



# CITY OF MILWAUKIE

March 12, 2025

Land Use File(s): MLP-2025-001; NR-2025-001; VR-2025-001

## NOTICE OF DECISION

This is official notice of action taken by the Milwaukie Planning Commission on March 11, 2025.

*Traducciones de este documento e información sobre este proyecto están disponibles en español. Para solicitar información o preguntar en español, favor de email [espanol@milwaukieoregon.gov](mailto:espanol@milwaukieoregon.gov).*

<b>Applicant(s):</b>	Oregon Liquor and Cannabis Commission
<b>Location(s):</b>	9021 SE McLoughlin Blvd
<b>Tax Lot(s):</b>	11E26AA00100
<b>Application Type(s):</b>	Partition; Natural Resources Review; Variance
<b>Decision:</b>	Approved with Conditions
<b>Review Criteria:</b>	Milwaukie Zoning Ordinance: <ul style="list-style-type: none"><li>• MMC Section 19.312 North Milwaukie Employment Zone (NME)</li><li>• MMC Section 19.402 Natural Resources</li><li>• MMC Chapter 19.700 Public Facility Improvements</li></ul> Milwaukie Municipal Code: <ul style="list-style-type: none"><li>• MMC Title 17: Land Division, including:<ul style="list-style-type: none"><li>○ MMC Chapter 17.12 Application Procedure &amp; Approval Criteria</li><li>○ MMC Chapter 17.16 Application Requirements and Procedures</li><li>○ MMC Chapter 17.20 Preliminary Plat</li><li>○ MMC Chapter 17.28 Design Standards</li><li>○ MMC Chapter 17.32 Improvements</li></ul></li></ul>
<b>Neighborhood(s):</b>	N/A

**Appeal period closes: 5:00 p.m., March 27, 2025**

This notice is issued in accordance with Milwaukie Municipal Code (MMC) Section 19.1005 Type II Review. The complete case file for this application is available for review by appointment between 8:00 a.m. and 5:00 p.m. on regular business days at the Planning Department, City Hall, 10501 SE Main St. Please contact Vera Koliass, Senior Planner, at 503-786-7653 or [koliassv@milwaukieoregon.gov](mailto:koliassv@milwaukieoregon.gov), if you wish to view this case file or visit the project webpage at <https://www.milwaukieoregon.gov/planning/mlp-2025-001>.

**This decision may be appealed by 5:00 p.m. on March 27, 2025, which is 15 days from the date of this decision.**<sup>1</sup> (Note: Please arrive by 4:45 p.m. for appeal payment processing.) Only persons who submitted comments or made an appearance of record at the public hearing have standing to appeal the decision by filing a written appeal. An appeal of this decision would be heard by the Milwaukie City Council following the procedures of MMC Section 19.1010 Appeals. This decision will become final on the date above if no appeal is filed during the appeal period. Milwaukie Planning staff can provide information regarding forms, fees, and the appeal process at 503-786-7630 or [planning@milwaukieoregon.gov](mailto:planning@milwaukieoregon.gov).

**Findings in Support of Approval**

The Findings for this application are included as Exhibit 1.

**Conditions of Approval**

1. The applicant's final plat application must include the items listed on the City of Milwaukie Final Plat Checklist. The following specific items and changes are required as part of the application:
  - a. A written narrative describing any changes made to the final plat that are not related to these conditions of approval.
  - b. A final plat that substantially conforms to the plans received by the Planning Department on January 23, 2025 and approved by this action, except as modified by these conditions of approval.
  - c. The final plat must include spaces for signatures by the Milwaukie Planning Manager and Milwaukie City Engineer, and a note indicating that this partition is subject to the requirements of City of Milwaukie Land Use Application MLP-2025-001.
  - d. The final plat must include the Restricted Development Area. The restricted development easement must be recorded and noted on the final plat.

**Additional Requirements**

The following items are not conditions of approval necessary to meet applicable land use review criteria. They relate to other development standards and permitting requirements

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

contained in the Milwaukie Municipal Code (MMC) and/or Public Works Standards that are required at various points in the development and permitting process.

2. The Time Limit on Approval established in MMC 19.1001.7.E applies to this proposed partition.
  - a. MMC 19.1001.7.E.1.c: For boundary adjustments and land divisions approved under Title 17 Land Division, evidence of recording of the required instruments must be provided to the city within two years of the original approval.
  - b. MMC 19.1001.7.E.2.a: Approvals may be extended pursuant to MMC 19.908.
3. MMC Section 17.04.120 Recording

As per MMC Section 17.04.120, partition plats must be recorded by plat. An application for final plat must be submitted to both the City Planning Department and the County Surveyor. Once approved by the County Surveyor, a copy of the recorded final plat must be submitted to the City Planning Department.



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Laura Weigel, AICP  
Planning Manager

### **Exhibits**

1. Findings in Support of Approval
- cc: Oregon Liquor and Cannabis Commission, 9079 SE McLoughlin Blvd  
Jeffrey Munns, Assistant County Counsel (via email)  
Ben Blessing, Senior Planner, Clackamas County (via email)  
Planning Commission (via email)  
Joseph Briglio, Community Development Director (via email)  
Jennifer Garbely, City Engineer (via email)  
Jeff Tolentino, Assistant City Engineer (via email)  
Engineering Development Review (via email)  
Patrick McLeod, Building Official (via email)  
Stephanie Marcinkiewicz, Inspector/Plans Examiner (via email)  
Harmony Drake, Permit Coordinator (via email)  
Emilie Bushlen, Permit Technician (via email)  
Shawn Olson, CFD#1 (via email)  
Code Enforcement (via email)

Land Use File(s): MLP-2025-001

**EXHIBIT 1**  
**Findings in Support of Approval**  
**Primary File #MLP-2025-001 (9201 SE McLoughlin Blvd)**

Sections of the Milwaukie Municipal Code not addressed in these findings are found to be inapplicable to the decision on this application.

1. The applicant, Jeffrey Munns, on behalf of the Oregon Liquor and Cannabis Commission (OLCC), has applied for approval to partition the existing property into two properties with the centerline of Johnson Creek (the creek) as the dividing line. The subject property is addressed as 9201 SE McLoughlin Blvd, with 9000 SE McBrod Ave, and is zoned North Milwaukie Employment zone (NME). The primary land use application file numbers are MLP-2025-001, with NR-2025-001 and VR-2025-001.
2. The subject property is 14.5 acres, is divided by Johnson Creek, and is developed with the OLCC office and warehouse and distribution facilities (east of the creek) and the Clackamas County Community Corrections facilities (west of the creek along McBrod Ave). The proposal is to divide the subject property along the center line of Johnson Creek, retaining the eastern section of the property for OLCC and creating a new parcel for Clackamas County's existing community correction facilities on the West side of Johnson Creek. If the request is granted, Clackamas County would own the land where the buildings and improvements are located instead of leasing the land from current or future owners.

Once divided, the county property west of the creek would have an area of approximately 3.6 acres. The remaining OLCC property would have an area of approximately 10.9 acres. No development is proposed as part of this application. No changes to access, circulation, parking, or structures are proposed. No removal of any vegetation is proposed.

MMC 19.402.13 requires that, as part of a partition, 100% of the Water Quality Resource Area (WQR) must be placed in a separate unbuildable tract protected by a conservation restriction. The applicant has requested a variance from the requirement for the unbuildable tract and has proposed a restricted development area with a restrictive easement instead.

3. The proposed land division constitutes a partition as per the definitions in Milwaukie Municipal Code (MMC) Chapter 17.08. The proposal is subject to the following provisions of the MMC:
  - MMC Title 17 Land Division, including:
    - MMC Chapter 17.12 Application Procedure & Approval Criteria
    - MMC Chapter 17.16 Application Requirements and Procedures
    - MMC Chapter 17.20 Preliminary Plat
    - MMC Chapter 17.28 Design Standards
    - MMC Chapter 17.32 Improvements
  - MMC Section 19.312 North Milwaukie Employment Zone (NME)

- MMC Section 19.402 Natural Resources
- MMC Chapter 19.700 Public Facility Improvements
- MMC Section 19.911 Variances
- MMC Section 19.1006 Type III Review

The application has been processed and public notice provided in accordance with MMC Section 19.1006 Type III Review. A public hearing with the Planning Commission was held on March 11, 2025, as required by law.

#### 4. MMC Title 17 Land Division

MMC Title 17 establishes the standards and procedures for land division and property boundary changes.

##### a. MMC Chapter 17.12 Application Procedure and Approval Criteria

MMC 17.12 specifies the process, procedures, and approval criteria for lot consolidation, property line adjustment, partition, subdivision, and replat.

*The subject property is a 14.5-acre lot. The proposed land division will create two new parcels. This action constitutes a partition and is subject to Type II review as per the guidance of MMC Table 17.12.020. However, because other aspects of the proposal are subject to Type III review, the full application is reviewed by the Planning Commission.*

MMC Section 17.12.040 establishes the approval criteria for preliminary plat. The proposed partition meets these criteria as described below.

- (1) The proposed preliminary plat complies with Title 19 and other applicable ordinances, regulations, and design standards.

*As demonstrated by the applicant's submittal materials and evidenced by these findings, the proposed partition complies with all applicable standards of MMC Titles 17 and 19. As proposed, this criterion is met.*

- (2) The proposed division will allow reasonable development and will not create the need for a variance of any land division or zoning standard.

*The proposed partition will establish two parcels. In addition, a restricted development area with a restrictive easement has been proposed in lieu of a separate unbuildable tract to preclude further development in the resource areas. The proposed partition does not create the need for any variances, except for the requested variance related to the development restriction. As proposed, this criterion is met.*

- (3) The proposed subdivision plat name is not duplicative and the plat otherwise satisfies the provisions of Oregon Revised Statutes (ORS) 92.090(1).

*The proposed partition will be assigned a filing number by the Clackamas County Surveyor and does not require a plat name. As required for the final plat submittal, the plat will meet all applicable provisions of the ORS. As proposed, this criterion is met.*

- (4) The streets and roads are laid out so as to conform to the plats of subdivisions already approved for adjoining property as to width, general direction, and in all other respects unless the City determines it is in the public interest to modify the street or road pattern.

*No new streets or roads are included in the proposed partition. This standard is not applicable.*

- (5) A detailed narrative description demonstrating how the proposal conforms to all applicable code sections and design standards.

*The applicant's submittal materials include a narrative that addresses all applicable code sections and design standards.*

- (6) Approval of a preliminary plat for a middle housing land division will be granted if the Planning Manager finds that the applicant has met all of the following criteria:

*The proposed partition does not involve a middle housing land division.*

*This standard is not applicable.*

*As proposed, the Planning Commission finds that the preliminary plat meets the applicable criteria.*

b. MMC Chapter 17.16 Application Requirements and Procedures

MMC Section 17.16.060 establishes the application requirements for preliminary plat, including completed application forms and checklists, applicable fees, and the information specified in MMC Chapter 17.20 Preliminary Plat.

*The applicant's submittal materials include the necessary forms, checklists, and fees, as well as a narrative, preliminary plat document, and other information sufficient to demonstrate compliance with the applicable standards and criteria.*

*As proposed, the Planning Commission finds that the application meets the applicable requirements for preliminary plat submittal.*

c. MMC Chapter 17.20 Preliminary Plat

MMC 17.20 establishes the information required for a preliminary plat, including general information to be shown on the plat and existing and proposed conditions.

*The applicant's preliminary plat submittal is to scale and includes a map of existing conditions, contour lines, utilities, and other general information.*

*As proposed, the Planning Commission finds that the proposed preliminary plat includes the relevant and necessary information as outlined in MMC 17.20.*

d. MMC Chapter 17.28 Design Standards

MMC 17.28, particularly MMC Section 17.28.040, establishes standards for lot design for land divisions and boundary changes. These standards do not apply to units of

land that are created for purposes other than land development, including parks and natural areas.

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

*As discussed in Finding 6, the proposed new parcels both meet the minimum area and dimensional requirements for the underlying NME zone. As proposed, this standard is met.*

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

*Given the existing lot shape, street locations, presence of Johnson Creek, and the historic development patterns on the site, rectilinear lots are not possible.*

*As proposed, this standard is met given the noted exceptions for existing conditions.*

- (3) MMC Subsection 17.28.040.C limits compound lot lines for side or rear lot lines. Cumulative lateral changes in direction exceeding 10% of the distance between opposing lot corners along a given lot line may only be permitted through the variance provisions of MMC Subsection 19.911.

*The proposed partition includes side lot lines with true east-west direction, or along the long curve of Ochoco St. The share rear lot line will be the centerline of Johnson Creek, which forms a natural, meandering boundary that cannot be avoided. A variance is not warranted. This standard is met.*

- (4) MMC Subsection 17.28.040.D allows lot shape standards to be varied pursuant to MMC 19.911.

*No variance to the lot shape standards is requested in this application. This standard is not applicable.*

- (5) MMC Subsection 17.28.040.E limits double frontage and reversed frontage lots, stating that they should be avoided except in certain situations.

*The existing lot has frontages on McLoughlin Blvd, McBrod Ave, and Ochoco St. Neither of the proposed parcels will be a double frontage or reversed frontage lot. This standard is met.*

- (6) MMC Subsection 17.28.040.F requires that, pursuant to the definition and development standards contained in Title 19 for frontage, required frontage shall be measured along the street upon which the lot takes access. This standard applies when a lot has frontage on more than one street.

*The underlying NME zone does not require street frontage, although both proposed lots will have ample street frontage. This standard does not apply.*

*As proposed, the Planning Commission finds that the new parcels presented in the applicant's preliminary plat meet the applicable design standards established in MMC 17.28.*

e. MMC Chapter 17.32 Improvements

MMC 17.32 establishes procedures for public improvements, including a requirement that work will not begin until plans have been approved by the City.

*As discussed in Finding 7, there are existing accessways serving the proposed parcels based on existing development. As per the provisions of MMC Chapter 19.700, discussed in Finding 7, as no new development is proposed on either parcel, no improvements are required. As proposed, the Planning Commission finds that the applicable standards of MMC 17.32 are met.*

*The Planning Commission finds that the proposed partition meets all applicable standards of MMC Title 17.*

5. MMC Section 19.312 North Milwaukie Employment Zone (NME)

MMC 19.312 establishes standards for the North Milwaukie Employment Zone (NME). The application meets the applicable standards of this section as described below.

a. MMC Subsection 19.312.2 Allowed Uses

MMC 19.312.2 establishes the uses allowed in the NME zone, including offices, warehousing and distribution, and manufacturing as permitted uses, and Community Service Uses (CSU).

*The subject property is currently developed with the OLCC facility which is a wholesale, warehousing and distribution facility. The County facilities are existing Community Service Uses.*

b. MMC Subsection 19.312.5 Development Standards

MMC 19.312.5 establishes development standards for the NME zone. There are no minimum standards for lot size, street frontage, or setbacks.

*No additional development is proposed as part of this application. The parcel is developed with approved development since the 1970s. As developed, and with no changes proposed, the proposed partition meets all applicable development standards of this subsection.*

*The Planning Commission finds that the proposed partition meets all applicable development standards of MMC 19.312.*

6. MMC Section 19.402 Natural Resources

MMC 19.402 establishes regulations for designated natural resource areas. The standards and requirements of MMC 19.402 are an acknowledgment that many of the riparian, wildlife, and wetland resources in the community have been adversely impacted by



development over time. The regulations are intended to minimize additional negative impacts and to restore and improve natural resources where possible.

a. MMC Subsection 19.402.3 Applicability

MMC 19.402.3 establishes applicability of the Natural Resource (NR) regulations, including all properties containing Water Quality Resources (WQRs) and Habitat Conservation Areas (HCAs) as shown on the City's Natural Resource (NR) Administrative Map.

*The subject property is bisected by Johnson Creek. The City's NR Administrative Map shows both WQR and HCA designations on the subject property. As per MMC Table 19.402.3.K, property line adjustments, partitions, and subdivisions involving properties that include WQR and/or HCA resources are subject to the provisions of MMC Section 19.402, specifically the provisions of MMC Subsection 19.402.13.*

*The Planning Commission finds that the proposed partition is subject to the provisions of MMC 19.402, including the requirements of MMC 19.402.13.*

b. MMC Subsection 19.402.13 Land Division and Property Line Adjustments

MMC 19.402.13 establishes standards and requirements for property line adjustments and all forms of land division defined in MMC Chapter 17.08 for properties that include WQR and/or HCA resources.

(1) MMC Subsection 19.402.13.G Low-Impact Partitions

MMC 19.402.13.G establishes a Type II review process for "low-impact partitions" that can demonstrate compliance with specific standards. For properties that contain WQRs, 100% of the WQR must be placed in a separate unbuildable tract, protected by a conservation restriction. For properties that contain HCAs on 85% or less of the total lot area, the applicant must either (1) ensure that there is no more than a 30-point difference in the percentage of HCA coverage on each of the parcels or (2) place at least 90% of the original property's HCA in a separate unbuildable tract that is protected by a conservation restriction.

*Because some of the previously developed areas encroach into the WQR, a low-impact partition is not possible.*

*The Planning Commission finds that the proposed partition does not qualify as a low-impact partition, and is therefore, subject to Type III review.*

(2) MMC Subsection 19.402.13.H All Other Partitions

MMC 19.402.13.G establishes a Type III review process for partitions that cannot meet the requirements for "low-impact partitions" that can demonstrate compliance with specific standards. For properties that contain WQRs but cannot comply with Subsection 19.402.13.G.2, that contain both WQRs and HCAs but cannot comply with Subsection 19.402.13.G.3, or where the HCA

covers more than 85% of the total lot area, the application shall comply with the following standards:

- (a) To the extent practicable, the parcel configuration shall mitigate the potential future impacts to WQRs from access and development.

*The proposed parcel configuration takes full advantage of the natural flow patterns of Johnson Creek. No new development is proposed as part of the partition and all areas not already developed are proposed to be included in a Restricted Development Area (RDA) with a restrictive easement to prevent any future development of the site's WQR and/or HCA areas.*

- (b) An Impact Evaluation and Alternatives Analysis shall be prepared in accordance with the relevant portions of Subsection 19.402.12.A.

*A full Impact and Alternatives Analysis was submitted as part of the application materials.*

*The WQR, a 50-foot vegetative buffer offset from the edge of Johnson Creek, is roughly 151,500 sq ft in area (3.48 Acres). Within the buffer, tree canopy comprises roughly 63,900 sq ft of the total buffer area, or 42%. Ground cover and shrubs cover roughly 56,600 of the total WQR, or 37%. Combined, all tree canopy, ground cover, and shrubs total roughly 78,660 sq ft, or 51% of the total WQR. Based on the existing vegetation and impaired nature of this section of Johnson Creek, the existing condition of the WQR on the site is considered poor.*

*No new development is proposed as part of the partition and the natural resources are proposed to be preserved as is, in perpetuity. The existing development has remained unchanged for several decades, and there have been no substantial changes to the site overall. Much of the Johnson Creek watershed is already "impaired" and has been the subject of many regional restoration efforts. There will be no net impact to the creek with this partition, as no new development is proposed, and the existing vegetation will be preserved in an RDA and protected by restrictive covenant.*

- (c) For properties where the HCA covers more than 85% of the total lot area, the Impact Evaluation and Alternatives Analysis shall address how the applicant's proposal retains the greatest practicable degree of contiguity of the HCA across the new parcels.

*The HCA covers far less than 85% of the total lot area. This criterion does not apply.*

*The Planning Commission finds that the proposed partition meets the applicable criteria for a natural resource partition.*

- (3) MMC Subsection 19.402.13.J Resource Area as a Separate Tract

MMC 19.402.13.J establishes standards for placing WQR and/or HCA resources in a separate unbuildable tract when required. The separate tract must not be

part of any lot or parcel used for construction of any structures. Prior to final plat approval, ownership of the separate tract must be identified to distinguish it from lots or parcels intended for development, with ownership in common or by a homeowners association being strongly discouraged. Options include the tract remaining a privately held natural area with a restrictive covenant or conservation easement.

*The applicant has submitted natural resources maps identifying the natural resources areas and a restricted development area. The natural resource plan shows combined HCA and WQRs, while the Restricted Development Plan shows the combined areas, which are proposed to be restricted from future development in perpetuity. The applicant has requested a variance to this section in order to place the Natural Resource areas in an RDA. These areas will be protected in perpetuity with protective covenants. The proposed restricted development easement prohibits any construction, disturbance, or plant removal, unless authorized by the City of Milwaukie.*

*As conditioned, and subject to approval of a variance, the Planning Commission finds that this standard is met.*

*As proposed and conditioned, the Planning Commission finds that the applicable standards of MMC 19.402.13 are met.*

*The Planning Commission finds that, as conditioned, the proposed partition meets all applicable standards of MMC 19.402.*

#### 7. MMC Chapter 19.700 Public Facility Improvements

MMC 19.700 establishes provisions to ensure that development provides public facilities that are safe, convenient, and adequate in rough proportion to their public facility impacts.

##### a. MMC Section 19.702 Applicability

MMC Section 19.702 establishes the applicability of MMC 19.700, including for land divisions, new construction, and modification or expansion of an existing structure or a change or intensification in use that results in any projected increase in vehicle trips or any increase in gross floor area on the site.

*The applicant proposes to partition the subject property to create two parcels. The proposed partition is subject to the requirements of MMC 19.700.*

##### b. MMC Section 19.703 Review Process

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

*A preapplication conference for this proposal was waived by the Planning Manager.*

*This standard does not apply.*

c. MMC Section 19.704 Transportation Impact Evaluation

MMC 19.704 establishes that the City Engineer will determine whether a proposed development has impacts on the transportation system by using existing transportation data. If the City Engineer cannot properly evaluate a proposed development's impacts without a more detailed study, a TIS will be required to evaluate the adequacy of the transportation system to serve the proposed development and determine proportionate mitigation of impacts.

*The City Engineer has determined that a TIS is not required, as no new development is proposed.*

*This standard is met.*

d. MMC Section 19.708 Transportation Facility Requirements

MMC 19.708 establishes the City's requirements and standards for improvements to public streets, including pedestrian, bicycle, and transit facilities. MMC Subsection 19.708.1 requires compliance with MMC Chapter 12.16 and establishes general requirements and standards for streets, including access management, clear vision, street design, connectivity, and intersection design and spacing standards. MMC Table 19.708.2 provides more specific street design standards for various street classifications, including for arterial and neighborhood routes. All streets, sidewalks, necessary public improvements, and other public transportation facilities located in the public ROW and abutting the development site must be adequate at the time of development or must be made adequate in a timely manner. The City's street design standards are based on the street classification system described in the City's Transportation System Plan (TSP).

*The subject property is already developed, and no new development is proposed. The construction of physical frontage improvements or collection of a fee in lieu of construction (FILOC) is not warranted at this juncture; a requirement for improvements or FILOC can be more accurately evaluated and justified at the time of any future development.*

*This standard is met.*

*The Planning Commission finds that the applicable standards of MMC 19.700 are met.*

8. MMC Section 19.911 Variances

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

a. MMC Subsection 19.911.2 Applicability

MMC 19.911.2 establishes applicability standards for variance requests.

Variances may be requested to any standard of MMC Title 19, provided the request is not specifically listed as ineligible in MMC Subsection 19.911.2.B. Ineligible variances include requests that result in any of the following: change of a review type, change

or omission of a procedural step, change to a definition, increase in density, allowance of a building code violation, allowance of a use that is not allowed in the base zone, or the elimination of restrictions on uses or development that contain the word “prohibited.”

*The applicant has requested relief from MMC 19.402.13.J.2, specifically the requirement to create a separate resource area “tract”, proposing instead a restricted development area.*

*The requested variance meets the eligibility requirements established in MMC 19.911.2.*

b. MMC Subsection 19.911.3 Review Process

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

*The requested variance is not identified in MMC 19.911.3.B as being eligible for Type II review. Therefore, the requested variance is subject to the Type III review process and the approval criteria established in MMC Subsection 19.911.4.B.*

c. MMC Subsection 19.911.4 Approval Criteria

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

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

*The proposed Restricted Development Plan shows the combined WQR and HCA areas on the site, which are proposed to be restricted from future development in perpetuity. The applicant has requested a variance to this section in order to place the Natural Resource areas in an RDA. These areas will be protected in perpetuity and be protective covenants.*

*Separate resource area tracts are a useful instrument for some residential land divisions, or land divisions that will create new building sites. However, the subject property is already developed and, as described by the applicant, they propose a hardship to the OLCC property given that the entire site is already developed. The applicant proposes to preserve all of the undeveloped HCA and WQR, but requests the final plat show a Restrictive Development Area (RDA) or Restrictive Easement with associated restrictive covenant(s) being recorded simultaneously. The RDA or restrictive easement will accomplish the same level of protection that would be provided within a separate tract. It will be held in perpetuity and will have the benefit of a responsible government agency as the underlying owner.*

*RDAs or Restrictive Easements can accomplish the same exact protections that are set forth in MMC 19.402, but will ensure that each owner is expressly responsible for the maintenance of their respective natural resource areas. Another adverse impact of creating tracts, the tract/owner/entity may dissolve or otherwise not be answerable to the stated conditions therein, and difficult to contact. Some Homeowners Associations run into this type of ownership issue, several years after the plat is recorded. There is no response from the entity, and the City may need to talk with the tract owner, may need an easement, or may see an opportunity to enhance the Natural Resource area. The benefit of having an RDA or restrictive easement means that the underlying owners, the County or OLCC, (or their successors/heirs) will always be available to work with the City or other agencies, when it comes to enhancing these areas or allowing permission on to the protected area.*

*The Planning Commission finds that the applicant's submittal provides an adequate analysis of the impacts and benefits of the requested variance compared to the baseline requirements. This criterion is met.*

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

*The proposed variance allowing an RDA has more benefit and utility than a tract. An RDA or Restrictive Easement makes it easier to work with underlying owners. Furthermore, if any future opportunities arise to enhance the resource area, securing easements (e.g. stormwater, sewer, etc.), or simply contacting the underlying property owner, will be relatively easy compared to working with a third party or property association for a tract.*

*The same protections are available in the RDA as compared to a separate tract without the burdens of a separate property under different management and ownership. In addition, the property is already developed with two separate governmental facilities. It does not appear that other similar properties in the NME zone have separate resource area tracts.*

*The Planning Commission finds that the requested variance is reasonable and appropriate and that it meets one or more of the criteria provided in MMC Subsection 19.911.B.1.b.*

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

*There are no identified impacts from allowing the resource areas to be protected via an RDA rather than in a separate tract. The same amount of land would be preserved and protected.*

*As proposed, the Planning Commission finds that the requested variance meets the approval criteria established in MMC 19.911.4.B.1 for Type III variances seeking discretionary relief.*

*As conditioned, the Planning Commission finds that the requested variance is allowable as per the applicable standards of MMC 19.911.*

9. The application was referred to the following departments and agencies on February 5, 2025:

- Milwaukie Community Development Department
- Milwaukie Building Department
- Milwaukie Engineering Department
- Clackamas Fire District #1 (CFD#1)
- NW Natural

In addition, notice of the public hearing was mailed to owners and residents of properties within 300 ft of the subject property on February 19, 2025. The Johnson Creek Watershed Council was notified on February 25, 2025.

No comments were received.