justin D. Gericke, City Attorney



CITY OF MILWAUKIE
"Dogwood City of the West"

Ordinance No. 2117

AN ORDINANCE OF THE CITY OF MILWAUKIE, OREGON, AUTHORIZING THE CITY COUNCIL TO DECLARE A HOUSING EMERGENCY UNDER SPECIFIED CIRCUMSTANCES, DEFINING DURATION AND CITY COUNCIL POWERS DURING A HOUSING EMERGENCY AND DECLARING AN EMERGENCY

WHEREAS, the Portland metropolitan region had the lowest residential vacancy rate in the nation as of the fourth quarter of 2015, estimated at 2.4%; and

WHEREAS, the region's low vacancy rate has resulted in significant rent increases over the last several years, including a 11.3% yearly increase as of the fourth quarter of 2015; and

WHEREAS, Milwaukie's proximity to Portland has resulted in increased gentrification and displacement of residents in recent years; and

WHEREAS, at the same time, many city residents have experienced a decrease in inflation adjusted wages and a reduced ability to find adequate and affordable housing; and

WHEREAS, the combination of high rents and low vacancy rates has resulted in heightened housing uncertainty for many Milwaukie residents; and

WHEREAS, the City Council finds that the uncertainty created by the possibility of losing affordable housing and homelessness is a danger to the public health, safety and welfare,

Now, Therefore, the City of Milwaukie does ordain as follows:

- Section 1. The City Council is authorized to declare a housing emergency when there is an immediate need to address the shortage of affordable housing, in order to avoid human suffering.
- Section 2. The initial duration of a housing emergency shall not exceed one year, but may be extended in six-month increments.
- Section 3. The Milwaukie City Council shall terminate a housing emergency by resolution when the emergency no longer exists or when the threat of an emergency has passed.

Section 4. Upon the declaration of a housing emergency, in addition to any other powers that may be exercised by a local government, the City Council may:

- A) Utilize City owned resources;
- B) Designate persons to coordinate the work of public, private or nonprofit relief agencies responding to the housing emergency;
- C) Order such other measures as may be necessary to protect the life, safety and health of persons, property or the environment.

Section 5. Emergency. With increasing housing uncertainty and fear of homelessness for city residents, this Ordinance is necessary for the immediate protection of public health, safety and general welfare; therefore an emergency is declared to exist and this Ordinance shall become effective upon the date of its adoption.

Read the first time on 4/19/16, and moved to second reading by 5:0 vote of the City Council.

Read the second time and adopted by the City Council on 4/19/16.

Signed by the Mayor on 4/19/16.

APPROVED:

Approved by Milwaukie City Council this 19th day of April, 2016.



Mark Gamba, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Ramis PC



Pat DuVal, City Recorder



City Attorney



CITY OF MILWAUKIE
"Dogwood City of the West"

Ordinance No. 2118

AN ORDINANCE OF THE CITY OF MILWAUKIE, OREGON, RELATING TO RENTER PROTECTIONS, ESTABLISHING NEW CODE CHAPTER 5.60 AND DECLARING AN EMERGENCY

WHEREAS, the Portland metropolitan region had the lowest residential vacancy rate in the nation as of the fourth quarter of 2015, estimated at 2.4%; and

WHEREAS, the region's low vacancy rate has resulted in significant rent increases over the last several years, including a 11.3% yearly increase as of the fourth quarter of 2015; and

WHEREAS, Milwaukie's proximity to Portland has resulted in increased gentrification and displacement of residents in recent years; and

WHEREAS, the combination of high rents and low vacancy rates has resulted in heightened housing uncertainty for many Milwaukie residents; and

WHEREAS, in recognition of the impact of the low residential vacancy rates and increasing rents, the Milwaukie City Council has declared a housing emergency; and

WHEREAS, the Milwaukie City Council has authority under Ordinance No. 2117 to take legislative action to provide adequate written notice of a no cause termination; and

WHEREAS, the Residential Landlord and Tenant Act (ORS Chapter 90) allows for no-cause terminations of month-to-month rental agreements with 30 days' notice during the first year of a tenant's occupancy, and with 60 days' notice after the first year of occupancy; and

WHEREAS, the Milwaukie City Council has determined that 30 or 60 days is not adequate time for displaced tenants to find and secure new rental housing; and

WHEREAS, in order to provide tenants enough time to find and secure a new rental unit, the minimum written notice of a no cause termination of tenancy should be 90 days.

Now, Therefore, the City of Milwaukie does ordain as follows:

Section 1. A new Chapter 5.60 is adopted and added to the Municipal Code of Milwaukie which will read as follows:

5.60 Milwaukie Renter Additional Protections

5.60.010 Purpose and Intent. The purpose of this Section is to provide residential renters in the City of Milwaukie with adequate protections in the event that they are served with a no cause eviction.

5.60.020 Definitions.

Act – the Residential Landlord and Tenant Act, codified in Chapter 90 of the Oregon Revised Statutes. For the purposes of Chapter 5.60, capitalized terms have the meaning set forth in the Act.

5.60.030 Applicability. The following apply to Tenants of Dwelling Units within the boundaries of the City of Milwaukie, which are in addition to the requirements and protections set forth in the Act:

A. A Landlord may terminate a Rental Agreement without a cause specified in the Act (“no cause eviction”) only by delivering a written notice of termination to the Tenant of (a) not less than 90 days before the termination designated in that notice as calculated under the Act; or (b) the time period designated in the Rental Agreement, whichever is longer. This requirement does not apply to Rental Agreements for Week-to-week tenancies or to Tenants that occupy the same Dwelling Unit as the Landlord.

B. A Landlord that fails to comply with any of the requirements set forth in this Section 5.60.030 shall be liable to the Tenant for an amount up to three months’ Rent as well as actual damages, reasonable attorney fees and costs (collectively, “Damages”). Any Tenant claiming to be aggrieved by a Landlord’s noncompliance with the foregoing has a cause of action in any court of competent jurisdiction for Damages and such other remedies as may be appropriate.

Section 2. The Milwaukie City Council shall reconsider the protections herein if the Portland metropolitan region’s residential vacancy rate rises above 4%, or after one year, whichever occurs first.

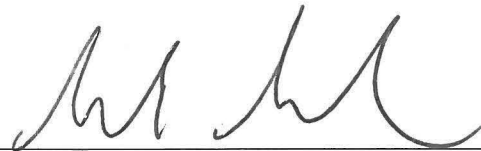
Section 3. Emergency. With increasing housing uncertainty and fear of homelessness for city residents, this Ordinance is necessary for the immediate protection of public health, safety and general welfare; therefore an emergency is declared to exist and this Ordinance shall become effective upon the date of its adoption.

Read the first time on 4/19/16, and moved to second reading by 5:0 vote of the City Council.

Read the second time and adopted by the City Council on 4/19/16.

Signed by the Mayor on 4/19/16.

APPROVED: Approved by Milwaukie City Council on 4/19/16.



Mark Gamba, Mayor

ATTEST:

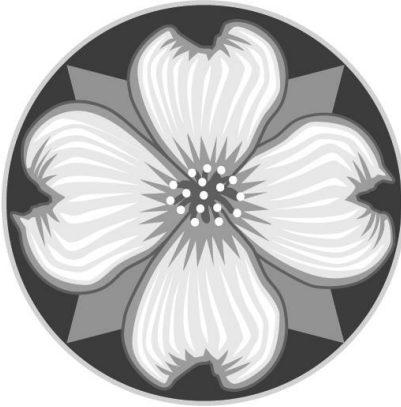
APPROVED AS TO FORM:
Jordan Ramis PC



Pat DuVal, City Recorder



City Attorney



RS Agenda Item

7

Information



Mayor's Announcements – Dec. 3, 2019

- **Clackamas County Hillside Master Plan Celebration** – Wed., Dec. 4 (5:30 – 7:30 PM)
 - Providence Milwaukie (Mother Gamelin Rm.), 10150 SE 32nd Ave.
- **Planning 101 Community Class** – Wed., Dec. 4 (6:30 – 8 PM)
 - City Hall, 10722 SE Main St.
- **Leaf Drops** – Sat., Dec. 7 & 14 (7 AM – 2 PM)
 - Johnson Creek Building, 6101 SE Johnson Creek Blvd.
- **Umbrella Parade and Tree Lighting** – Sat., Dec. 7 (3:45 – 6:30 PM)
 - Parade convenes at South Downtown Plaza / Tree Lighting at City Hall, 10722 SE Main St.
- **Winter Solstice & Christmas Ships Event** – Sat., Dec. 21 (4:30 – 7:30 PM)
 - Milwaukie Bay Park, 11211 SE McLoughlin Blvd.
- **Homewood Park Habitat Enhancement** – Sat., Jan. 11 (9 AM – 12 PM)
 - Homewood Park, 10821 SE Home Ave.
- **Ledding Library Update**
 - Temporary site on North Main St. closes Mon., Dec. 9
 - **Ledding Library Grand Opening** (10660 SE 21st Ave.) – Sat., Jan. 11 (10 AM – 6 PM, Ribbon Cutting at 10 AM)
- **LEARN MORE AT WWW.MILWAUKIEOREGON.GOV**