



Hearings Office

City of Portland

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RECOMMENDATION OF THE HEARINGS OFFICER

I. GENERAL INFORMATION

File Number: LU 21-094203 CP ZC (Hearings Office 4220002)

Applicant: Renee France
Radler White Parks & Alexander LLP
111 SW Columbia Street, Suite 700
Portland, OR 97201
rfrance@radlerwhite.com

Property Owner: Marvin La Porte
5515 SE Milwaukie Avenue
Portland, OR 97202

Hearings Officer: William Guzman

Bureau of Development Services (BDS) Staff Representative: Amanda Rhoads

Site Address: 5515 SE Milwaukie Avenue

Legal Description: BLOCK 5 INC PT VAC ST LOT 1, BROWN'S TRACT; BLOCK 5 INC PT VAC ST LOT 3, BROWN'S TRACT; BLOCK 5 LOT 4, BROWN'S TRACT; BLOCK 5 LOT 5-7 INC PT VAC ST LOT 8, LAND & IMPS SEE R122536 (R110000511) FOR OTHER IMPS, BROWN'S TRACT; BLOCK 5 INC PT VAC ST LOT 9, BROWN'S TRACT; BLOCK 6 INC PT VAC ST LOT 2, BROWN'S TRACT; BLOCK 4 LOT 1&2, MIDWAY

Tax Account Number: R110000470, R110000490, R110000500, R110000510, R110000550, R110000580, R568701110

State ID Number: 1S1E14DB 17200, 1S1E14DB 17100, 1S1E14DB 17500, 1S1E14DB 17000, 1S1E14DB 17300, 1S1E14AC 09700, 1S1E14DB 15900

Quarter Section: 3532 and 3632

Neighborhood: Sellwood-Moreland

Business District: Sellwood-Moreland

District Neighborhood Coalition: Southeast Uplift

Current Zoning: *Base Zones:* R5: Single-Dwelling Residential 5,000; CM1: Commercial Mixed-Use 1; and R2.5: Single-Dwelling Residential 2,500. *Overlay Zones:* Portions of the site contain one or more of the following overlays: "d" Design overlay; "e": River Environmental overlay; "g": River General overlay and "z" Constrained Sites overlay.

Land Use Review: Type III, CP ZC, Comprehensive Plan Map Amendment and Zoning Map Amendment

BDS Staff Recommendation to Hearings Officer: Approval with conditions. There are two staff reports in the record (Exhibits H-3 and H-5); the Hearings Officer notes these two documents are identical except for the removal of highlighting in the text.

Public Hearing and the Record: The Hearings Officer opened the public hearing at 2:34 p.m. on February 16, 2022, via the Zoom platform due to COVID-19 and the hearing was closed at 4:29 p.m. Upon request, the Hearings Officer held the record open for seven days after the Hearing to allow the Applicant to submit a final written argument. The record closed at 4:00 p.m. on February 23, 2022.

Post-Hearing Request: At the hearing, during the opening instructions, the Hearings Officer advised participants that anyone could request the record remain open in order to submit additional written testimony after the hearing ended. The Hearings Officer instructed that this request should be made when presenting their testimony. The Hearings Officer did not impose any time restraints on any of the persons testifying.

After the hearing closed, the Hearings Office received an email request to keep the record open. This person explained:

"At the very end of the meeting, the Hearing's Officer asked if anyone wanted to hold the hearing open for additional comments. I did and 'raised by hand' (zoom protocol), but it was just at the instant that he closed the meeting, so my raised hand was not seen. Is it possible now to request additional time to submit comments?"

The attempt to request the record remain open at the end of the hearing was not invited by the Hearings Officer. The audio recording of the Hearing accurately captures the Hearings

Officer's instructions. Several documents were submitted after the record closed and are not considered as part of the record in this matter: Exhibits H-59 and H-60. In the event a reviewing body considers it an error to not include Exhibits H-59 and H-60, the substance of the testimony is redundant to other testimony already in the record and would not materially alter the Hearings Officer's analysis.

Audio Recording: The public land use hearing is audio recorded by the Hearings Office. It is available to everyone in the City's online records management system:

<https://efiles.portlandoregon.gov/Record?q=recAnyWord%3A4220002&sortBy=recCreatedOn&pagesize=100&filter=electronic>.

Exhibits: A complete list of all the exhibits contained in the record is included near the end of this document (exhibit list). The record includes Exhibits A-1 through G-3 which the BDS Land Use Division receives prior to the issuing of the Staff Report. Upon request to BDS, these documents are available in a digital format via electronic link.

Once the notice of hearing is provided to the public, the Hearings Office is responsible for accepting and documenting written testimony from the public. All of the testimony and documents received by the Hearings Office are stored in an online case management system accessible to everyone: <https://www.portland.gov/omf/hearings>. The Hearings Office exhibits are marked in the lower right-hand corner with an exhibit stamp indicating "Hearings Office." In this recommendation these are referred to as the H Exhibits.

The Hearings Office's electronic case management system automatically numbers the documents in the order in which they are uploaded. Two documents are accepted into the record even though they were uploaded after the hearing. The first is Exhibit H-61, which is the final argument from Applicant for whom the Hearings Officer held open the record for seven days. This document was timely filed with the Hearings Office prior to the expiration of the additional seven days. The Hearings Officer also accepts Exhibit H-62; this is the PowerPoint presentation given by City staff that the Hearings Officer accepted into the record during the hearing's opening remarks. For an unknown reason, Exhibit 48 does not appear to exist in the online case management system; this omission may be the result of human or technical error.

Testified at the Hearing:

Amanda Rhoads
Renee France
Brett Shipton
Rocky Johnson
Marianne Nelson
Brenda Ray Scott
Shari Gilevich
Bob Burkholder

David Schoellhamer
Emily Muro-Pitts
Peggy MacMillan

Quasi-Judicial Hearing: The process for this land use application is broken into two parts: an initial public hearing in which the reviewing body is the Hearings Officer followed by a second public hearing in which the reviewing body is City Council. The Hearings Officer's duty, following the first public hearing, is to provide City Council with a recommendation. City Council's duty, following a second public hearing, is to issue a decision. An appeal of City Council's decision would be heard by the Land Use Board of Appeals.

The Hearings Officer is a neutral and unbiased decision maker. The Hearings Officer does not have any conflicts of interest in the outcome of this matter. The Hearings Officer did not engage in any one-sided (*ex parte*) communications regarding the proposal with anyone. The Hearings Officer makes this recommendation based upon their good faith legal analysis of the facts as they apply to the applicable criteria.

II. ANALYSIS

Transparency and Accountability: In this matter, the Hearings Officer's duty is to provide City Council with a recommendation based on their unbiased viewpoint as a neutral factfinder. In part, the Hearings Officer's recommendation is an attempt to assist City Council navigate the approximately 90 exhibits and the nearly two hours of oral testimony that make up the record. The Applicant has the burden of proving to the Hearings Officer and City Council that the application can meet the approval criteria either with or without imposing conditions.

In pursuit of full transparency and accountability, the Hearings Officer is disclosing at the start of this analysis that, after a thorough review, the Applicant and the City's arguments, on balance, are more persuasive than the testimony in opposition to the application. The Hearings Officer, therefore, freely borrows text from the Applicant's submissions and the City's Staff Report in drafting this recommendation. The Hearings Officer's analysis will focus on the reasons the Hearings Officer finds that the opposition fails to rebut the Applicant's evidence and arguments.

In preparation for the second public hearing City Council should read closely this recommendation, the Staff Report (Exhibit H-5), and the submission of the principal opponent, Sellwood-Moreland Improvement League (SMILE) (Exhibit H-6). These documents accurately capture the issues in the record and provide a strong basis for analyzing the issues.

Proposal: The Applicant proposes to change zoning for the seven properties cited at the beginning of this recommendation. In this location, the proposal requires changes to Portland's Comprehensive Plan Map and Portland's Zoning Map. The proposal also involves

different Comprehensive Plan Map and Zoning Map designations on the west side of Milwaukie Avenue and the east side of Milwaukie Avenue, described below:

West Property:

- Comprehensive Plan Map Amendment from R5 – Residential 5,000 and MU-N – Mixed-Use – Neighborhood to MD-U – Multi-Dwelling – Urban Center;
- Zoning Map Amendment from R5 – Single-Dwelling Residential 5,000 and CM1 – Commercial Mixed-Use 1 to RM4 – Residential Multi-Dwelling 4;
- Removal of the “z” Constrained Sites Overlay zoning from the three lots zoned R5; and
- Application of the “d” Design Overlay zoning on the three lots zoned R5;
- Retention of the “e” River Environmental overlay and “g” River General overlay to remain on the parcels that already have them.

East Property:

- Comprehensive Plan Map Amendment from R2.5 – Residential 2,500 to MD-C – Multi-Dwelling – Corridor; and
- Zoning Map Amendment from R2.5 – Single-Dwelling Residential 2,500 to RM2 – Residential Multi-Dwelling 2;
- Application of the “d” Design Overlay zoning.

No development is proposed with this application. Current development includes an office building and associated parking on the CM1-zoned parcels; a surface parking lot on the R2.5 parcel; and the R5 parcels are vacant.

Relevant Approval Criteria: In order to be approved, this proposal must comply with the approval criteria of Title 33, Portland Zoning Code. The applicable approval criteria are:

- 33.810.050 Approval Criteria for Comprehensive Plan Map Amendments
- 33.855.050 Approval Criteria for Base Zone Change
- 33.855.060 Approval Criteria for Other Changes.

Principal Opponent: The City and the Applicant are in agreement that the application meets the approval criteria with the conditions set-forth in the Staff Report with a single exception. The single outstanding issue not resolved between the City and the Applicant is whether the proposal should include a condition requiring inclusionary housing (affordable housing) that differs slightly from the requirements in the current legislation.

In contrast to this alignment, the public testimony and the principal opponent of the application, SMILE, raise several important and valid issues for consideration. This recommendation to City Council includes the Hearings Officer’s good faith attempt to accurately summarize the opposition’s arguments raised in both the written and oral testimony and apply it to the relevant applicable criteria.

Although this application received a high level of public opposition in the form of written and oral testimony, it should be noted that a high level of controversy does not, by itself, prioritize a particular issue or policy in the analysis. In other words, a particular policy may not carry more weight in the analysis simply because it received a high number of related objections. The Hearings Officer is not persuaded by the popularity of an application or the lack of support. The quasi-judicial land use process is insulated from these external pressures. The law and the facts are applied neutrally. Multiple submissions on the same topic are considered redundant unless they differ importantly in the substance of their objection. The oral testimony provided at the Hearing, although important and valid, did not expand on the issues raised by the written testimony; therefore, the oral testimony is not transcribed in this document, but the recording is available to everyone online.

Opposition Analysis

The Hearings Officer finds that the opposition arguments are concentrated on the following points:

- Landslide Risk
- Environmental Degradation
- Neighborhood Characteristics
- Traffic/Parking Impacts.

Each of these topics is addressed below. The Hearings Officer starts the analysis by setting forth the opposition testimony, followed by the Applicant's or the City's response, and lastly analysis and recommendation from the Hearings Officer. The Hearings Officer does not claim to include every word of written opposition testimony, only that the opposition testimony included here accurately captures the primary issues. Access to the full text of all the written testimony is available to everyone and is accessible in the online case management system.

Land Slide Risk

The Applicant concedes a portion of the West Property poses a landslide risk. The risk of landslide poses an important and valid threat to safety, property, and human life. Below is a summary of the public's written opposition testimony that raised the issue of a landslide risk on the West Property (there are no landslide risks associated with the East Property):

- Exhibit H-4 (email submission of Marita Ingalsbe): There should be **"no potential for increased development along the ridge"** due to a **"steep drop off"** that has experienced landslides in the past and argues that these will continue to occur in the future due to "extreme rain." This testimony notes the z-overlay should remain to prevent further development.
- Exhibit H-6 (email submission of SMILE): "Placing high-density housing in a **landslide zone endangers human health**. . . Expanding high density housing in a landslide zone increases risk. **Climate change will increase the risk of landslides.**"

- Exhibit H-7 (email submission of Marianne Nelson): the West Property's "steep escarpment is composed of unstable gravels and other sediments" making "[t]his area prone to catastrophic slope failure." Noting "extreme rain" events and garbage-related erosion concerns on the slope makes future landslides more likely.
- Exhibit H-10 and H-11 (email submissions of Kelly Lanspa and Hugh Scollin) referencing the West Property they state: "It is a very narrow stretch of land adjacent to a nature area and a definite landslide hazard."
- Exhibit H-15 (email submission of Michele McNamara) notes "the steep drop-off of the land would require very deep footings and pose the threat of landslides across a trail that sees high levels of foot traffic throughout the day and provides a natural oasis that attracts people from multiple neighborhoods[.]"
- Exhibit H-16 (email submission of Harvey Hansen): "This change would allow a massive structure on a bluff very prone to slides."
- Exhibit H-24 (email submission of Mike Houck): "I have observed numerous landslides on the property in question and elsewhere along the bluff overlooking the Bottoms. . . The almost vertical slope is highly unstable and has a long history of landslides. An earlier slide, only one block south of the proposed zoning change, resulted in closure of the Oaks Bottom Wildlife Refuge access trail for many months."
- Exhibit H-25 (email submission of Jamie Ross): "It is a very narrow stretch of land adjacent to a nature area and a definite landslide hazard."
- Exhibit H-32 (email submission of Gael Godfrey and Austin Link): "It is a very narrow stretch of land adjacent to a nature area and a definite landslide hazard."
- Exhibit H-36 (email submission of Lynelle Hansen): "It is a very narrow stretch of land adjacent to a nature area and a definite landslide hazard."
- Exhibit H-38 (email submission of Conservation Director, Audubon Society of Portland): "This West Properties sit immediately adjacent to Oaks Bottom Wildlife Refuge on a steep slope with a long history of instability and landslides. The level of intensity of development proposed for this site would put both people and natural resources at risk."
- Exhibit H-42 (email submission of Lucy and Dan Davenport): "The unstable nature of the bluff which lies on a seismic faultline is very evident with frequent caving of sidewalk and hillside landslides in the area."

- Exhibit H-44 (email submission of Michelle Forbes): “**Any 10 story building in this location would surely be at great landslide and earthquake risk as well.**”
- Exhibit H-49 (email submission of Peggy MacMillan): “It has been indicated that there would be required geotechnical studies, and hopefully environmental studies too, based on the **proximity to a steep cliff** and to Oaks Bottom. This is necessary for any development there to secure healthy housing, human health and environmental health. There is a house not far to the South that recently had to be moved back because of **landslide hazard.**”
- Exhibit H-54 (email submission of Manning Welsh and Shari Gilevich): “The issue about project costs definitely should be addressed, given the engineering that will be required to build in **this landslide hazard area.**”
- Heidi Cropsey, Exhibit 56, “These changes and the developments that follow, would risk not only serious damage to the environment in the event of **mud slides with heavy rains**, but would severely hamper attempts to mitigate damage of earthquakes, fire and/or other natural or human caused disaster.”

The Hearings Officer finds that a portion of the West Property’s characteristics (the most western portion of the property) does pose a substantial landslide risk. The Hearings Officer does not find that this risk is a barrier to approving the application for the following reasons.

The application does not propose any development. The building permit review process when a structure is proposed will require a geotechnical report by an engineering expert. This permit process will require that any development project is designed to withstand landslides. The Hearings Officer finds that the Applicant’s geotechnical expert’s testimony, based upon site specific evaluation and review, is credible in its entirety and is incorporated herein by reference. This testimony supports a finding that it is feasible to design a building on the Western Property under the proposed designation in a way that will mitigate landslide hazard risks including on-site stormwater management that is likely to further minimize risk. (Applicant’s Final Argument Exhibit H-61). Managing the stormwater onsite will reduce the landslide risk. Conditions A and B are necessary and appropriate given the site’s specific features.

The Hearings Officer finds that the permit review process, which must be met before the City approves a structure on the West Properties, is as rigorous for a single-family dwelling unit (current zone) as it is for a multi-dwelling unit (proposed zone). Therefore, the proposed zoning change does not increase the risk to safety or human life. It follows that the proposal is as supportive of the Comprehensive Plan as the current designations. The slopes by themselves do not prevent the subject properties from meeting the applicable criteria because the Hearings Officer finds the properties can be developed in a way that limits erosion and landslides.

One final point on the steep slopes is worthy of note. The Applicant's goal may not be to develop the most challenging portion of the site (the steepest sloped area). Applicant states the following intent: "Future development on the West Property is expected to be concentrated on the eastern, upland portion of the site outside of the more steeply sloped overlay areas, thus providing water quality benefits for the Willamette River and habitat areas to the west." City Council might entertain a condition that prohibits construction on that portion of the site or deny this portion of the site being rezoned as requested. The reason the Hearings Officer is not recommending this is because the size of the entire site area is used in the floor area ratio calculation (the greater the area of the site, the greater floor area or building coverage or landscape area calculation). In other words, the developer can use this space in the calculations when looking at the development standards without actually building on the steep slopes. In order for this to occur all the zoning must be the same. The Hearings Officer finds, on balance, for the reasons explained above, that restricting this area with an additional condition is not necessary.

Environmental Degradation

The Hearings Officer finds that immediately adjacent to the steep slopes of the Western Properties is an area known as the Oaks Bottom Wildlife Refuge. The following is the Hearings Officer's good faith attempt to capture and summarize the public's opposition related to Oaks Bottom Wildlife Refuge:

- Exhibit H-8 (email submission of Nancy Schwartz): "7 stories next to a wildlife refuge will have **a significant impact on the wildlife living there[.]**"
- Exhibit H-9 (email submission of Kris Guptill): "To allow potentially 4 to 7 story buildings on this bluff is irresponsible and **potentially hazardous for this cherished and critical refuge.**"
- Exhibits H-10 and Exhibit H-11 (email submissions of Kelly Lanspa and Hugh Scollin) "Housing up to 10 stories would **disrupt the natural habitat visually and perhaps environmentally.**"
- Exhibit H-18 (email submission of Teddi Carbonneau): "**To allow this structure so close to our fragile Oaks Bottom and Spring Water Trail smacks of corruption.** This City has abandoned any claim to fighting Global Warming. How much abuse is our environment going to take? How many more trees and green spaces have to be destroyed by lack of caring and [incompetence]?"
- Exhibit H-20 (email submission of Mark Devendorf): "This land is next to Oaks Bottom, which is **a fragile habitat already damaged** by its proximity to many houses and building sites."

- Exhibit H-21 (email submission of Nancy Williams): "Of particular concern is the **impacts on the wildlife area to the west.**"
- Exhibit H-22 (email submission of Deborah Wessell): "Inserting 4-7-story (or more) buildings on the very brink of the Oaks Bottom Wildlife Refuge far below is not only a violation of the human character of the neighborhood, but **a disruption of a critical natural habitat** and very likely a landslide danger."
- Exhibit H-31 (email submission of Scott Van Dusen): "Anything over 4 stories on the west side of Milwaukie at that location would be unsafe, **risk the natural habitat of Oaks Bottom Refuge below[.]**"
- Exhibit H-32 (email submission of Gael Godfrey and Austin Link): "To allow potentially 4 to 7 story buildings on this bluff is irresponsible and **potentially hazardous for this cherished and critical refuge.**"
- Exhibit H-34 (email submission of Kristin Harvey): "**It will also drastically hinder the wildlife habitat and the beloved natural areas** that we love so much."
- Exhibit H-35 (email submission of Donna Pizzi): "To allow potentially 7-10 story buildings on this bluff is irresponsible and **potentially hazardous for this cherished and critical refuge.**"
- Exhibit H-37 (email submission of Luann Long): "On top of this is that **the effect this will have on our wildlife refuge** that is right below where you want to build this! This is NOT the spot to build any more of these types of properties! We love our wildlife. We relish in the fact that we can walk by places and feel safe. We walk our dogs and bring our children with us to go Oaks Bottom Refuge. It's bad enough that we have to walk around garbage and feces on our way to do that."
- Exhibit H-38 (email submission of the Audubon Society of Portland): "This West Properties sit immediately adjacent to Oaks Bottom Wildlife Refuge on a steep slope with a long history of instability and landslides. **The level of intensity of development proposed for this site would put both people and natural resources at risk.**"
- Exhibit H-40 (email submission of Linda [No last name]): "Ten stories is much too high for this neighborhood. It is not downtown. **It is near a wildlife refuge.** It is a place where people walk and enjoy nature."
- Exhibit H-41 (email submission of Ann Scott): "That stretch of roadway is an unofficial entrance to oaks park and to the neighborhood and **a high-rise building there would**

require deep foundation construction of which would impact the ecosystem we are trying to restore[.]”

- Exhibit H-43 (email submission of David Ashman): “I am in full support of the Sellwood Moreland Improvement League (SMILE) testimony dated February 11, 2022 also opposing the application and zoning changes for the following reasons: . . . **Degradation of the benefits of Oaks Bottom Wildlife Refuge.**”
- Exhibit H-51 (email submission of Michael Pucik): “This property is adjacent to a wildlife reserve. **The additional human, noise, light, and sound, pollution will have an extremely adverse effect on the wildlife and plant life in the reserve.** Not to mention the increase in human traffic and all of the pets specifically dogs being walked in the reserve scaring off wildlife and killing plant life. This pollution will be 24 hours, 7 days a week.”

The Hearings Officer acknowledges and validates the importance of this natural resource to the public and the City.

Set forth below is the Applicant’s rebuttal regarding the protection of this environmentally sensitive area.

“The [public opposition] comments do not acknowledge the wide swath of River Overlay located along the western side of the West Property which effectively creates a regulatory buffer between the available development area on the upland portion of the property and the edge of Oaks Bottom.”

The Hearings Officer finds that the Applicant’s proposal does retain the “e” River Environmental overlay and “g” River General overlay on the parcels that already have them. The Staff Report (Exhibit H-5 at pages 3–4) provides a full description and intent of these environmental overlays. Briefly, some of the protections or considerations provided by the protective overlay include:

- Allows development that protects, conserves, and enhances important natural resource functions and values while allowing environmentally sensitive development.
- Limits the impacts from development and vegetation maintenance on the natural resources and functional values contained within the overlay zone.
- Supports development that is carefully designed to be sensitive to the site’s protected resources.
- Mitigation is required for unavoidable impacts and is intended to have no net loss of natural resource features or functions over time.

The Hearings Officer reasons that since the regulatory protections on the resources below the Western Property were themselves deemed to comply with the Comprehensive Plan,

Statewide Planning Goal 5, and Statewide Planning Goal 15, that the Hearings Officer finds that they remain satisfied. In other words, the Applicant's proposal to retain the environmentally protective overlays is equally supportive of the Comprehensive Plan goals and policies as the current zoning. The Hearings Officer finds there are no protected view corridors either to or from the properties and Oaks Bottom Wildlife Refuge.

Neighborhood Characteristics

The Staff Report (Exhibit 5 at pages 5-6) includes a full description of the current zoning and the proposed changes to zoning. In the most general of terms, the Applicant is proposing to increase density. The following is the Hearings Officer's good faith attempt to capture and summarize the public's opposition related to the character of the neighborhood:

- Exhibits H-10 and H-11 (email submissions of Kelly Lanspa and Hugh Scollan): **"Nothing in the neighborhood is close to 10 stories and this doesn't seem to match the aesthetics laid out in the Main Street guidelines. Milwaukie IS a Neighborhood corridor- NOT A CIVIL CORRIDOR."**
- Exhibit H-12 (email submission of Lauri Colbert): **"Milwaukie Ave. is a neighborhood street and needs to be treated as such . . . Changing the zoning to allow monstrous apartment buildings will only add to the mayhem and unsafe conditions already taking place. . . Please let neighborhoods continue to be neighborhoods."**
- Exhibit H-13 (email submission of Richard Fitzpatrick): "This area cannot support this project."
- Exhibit H-14 (email submission of Jennifer Kennedy): "I was shocked to learn of the scale if the zoning change is allowed."
- Exhibit H-15 (email submission of Michele McNamara): **"[I]t is completely out of character for the neighborhood,** which currently includes relatively modest homes and small businesses."
- Exhibit H-16 (email submission of Harvey Hansen): **"This change would allow a potentially massive structure unlike anything in the neighborhood** and while parking is already at capacity the ensuing congestion would be a nightmare."
- Exhibit H-17 (email submission of Kay Sweeney): "This proposal is unconscionable, outrageous! If we need more housing it needs to be in some proportion with environment! This proposal is trumpish for letting big money have anything they want and to hell with community!"

- Exhibit H-19 (email submission of Catherin Magee): "This is a family friendly neighborhood that is mostly comprised of single family homes, townhomes, and the occasional apartment building. I do not know of any buildings in the neighborhood over four floors, most are two. The neighborhood aesthetic and balance cannot support a 'high density urban scale multi dwelling zone of seven or more stories. . .'"
- Exhibit H-21 (email submission of Nancy Williams): "I can tell you that the proposed allowable heights and density far outpace what the street, surrounding natural area, and houses could realistically accommodate. . . I realize that the future will no doubt include development in these blocks, but the proposed zoning changes allow for development completely out of proportion with the scale of the surrounding homes and Oaks Bottom."
- Exhibit H-22 (email submission of Deborah Wessell): "[I] understand that population pressures demand higher-density housing in all of Portland's neighborhoods. . Inserting 4-7-story (or more) buildings . . . [is] a violation of the human character of the neighborhood . . ."
- Exhibit H-23 (email submission of Brenda Niman): "The City of Portland's irresponsible and shortsighted overbuilding of neighborhoods of what used to make Portland livable is reprehensible. All this in the name of 'affordable housing' which all of us know is anything but. Our neighborhoods were zoned "residential" for a reason."
- Exhibit H-25 (email submission of Jamie Ross): "In my opinion, [the West Properties] could not support this kind of structure. . . It would be far too big for the neighborhood. . . A change is probably in order, but there is far more appropriate zoning that could be applied that would integrate better with the neighborhood. . . The current R2.5 zone [for the East Properties] is more appropriate for integrating with the single-family neighbors to the North, East, and South. R2.5 will allow for multi-family housing, but more like up to a six plex."
- Exhibit H-27 (email submission of Beth Stein): "This is really a super tall building for our neighborhood. It's going to disrupt views and wildlife and our peace.... I sure wish people in power and in charge of such developments would give more consideration to where they are building and what effect it will have on all the inhabitants of an area, not just human. We are so destructive and oblivious and arrogant. I wish we [weren't]. Please don[']t build this here."
- Exhibit H-28 (email submission of Meigra Simon): "I am writing to voice my opposition to the proposed 10 story apartments project at 5515 SE Milwaukie Ave. . To have such a huge building in this neighborhood is not only totally out of character with the

surrounding buildings, it doesn't add to the neighborhood, only to the developer's large pockets (not to mention the city's coffers)."

- Exhibit H-29 (email submission of Stephen Barone): "**The proposed structure will ruin the skyline, the neighborhood aesthetics**, and does not feature the characteristics of green building."
- Exhibit H-31 (email submission of Scott Van Dusen): "RM4 zoning is more appropriate in the Central City as shown in Portland's 2035 Comprehensive Plan. . . **This location would not be appropriate as RM4 zoning**. . . I am urging the City of Portland to deny this zoning change, as well as not allow any RM4 zones in the Sellwood-Moreland neighborhood."
- Exhibit H-32 (email submission of Gael Godfrey and Austin P. Link): "Milwaukie Avenue is a Neighborhood Corridor (NOT a Civic Corridor), and a small one at that. Compared to say Woodstock which is also a Neighborhood Corridor. In my opinion, it could not support this kind of structure. . . **It would be far too big for the neighborhood**. . . A change is probably in order, but **there is far more appropriate zoning that could be applied that would integrate better with the neighborhood**. Zones appropriate for Neighborhood Corridors would be RM2 or CM2."
- Exhibit H-33 (email submission of G. Kolstad): "I am writing to oppose the proposed zone changes around Milwaukie Avenue and Ellis Street in Sellwood/Westmoreland. **The current zoning encourages development that increases density while reflecting the surrounding neighborhood's modest lot sizes, dwelling heights and available street capacity**. Making the proposed changes will potentially negatively and drastically affect existing residents and give future residents a poorer place to live. . . The loss of light and privacy to the surrounding modest and one story houses would already be significant. Moderating the out-of-character and drastic changes would be a small compromise."
- Exhibit H-34 (email submission of Kristin Harvey): "**Sellwood - Moreland is not appropriate for the type of development that is being proposed and what has already begun to take place**. . . For one, the neighborhood cannot handle the proportions of these structures that are being proposed . . . the entire character with be destroyed, it's historic charm will become invisible and the peaceful qualities of the natural areas will cease to be."
- Exhibit H-35 (email submission of Donna Pizzi): "I object to the plans to build a 10-story building in **our neighborhood, which is already over run with huge apartment buildings**, often with no parking, making our small streets packed with parked cars, which impedes all types of travel. In the past month, I've seen two cars parked on Milwaukie Ave totaled by hit & run drivers."

- Exhibit H-36 (email submission of Lynelle Hansen): **"Nothing in the neighborhood is close to 10 stories** and this doesn't seem to match the aesthetics laid out in the Main Street guidelines. Milwaukie IS a Neighborhood corridor- NOT A CIVIL CORRIDOR. . . **It would be far too big for the neighborhood."**
- Exhibit H-37 (email submission of Luann Long): "Beside the effect this building would have environmentally it is also the effect it has on residents and workers in this area. **There are 2 semi high buildings that are apartments in this area.** One is across the street and one is next to the same area where you want to have this building set up. We now have a barrage of crime, drug dealings and garbage being left in this same area."
- Exhibit H-39 (email submission of Bill Mosser): "I just learned about a hearing today for a zoning change at 5515 SE Milwaukie Avenue which would allow a ten story apartment building to be constructed. I am opposed to that zoning change."
- Exhibit H-40 (email submission of Linda [No last name]): **"Ten stories is much too high for this neighborhood. It is not downtown."**
- Exhibit H-42 (email submission of Lucy and Dan Davenport): "I will personally be dramatically impacted by this zoning change. In the past five years the immediate [n]eighborhood within a two block radius of my home has seen construction of five hundred apartment units and town homes. **This infill has changed the entire landscape with highrise construction** and loss of open habitat. . . Our walks in the neighborhood are greeted by garbage spilling out from single family garbage receptacles in place for twenty unit high rise apartment units."
- Exhibit H-43 (email submission of David Ashman): "While I'm not opposed to bringing the applicant's parcels into alignment, this is a gateway to our community and development needs to be carried out in a thoughtful way. I believe zoning the applicant's properties west of Milwaukie Avenue CM2 or RM2 would be more supportive of the Comprehensive Plan, fulfill the zoned housing potential of the properties, improve the feasibility of development, and do so in a way that is safer and in compliance with the present zoning code."
- Exhibit H-49 (submission of Peggy MacMillan): "Regarding the West side of Milwaukie Avenue. The lot to the North is already zoned RM4, but that is not a valid reason to change them all to that zone. **RM4 never was an appropriate zone for the North lot."**
- Exhibit H-50 (email submission of Maura Hayes): "The proposed development project is **vastly out-of-scale for the surrounding area** and is located on a sensitive landslide prone hillside above a nature preserve."

- Exhibit 53 (email submission of Shari Gilevich, member of SMILE): “My focus is on the proposed zone change to RM4 on the west side of SE Milwaukie Ave. As the testimony shows, the proposed MD-U plan designation is not applicable in this location and so the implementing zone, RM4, also is not applicable.”
- Exhibit H-55 (email submission of Brenda Ray Scott, member of SMILE): “[M]y objection focuses on the following point: Incompatibility of the MD-C designation and RM2 zone with the land use pattern established by the Comprehensive Plan Map[.] The proposed MD-C/RM2 designation is not compatible with the land use pattern established by the Comprehensive Plan Map because it is latitudinally centered in a neighborhood of 28 R2.5 properties (see figure). The two isolated RM2 properties south of Ellis Street are a triplex and four-plex, which the recently enacted Residential Infill Project now allows in the R2.5 zone. **The proposal would add incoherency by creating a checkerboard pattern of RM2 and R2.5 properties.**”
- Exhibit H-56 (email submission of Heidi Cropsey): “Milwaukie Ave is a Neighborhood, not a Civic Corridor, it should be treated as such.”
- Exhibit H-57 (email submission of April Atwood): “**None of this area should be zoned RM4, which is only appropriate to a high density urban-scale neighborhood such as is found in downtown Portland.** Milwaukie Ave in the Westmoreland area is a neighborhood corridor, not a civic corridor, and a small one at that! A RM4 designation would allow a 100-foot high structure, although the city recommendation is to restrict height to 75 feet. **This is still much too tall for this small neighborhood!**”

The Hearings Officer finds that the properties are located in a neighborhood that is relatively close to the City’s center to the North. RM4 is appropriate in this location as compared to RX (which is the most dense zoning applicable to the City’s centers). Milwaukie Avenue is a neighborhood corridor that is intended to, and does support, increased density and commercial uses. The transit station (located approximately 0.5 miles away at 17th and Holgate) as well as the bus stop are sufficiently close in proximity to the properties. There are walking and biking alternatives. The Hearings Officer finds that on balance it is not necessary that Milwaukie Avenue fit perfectly within the characteristic description of a civic corridor. This is not a criterion but just a general characteristics description.

The Hearings Officer finds that the proposed RM4 zone on the West Property is consistent with the zoning to the north that is already zoned RM4. The Hearings Officer places little weight on arguments and speculation that the properties currently zoned RM4 are inappropriate (that is, that the zoning is the product of an unintended quirk). The Hearings Officer considers the zoning of the parcels in close proximity to the properties as they are currently zoned. In regard to the land use pattern for the East Property’s proposed RM2 zone, the Applicant argues,

“... the existing R.25 single-family designation is located in a two-block area along SW Milwaukie Avenue with mixed R2.5 and RM2 zoned properties. Additionally, as detailed in the application and noted by staff, the R2.5 zone on the properties within that two block area that front SW Milwaukie Avenue are the only single-family zoned properties for the entirety of the 2.5 mile stretch of SW Milwaukie Avenue.”

Therefore, the Hearings Officer finds that the proposed changes simplify the zoning pattern by matching the existing zoning pattern along Milwaukie Avenue.

The Staff Report includes several thoughtful site-specific conditions to the Applicant's proposal that adequately address the opposition's desire to maintain the characteristics of the neighborhood while allowing development. First, the maximum height on the RM4-zoned lots is limited to 75 feet. Second, development on the site must meet the following additional step-down height limits:

- a. For the West Property, along the roughly 125-foot length across SE Milwaukie from single-dwelling zoning, building height within 15 feet of the east lot line is limited to 45 feet; and
- b. For the East Property, building height within 15 feet of the north lot line is limited to 35 feet.

Lastly, Discretionary Design Review is required for both the West and the East properties at the initial development of the site. The Staff Report (Exhibit H-5 at pages 15-16) explains the rationale:

“One purpose of this overlay is to build on context by enhancing the distinctive physical, natural, historic and cultural qualities of the location while accommodating growth and change. Depending on the scale of the development, location in the city, and other criteria, projects proposed in the Design overlay can often choose between using design standards, or going through discretionary Design Review.”

Therefore, the Hearings Officer finds that with the conditions set forth above, and agreed to by the Applicant, the proposal is equally or more supportive of the Comprehensive Plan as a whole than existing single-family designations.

Traffic and Parking Issues

The Portland Bureau of Transportation (PBOT) reviewed the Applicant's transportation study (Exhibit A.4) and found it to be acceptable. PBOT had no objections to the proposal (Exhibit E.2) stating the following:

"PBOT staff has reviewed the applicant's narrative addressing the Transportation Element of the Comprehensive Plan (Goal 12) and the approval criteria for a zone map amendment addressed in the Transportation Impact Study (TIS) prepared by Kittelson & Associates. PBOT staff concurs with their findings for the Comprehensive Plan map amendment and Zoning Map amendment that **the transportation system is capable of supporting the proposed changes in addition to existing uses in the area. The proposal will not result in any significant transportation impacts and no mitigation measures are needed.**"

Common sense suggests that a multi-dwelling building housing more people than a single-dwelling building would be correlated with a higher number of vehicles increasing traffic and decreasing available parking. However, the term "significance threshold" in this context is closely defined as explained in the Staff Report (Exhibit H-5 at pages 46–51). The traffic study did not find a significant increase in traffic.

The following is the Hearings Officer's good faith attempt to capture and summarize the public's opposition related to the traffic and parking related concerns.

- Exhibit H-12 (email submission of Lauri Colbert): "Milwaukie Ave. is a neighborhood street and needs to be treated as such . . . **To try and tell neighbors traffic will not increase is an absolute lie.**"
- Exhibit H-14 (email submission of Jennifer Kennedy): "**There is already a considerable amount of traffic for morning school/work commutes in this area.**"
- Exhibit H-21 (email submission of Nancy Williams): "I can tell you that the proposed allowable heights and density far outpace what the street, surrounding natural area, and houses could realistically accommodate . . . Additionally, **while Milwaukie Avenue is indeed a main thoroughfare to enter and exit the neighborhood, it already gets severely impacted by traffic during commute hours.**"
- Exhibit H-25 (email submission of Jamie Ross): "In just a 2-block radius, we have already experienced the development of several single lots to 14-20 studio apartment buildings. Adding probably close to 100 people? **Despite what the City says or wants, those people do have cars. With the proposed zone changes, PBOT determined that there would be no change to traffic - car, bicycle, or pedestrian - and that no further study would be needed.** I think exactly the opposite is true, even if the zones were kept to CM2 and R2.5, once development is proposed, they need to study traffic and parking."

- Exhibit H-28 (email submission of Meigra Simon): “As a business owner at Springwater Wellness Center at 6214 SE Milwaukie Ave, I have noticed many more parking issues.”
- Exhibit H-33 (email submission of G. Kolstad): “Parking - (I know, parking) is already near maximum capacity on the street surrounding the development and that is with a parking lot (Ellis and Milwaukie) that will be removed. Adding multiple developments on top of the numerous ones added in recent years will impact the neighborhood negatively, increasing noise, pollution, and safety. Traffic - More study should be done to determine the traffic and safety impact of new development. The assertion that traffic won't increase seems odd.”
- Exhibit H-34 (email submission of Kitty Diggins): “The roads have already become congested with the increased density of the area and it WILL become unmanageable if this kind of development continues.”
- Exhibit H-40 (email submission of Linda [No last name]: “Another concern is parking. Not all possible tenants can ride bikes. Not all tenants can use public transportation.”
- Exhibit H-41 (email submission of Ann Scott): “The increased traffic would be significant and the only egress to a major roadway is on constricted entrances to 99E.”
- Exhibit H-42 (email submission of Lucy and Dan Davenport): “We are experiencing daily impact from increased congestion on two lane Milwaukie Blvd. The #19 was bus commute that twenty years ago took my husband to his office in south downtown Portland in fifteen minutes now takes a minimum of fifty minutes during morning commuting hours and similar time in the evening. We can no longer safely leave our driveway in daytime hours due to the onslaught of street parking which spills over our driveway on a daily basis.”
- Exhibit H-44 (email submission of Michelle Forbes): “The proposed RM4 zoning does NOT properly provide for the parking necessary to maintain a tenable traffic flow. This stretch of Milwaukie Ave is a bottleneck for those accessing McLoughlin from Sellwood-Moreland and points south, as for those entering the neighborhood. Because of the bluff to the west, there are limited streets for additional on street parking. . . It is unwise to allow for any new residential units in this corridor without requiring parking for every unit.”
- Exhibit H-46 (email submission of German and Kelly Collazo): “The proposed plan is extremely unsafe for MANY reasons. These changes will increase traffic, pedestrian/bike usage, and parking significantly. What is the plan to accommodate

the increase in need of parking and the increase in traffic on these streets? . . . The parking on Milwaukee and Ellis is already extremely difficult - with the increase in housing and population, how will these streets be considered a safe route for "a minor emergency response street". It's disappointing and irresponsible that the city is not conducting studies on the impacts this will have on the traffic, parking, and bicycle, and pedestrian safety despite the dramatic changes they will be making."

- Exhibit H-49 (email submission of Peggy MacMillan): "In just a 2-block radius, we have already experienced the development of multiple single lots to 14–20-unit studio apartment buildings with no parking. Adding say 100 people? **Despite what the City thinks or the goal, those people do have cars. With the proposed zone changes, I noted that PBOT determined there would be no change to traffic - car, bicycle, or pedestrian – or to parking, and that no further study would be needed. I think exactly the opposite is true,** even if the zones were kept to CM2 and R2.5, further study is needed for our safety."
- Exhibit H-51 (email submission of Michael Pucik): "**There is not adequate [infrastructure] to handle the amount of traffic or parking created by the enormous amount of new people.** I know it is a widely spread theory that because a development is near a bus stop people won't own cars. This neighborhood is living proof that assumption is incorrect. This neighborhood has had so much redevelopment in recent years we can show case after case of developments that were allowed to build without parking because it is near a bus stop, now the streets are packed with the cars of the inhabitants."
- Exhibit H-52 (email submission of Dan Davenport): "I am legally blind and my son who lives with me is also legally blind. **The plans would significantly increase the volume of car traffic through the neighborhood along Milwaukee Avenue,** 17th Avenue and also along Ellis St, which many drivers already use as a main route to cross from Milwaukee to 17th. Many drivers already exceed safe speeds along all three streets. . . Since all the high density development within two blocks of me was done without providing parking, the residents park wherever they can, including increasingly close to street corners. **Parked vehicles at the corners make it even more difficult to determine whether it is safe to cross or not.** And drivers pull quickly forward in an effort to look beyond the parked vehicles to see if they can cross or turn. I have often been nearly hit even though I was in the designated crosswalk because visibility both for the drivers and for me has been reduced."
- Exhibit H-57 (email submission of April Atwood): "Traffic impacts need to be restudied, as the lack of parking in future development will definitely impact the neighborhood. The nearest MAX station is a mile away (not the half mile that has been quoted in developer meetings), and I question the accuracy of the transportation study."

The Hearings Officer concurs with PBOT's assessment that the proposed amendments do not exceed the established threshold for determining significance and therefore additional traffic studies are not needed. The Hearings Officer finds the proposed amendment is consistent with both Goal 12 and implementing the Oregon Transportation Planning Rule. Therefore, the proposal is equally supportive of the Comprehensive Plan as the current zoning.

Inclusionary Housing

The proposed zoning will allow for large multi-dwelling buildings, which will potentially trigger the Inclusionary Housing provisions, thereby increasing affordable housing. This would be more supportive of the Comprehensive Plan than the current zoning for single-family dwellings. The inclusionary housing regulations are found to comply with the comprehensive zoning plan.

The Staff Report seeks to go farther in ensuring affordable housing at the site with an extra condition that imposes the inclusionary housing regulations without regard to the number of units per building and would limit the alternatives available to a developer seeking to meet the rule's requirements. Specifically, the City requests that 10% of the units built on the site are affordable using the 60% Family Median Income.

Condition F, proposed by the City, states the following:

"All residential development on the site must meet Inclusionary Housing requirements of Zoning Code Chapter 33.245, regardless of number of units per building. The Inclusionary Housing requirements must be met using the option described in Zoning Code Section 33.245.040.A.1.a. Namely, the affordable units will be provided onsite, and 10 percent of the total number of dwelling units in the new building(s) must be affordable to those earning no more than 60 percent of the area median family income. The alternative calculation method in 33.245.040.A.1.c and the fee-in-lieu option may not be used."

In opposition, the Applicant argues the following:

"The existing IH program threshold of over 19 units and full spectrum of options for compliance were deemed to comply with the Comprehensive Plan when adopted. Therefore, Condition F is not necessary for compliance with the applicable approval criteria. To the extent that the City seeks changes to the IH program, the appropriate mechanism for those changes is a legislative amendment to the IH regulations rather than an individual condition in a quasi-judicial zone change."

There is some public testimony in support of affordable housing. Exhibit H-26 (email submission of Evan Rogers): "Our neighborhood and the city of **Portland needs new housing**

options for the many people looking to move here. If anything, I wish this development could be larger than proposed. There are so many people living in tents within stone's throw of this building, and while those people may not be able to afford these particular apartments, they might be able to afford the apartments that the new residents would have moved into if these are not built. Please do not delay construction, which will only increase the cost of this housing, driving up prices in the Portland housing market."

Exhibit H-30 (email submission of Alex Harris): "I'm . . . writing to express my strong support for the proposal to upzone this area and allow a big beautiful new apartment building that can provide housing for dozens of people. **We need more market-rate housing. People want to move here, but it's getting way too expensive for them to do so.** New buildings, new residents, and new services are great for the neighborhood - for the people who get to move and for those who already live here."

The Hearings Officer finds that increasing affordable housing supports many of the goals of the applicable policies. On balance, the Hearings Officer concludes that the rezoning itself encourages the development of multi-dwelling units in the area instead of single-dwelling construction, and that this is equally supportive of the policies' goals by increasing density and making it more likely that any development on the properties will trigger the inclusionary housing rules.

The Hearings Officer did not find any site-specific reasons to include Condition F that would narrow a developer's options or lower the standards that trigger the inclusionary housing regulations. In order to impose this condition without the Applicant's consent, the Hearings Officer must find a reasonable relationship between the condition and the needs generated by the development. In other words, there must be a sufficient nexus between the impacts of the proposed development and the condition that would provide a basis to deny the application if not included. The applicant argues, and the Hearings Officer agrees, that the appropriate mechanism to increase affordable housing building requirements or a desire to limit a developer's inclusionary housing options is a legislative function without a site-specific reason for the condition.

III. CONCLUSIONS

The Hearings Officer adopts the Staff Report's analysis, attaches it hereto, and incorporates it herein by reference. The Hearings Officer's independent analysis is nearly consistent with the Staff Report's recommendation. Specifically, the proposed amendments to the Comprehensive Plan Map are found to be, on balance, equally supportive of the Comprehensive Plan as a whole than the current designation.

The proposed consistency in zoning along the western stretch of SE Milwaukie Avenue, the proposed MD-U Comprehensive Plan designation for the West Property, and the proposed

MD-C designation for the East Property are equally supportive of the relevant policies than the existing single-family and mixed-use Comprehensive Plan designations.

The Hearings Officer agrees with the Applicant that the proposal will 1) facilitate the development of a coherently designed residential community and streetscape on the west side of SE Milwaukie Avenue governed by a singular zone instead of three different zones with different development standards; 2) increase the available housing density in an area where housing is needed across income levels; and 3) consolidate development on the upland portions of the West Property to avoid greenway resources in the area currently zoned R5. The requested zoning consistency will reduce development costs, enhance community design, protect resources, and make the future development project more financially feasible to deliver housing units across income levels.

IV. Hearings Officer Recommendation to City Council

Approval of the following:

West Property:

- Comprehensive Plan Map Amendment from R5 – Residential 5,000 and MU-N – Mixed-Use – Neighborhood to MD-U – Multi-Dwelling – Urban Center;
- Zoning Map Amendment from R5 – Single-Dwelling Residential 5,000 and CM1 – Commercial Mixed-Use 1 to RM4 – Residential Multi-Dwelling 4;
- Removal of the “z” Constrained Sites Overlay zoning from the three lots zoned R5; and
- Application of the “d” Design Overlay zoning on the three lots zoned R5.

East Property:

- Comprehensive Plan Map Amendment from R2.5 – Residential 2,500 to MD-C – Multi-Dwelling – Corridor; and
- Zoning Map Amendment from R2.5 – Single-Dwelling Residential 2,500 to RM2 – Residential Multi-Dwelling 2;
- Application of the “d” Design Overlay zoning.

Approval is per the following conditions:

- A. It must be shown that one of the following is achieved prior to design review approval or building permit issuance for the first vertical development, whichever comes first:
 - a. The private stormwater management system can be designed to meet the requirements of the Stormwater Management Manual (SWMM) and so any offsite stormwater discharges are limited such that the total peak wet weather flow rate from the aggregate zone change site – both storm and sanitary – do not exceed the current estimated peak flow of 3.87cfs during the 25-year, 6-hour design storm

- (or updated rate from the Bureau of Environmental Services staff if appropriate to reflect system changes and/or modeling assumptions). If building and stormwater designs for the other parcels within the zone change site are unknown, wet weather flow calculations must assume offsite stormwater discharge in compliance with SWMM flow control standards for those future projects; or
- b. The Applicant or owner will be required to improve the public sewer system or provide mitigation to offset hydraulic risk due to discharges above the current estimated peak flow rate (or updated rate from the Bureau of Environmental Services if appropriate to reflect system changes and/or modeling assumptions).
- B. The Applicant must submit stormwater management reports with the results of infiltration testing for all subsequent land use and building permit reviews for future development of the subject properties.
- C. In addition to the step-down height limits stated in Zoning Code Section 33.120.215.B.2 and Table 120-3, development on the site must meet the following additional step-down height limits:
- a. For the West Property, along the roughly 125-foot length across SE Milwaukie from single-dwelling zoning, building height within 15 feet of the east lot line is limited to 45 feet; and
 - b. For the East Property, building height within 15 feet of the north lot line is limited to 35 feet.
- D. Maximum height on the RM4-zoned lots is limited to 75 feet.
- E. Discretionary Design Review is required for initial redevelopment of the site, including both the West Property and the East Property. Level of review will be determined by Zoning Code Section 33.825.025.A and Table 825-1. After primary buildings have been constructed, subsequent alterations may meet Design Standards if eligible.

William Guzman

William Guzman, Hearings Officer

March 25, 2022

Date

Application Determined Complete: January 3, 2022
Report to Hearings Officer: February 4, 2022
Recommendation Mailed (email and first-class): March 25, 2022

Conditions of Approval. This project may be subject to a number of specific conditions, listed above. Compliance with the applicable conditions of approval must be documented in all related permit applications. Plans and drawings submitted during the permitting process must illustrate how applicable conditions of approval are met. Any project elements that are specifically required by conditions of approval must be shown on the plans and labeled as such.

These conditions of approval run with the land, unless modified by future land use reviews. As used in the conditions, the term “applicant” includes the applicant for this land use review, any person undertaking development pursuant to this land use review, the proprietor of the use or development approved by this land use review, and the current owner and future owners of the property subject to this land use review.

City Council Hearing. The City Code requires the City Council to hold a public hearing on this case and you will have the opportunity to testify. The hearing will be scheduled by the City Auditor upon receipt of the Hearings Officer’s Recommendation. You will be notified of the time and date of the hearing before City Council. If you wish to speak at the Council hearing, you are encouraged to submit written materials upon which your testimony will be based, to the City Auditor.

If you have any questions, contact the Bureau of Development Services representative listed in this Recommendation.

The decision of City Council, and any conditions of approval associated with it, is final. The decision may be appealed to the Oregon Land Use Board of Appeals (LUBA), as specified in the Oregon Revised Statute (ORS) 197.830. Among other things, ORS 197.830 requires that:

- an appellant before LUBA must have presented testimony (orally or in writing) as part of the local hearings process before the Hearings Officer and/or City Council; and
- a notice of intent to appeal be filed with LUBA within 21 days after City Council’s decision becomes final.

Please contact LUBA at 1-503-373-1265 for further information on filing an appeal.

Expiration of approval. Zone Change and Comprehensive Plan Map Amendment approvals do not expire.

Applying for your permits. A building permit, occupancy permit, or development permit may be required before carrying out an approved project. At the time they apply for a permit, permittees must demonstrate compliance with:

- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions, and regulations of the City.

EXHIBITS RECEIVED IN THE HEARINGS OFFICE
(NOT ATTACHED UNLESS INDICATED)

The exhibits in the land use case file are all assigned a letter (example A-1). The Hearings Office accepts exhibits filed online in its case management system. These exhibits are marked in the lower right-hand corner that identifies the exhibit as a "Portland Hearings Office" exhibit. All of these exhibits are designated "H Exhibits" (that is, Hearings Office Exhibits). See the BDS Staff Report for a list of exhibits prior to "H."

Please see next page for the list of H exhibits.



Hearing Office

City of Portland

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phone: 503.823.7307

fax: 503.823.4347



Exhibits, Orders, and Other Attachments

Number	Title	Status
Exhibit 1	Zoom Participation Instructions	Accepted
Exhibit 2	Hearing Notice	Accepted
Exhibit 3	BDS Staff Report	Accepted
Exhibit 4	Engalsbe Email	Accepted
Exhibit 5 (attached)	Revised Staff Report	Accepted
Exhibit 6	SMILE Testimony	Accepted
Exhibit 7	Nelson Email	Accepted
Exhibit 8	Schwartz Email	Accepted
Exhibit 9	Guptill Email	Accepted
Exhibit 10	Lanspa Email	Accepted
Exhibit 11	Scollan Email	Accepted
Exhibit 12	Colbert Email	Accepted
Exhibit 13	Fitzpatrick Email	Accepted
Exhibit 14	Kennedy Email	Accepted
Exhibit 15	McNamara Email	Accepted
Exhibit 16	Hansen Email	Accepted
Exhibit 17	Sweeney Email	Accepted
Exhibit 18	Carbonneau Email	Accepted
Exhibit 19	Magee Email	Accepted
Exhibit 20	Devendorf Email	Accepted
Exhibit 21	Williams Email	Accepted
Exhibit 22	Wessell Email	Accepted
Exhibit 23	Niman Email	Accepted
Exhibit 24	Houck Letter	Accepted
Exhibit 25	Ross Email	Accepted
Exhibit 26	Rogers Email	Accepted
Exhibit 27	Stein Email	Accepted
Exhibit 28	Simon Email	Accepted
Exhibit 29	Barone Email	Accepted
Exhibit 30	Harris Email	Accepted
Exhibit 31	Van Dusen Email	Accepted
Exhibit 32	Godfrey & Link Email	Accepted
Exhibit 33	Kolstad Email	Accepted
Exhibit 34	Harvey Email	Accepted
Exhibit 35	Pizzi Email	Accepted
Exhibit 36	Lynelle Hansen Email	Accepted
Exhibit 37	Long Email	Accepted
Exhibit 38	Audubon Society Email	Accepted

Exhibit 39	Mosser Email	Accepted
Exhibit 40	Linda Email	Accepted
Exhibit 41	Scott Email	Accepted
Exhibit 42	Davenport Email	Accepted
Exhibit 43	Ashman Email	Accepted
Exhibit 44	Forbes Email	Accepted
Exhibit 45	Forbes Corrected Email	Accepted
Exhibit 46	Collazo Email	Accepted
Exhibit 47	Applicants Maps	Accepted
Exhibit 49	MacMillan Testimony	Accepted
Exhibit 50	Hayes Email	Accepted
Exhibit 51	Pucik Email	Accepted
Exhibit 52	Dan Davenport Email	Accepted
Exhibit 53	Gilevich Letter	Accepted
Exhibit 54	Welsh & Gilevich Letter	Accepted
Exhibit 55	Scott Letter	Accepted
Exhibit 56	Cropsey Email	Accepted
Exhibit 57	Atwood Email	Accepted
Exhibit 58	Record Closing Information	Accepted
Exhibit 59	Schiller Email	Submitted after record closed
Exhibit 60	Ritchie Email	Submitted after record closed
Exhibit 61	Closing Argument to Hearings Officer	Accepted
Exhibit 62	STAFF PRESENTATION	Accepted



City of Portland, Oregon
Bureau of Development Services
Land Use Services
FROM CONCEPT TO CONSTRUCTION

Dan Ryan, Commissioner
Rebecca Esau, Director
Phone: (503) 823-7300
Fax: (503) 823-5630
TTY: (503) 823-6868
www.portland.gov/bds

STAFF REPORT AND RECOMMENDATION TO THE HEARINGS OFFICER

CASE FILE: LU 21-094203 CP ZC (PC # 21-038774)
REVIEW BY: Hearings Officer
WHEN: Wednesday, February 16, 2022 at 2:30 pm

BUREAU OF DEVELOPMENT SERVICES STAFF: AMANDA RHOADS / AMANDA.RHOADS@PORTLANDOREGON.GOV

Due to the City's Emergency Response to COVID-19, this land use hearing will be limited to remote participation via Zoom. The link to the hearing is <https://us06web.zoom.us/j/83856977947>

GENERAL INFORMATION

Applicant: Renee France | Radler White Parks & Alexander LLP
111 SW Columbia St, Suite 700 | Portland, OR 97201
971-634-0217 | rfrance@radlerwhite.com

Owner: Marvin La Porte
5515 SE Milwaukie Ave | Portland, OR 97202

Site Address: 5515 SE MILWAUKIE AVE

Legal Description: BLOCK 5 INC PT VAC ST LOT 1, BROWN'S TRACT; BLOCK 5 INC PT VAC ST LOT 3, BROWN'S TRACT; BLOCK 5 LOT 4, BROWN'S TRACT; BLOCK 5 LOT 5-7 INC PT VAC ST LOT 8, LAND & IMPS SEE R122536 (R110000511) FOR OTHER IMPS, BROWN'S TRACT; BLOCK 5 INC PT VAC ST LOT 9, BROWN'S TRACT; BLOCK 6 INC PT VAC ST LOT 2, BROWN'S TRACT; BLOCK 4 LOT 1&2, MIDWAY

Tax Account No.: R110000470, R110000490, R110000500, R110000510, R110000550, R110000580, R568701110

State ID No.: 1S1E14DB 17200, 1S1E14DB 17100, 1S1E14DB 17500, 1S1E14DB 17000, 1S1E14DB 17300, 1S1E14AC 09700, 1S1E14DB 15900

Quarter Section: 3532 & 3632

Neighborhood: Sellwood-Moreland, contact David Schoellhamer at chair.landuse.smile@gmail.com

Business District: Sellwood-Westmoreland, contact at 503 232-3330.

District Coalition: Southeast Uplift, contact Leah Fisher at 503-232-0010 x313

Plan District: NONE

Current Zoning: *Base Zones:* R5: Single-Dwelling Residential 5,000; CM1: Commercial Mixed-Use 1; and R2.5: Single-Dwelling Residential 2,500. *Overlay Zones:* Portions of the site contain one or more of the following overlays: "d" Design overlay; "e": River Environmental overlay; "g*": River General overlay and "z" Constrained Sites overlay.

Case Type: CP ZC, Comprehensive Plan Map Amendment and Zoning Map Amendment

Procedure: Type III, with a public hearing and recommendation by the Hearings Officer and a public hearing and decision by City Council. The decision of City Council can be appealed to the State Land Use Board of Appeals (LUBA).

Proposal:

The applicant proposes to change zoning for the above-cited seven properties. In this location, the proposal requires changes to Portland's Comprehensive Plan Map and Portland's Zoning Map. The proposal also involves different Comprehensive Plan Map and Zoning Map designations on the west side of Milwaukie Avenue and the east side of Milwaukie Avenue, described below:

West Property:

- Comprehensive Plan Map Amendment from R5 – Residential 5,000 and MU-N – Mixed-Use – Neighborhood to MD-U – Multi-Dwelling – Urban Center;
- Zoning Map Amendment from R5 – Single-Dwelling Residential 5,000 and CM1 – Commercial Mixed-Use 1 to RM4 – Residential Multi-Dwelling 4;
- Removal of the “z” Constrained Sites Overlay zoning from the three lots zoned R5; and
- Application of the “d” Design Overlay zoning on the three lots zoned R5.
- Retention of the “e” River Environmental overlay and “g*” River General overlay to remain on the parcels that already have them.

East Property:

- Comprehensive Plan Map Amendment from R2.5 – Residential 2,500 to MD-C – Multi-Dwelling – Corridor; and
- Zoning Map Amendment from R2.5 – Single-Dwelling Residential 2,500 to RM2 – Residential Multi-Dwelling 2
- Application of the “d” Design Overlay zoning.

No development is proposed with this application. Current development includes an office building and associated parking on the CM1-zoned parcels; a surface parking lot on the R2.5 parcel; and the R5 parcels are vacant.

Relevant Approval Criteria:

In order to be approved, this proposal must comply with the approval criteria of Title 33, Portland Zoning Code. The applicable approval criteria are:

- 33.810.050 Approval Criteria for Comprehensive Plan Map Amendments
- 33.855.050 Approval Criteria for Base Zone Change
- 33.855.060 Approval Criteria for Other Changes

ANALYSIS

Site and Vicinity: The 1.36-acre site is made up of seven parcels in common ownership. Roughly the western third of the parcels on the west side of SE Milwaukie Ave (the “West Property”) make up part of the slope down to Oaks Bottom; they are treed, steeply sloping, and have additional development protections through the River overlay zoning. The West Property is developed with one- and two-story buildings that make up an office development first constructed in 1963, with surface parking centralized and buildings surrounding the development. More parking is to the north, associated with another building owned in common with the subject site. The parcel to the east of SE Milwaukie Ave (the “East Property”) is developed with a surface parking lot serving the office buildings to the west. Nearby are several new multi-dwelling projects along SE Milwaukie

Ave and within the neighborhood, single-dwelling residences to the southwest and east across Milwaukie, and limited commercial spaces.

SE Milwaukie Ave in this area is designated as a Neighborhood Corridor for traffic, a Transit Access Street, a City Bikeway, Major City Walkway, a Truck Access Street, and a Major Emergency Response Street. SE Ellis St south of the site is Local Service for traffic, transit, and freight. It is a City Bikeway and a Neighborhood Walkway and a Minor Emergency Response Street.

Existing Zoning: The site has the following zoning designations:

The Residential 2,500 (R2.5) single-dwelling zone is intended to preserve land for housing and to provide housing opportunities for individual households. The zone implements the comprehensive plan policies and designations for single-dwelling housing and provide options for infill housing that is compatible with the scale of the single-dwelling neighborhood. Minimum lot size is 1,600 square feet. Maximum density is one lot per 2,500 square feet of site area.

The Residential 5,000 (R5) single-dwelling zone is intended to preserve land for housing and to provide housing opportunities for individual households. The zone implements the comprehensive plan policies and designations for single-dwelling housing and provide options for infill housing that is compatible with the scale of the single-dwelling neighborhood.. Minimum lot size is 3,000 square feet. Maximum density is 1 lot per 5,000 square feet of site area.

The Commercial/Mixed Use 1 (CM1) zone is a small-scale zone intended for sites in dispersed mixed-use nodes within lower density residential areas, as well as on neighborhood corridors and at the edges of neighborhood centers, town centers and regional centers. The zone is also appropriate in core commercial areas of centers in locations where older commercial storefront buildings of 1 to 2 stories are predominant. This zone allows a mix of commercial and residential uses. The size of commercial uses is limited to minimize impacts on surrounding residential areas. Buildings in this zone will generally be up to three stories tall. Development is intended to be pedestrian-oriented and compatible with the scale and characteristics of adjacent residentially zoned areas or low-rise commercial areas.

The “d” Design overlay zone ensures that Portland is both a city designed for people and a city in harmony with nature. The Design overlay zone supports the city’s evolution within current and emerging centers of civic life. The overlay promotes design excellence in the built environment through the application of additional design standards and design guidelines that:

- Build on context by enhancing the distinctive physical, natural, historic and cultural qualities of the location while accommodating growth and change;
- Contribute to a public realm that encourages social interaction and fosters inclusivity in people’s daily experience; and
- Promotes quality and long-term resilience in the face of changing demographics, climate and economy.

The River Overlay zones implement the land use pattern identified in the Central City 2035 Plan (2018). There are two River Overlay zones each with their own purpose:

- The River General “g” overlay zone allows for uses and development that are consistent with the base zoning and allows for public use and enjoyment of the riverfront.
- The River Environmental “e” overlay zone protects, conserves and enhances important natural resource functions and values while allowing environmentally sensitive development. The purpose of the zone is to limit the impacts from development and vegetation maintenance on the natural resources and functional values contained within the overlay zone. The environmental regulations encourage flexibility and innovation in site planning and provide for development that is carefully designed to be sensitive to the site’s protected resources. Mitigation is required for unavoidable impacts and is intended to have

no net loss of natural resource features or functions over time. The River Environmental overlay zone applies to specific natural resource areas identified in a detailed study titled Willamette River Central Reach Natural Resources Protection Plan (2017). This overlay zone always applies in combination with one of the other River Overlay zones.

Under some circumstances, up to four dwelling units is allowed per lot in the R7, R5 and R2.5 zones. The "z" Constrained Sites Overlay zone reduces that development potential on lots that have certain development constraints. The constraints make the lots unsuitable for three or more dwelling units. This overlay is only applied to lots in the R7, R5 or R2.5 zone.

Land Use History: City records indicate there are no prior land use reviews for this site relevant to the current proposal.

Summary of Applicant's Statement: The applicant submitted a transportation impact study, drainage study, geotechnical engineering report, zoning study, and a 78-page narrative responding to the approval criteria. Below is a short excerpt from the applicant's narrative that summarizes the reasons the applicant believes the request is approvable (Exhibit A.6):

The proposed consistency in zoning along [the western] stretch of SE Milwaukie Avenue would 1) facilitate the development of a coherently designed residential community and streetscape on the west side of SE Milwaukie Avenue governed by a singular zone instead of three different zones with different development standards; 2) increase the available housing density in an area where housing is needed across income levels; and 3) consolidate development on the upland portions of the West Property to avoid greenway resources in the area currently zoned R5. The requested zoning consistency would reduce development costs, enhance community design, protect resources, and make the future development project more financially feasible to deliver housing units across income levels.

Agency Review: A "Request for Response" was mailed **January 11, 2022**. The following Bureaus have responded with no issues or concerns:

- Water Bureau (Exhibit E.3);
- Fire Bureau (Exhibit E.4);
- Site Development Section of BDS (Exhibit E.5);
- Life Safety Plans Examiner (Exhibit E.6);
- Urban Forestry Division of the Bureau of Parks and Recreation (Exhibit E.7); and
- Police Bureau (Exhibit E.8).

The Bureau of Environmental Services reviewed the applicant's drainage report (Exhibit A.7) and geotechnical engineering report (Exhibit A.3) for compliance with the service-related approval criteria for these reviews and suggested conditions of approval (Exhibit E.1).

The Bureau of Transportation (PBOT) similarly reviewed the applicant's transportation study (Exhibit A.4) and found it to be acceptable. PBOT had no objections to the proposal (Exhibit E.2).

Neighborhood Review: Two written responses were received prior to the publishing of this staff report. The first was from Verizon stating they have no facilities in the area (Exhibit F.1). The second response was from the Sellwood-Moreland Improvement League (SMILE) Land Use Committee in opposition to the proposal (Exhibit F.2). They presented several primary concerns:

- Concerns that development on the West Property is at risk of collapsing down the slope, thus risking human life.
- Contention that the existing RM4 zoning north of the subject site is "the result of quirks, not willful intent."

- Contention that the proposal both for RM4 on the west and RM2 on the east does not fit with the context of the area.
- Concern that there will be impacts on Oaks Bottom Wildlife Refuge with such a tall building allowed.

Staff comments: Regarding the risk to human life: the building permit review process will require a full geotechnical report and require that any development project is designed to withstand landslides regardless of whether the development is proposed on the slope on the west side of the West Property. The landslide hazard area is on the part of the site that has the River Environmental overlay zoning. If development were proposed on the slope, it would additionally be subject to River Review and the requirements and mitigation therein. More findings regarding this issue are below.

It is true that sometimes base zones are applied on a site to ensure the existing development does not move out of conformance with zoning changes or to facilitate future development. The entire subject site was zoned RH prior to the 2018 Comprehensive Plan and zoning map changes. The zones placed on the parcels at the time of the Comprehensive Plan update generally reflected current development. Regardless, the zoning and the corresponding Comprehensive Plan Map designation is in place north of the subject properties and those regulations will continue to apply on those sites, enabling future redevelopment at the allowances of the RM4 zone. The RM4 is a part of the zoning map in this area and it is valid to consider that for this request.

The other issues are addressed within the findings below.

COMPREHENSIVE PLAN MAP AMENDMENT APPROVAL CRITERIA

33.810.050 Approval Criteria

A. Quasi-Judicial. Amendments to the Comprehensive Plan Map that are quasi-judicial will be approved if the review body finds that the applicant has shown that all of the following criteria are met:

1. The requested designation for the site has been evaluated against relevant Comprehensive Plan policies and on balance has been found to be equally or more supportive of the Comprehensive Plan as a whole than the old designation;

Findings: Generally, Comprehensive Plan Map Amendments are approved if the range of allowed uses and intensity of development allowed by the proposed base zone satisfy the approval criteria. The applicant is requesting to remove the three current Comprehensive Plan Map designations (R5 – Residential 5,000; R2.5 – Residential 2,500; and MU-N – Mixed-Use – Neighborhood) and apply MD-U – Multi-Dwelling – Urban Center on the parcels west of SE Milwaukie Ave; and MD-C – Multi-Dwelling – Corridor on the parcel east of SE Milwaukie Ave.

The three existing designations are described in Policy 10.1 of the Comprehensive Plan as follows:

Single-Dwelling — 5,000. This designation is Portland’s most common pattern of single-dwelling development, particularly in the city’s inner neighborhoods. It is intended for areas where urban public services, generally including complete local street networks and access to frequent transit, are available or planned. Areas within this designation generally have few or very minor development constraints. Single-dwelling residential will be the primary use. The maximum density is generally 8.7 units per acre. The corresponding zone is R5.

Single-Dwelling — 2,500. This designation allows a mix of housing types that are single-dwelling in character. This designation is intended for areas near, in, and along centers and corridors, near transit station areas, where urban public services, generally including complete local street networks and access to frequent transit, are available or planned. Areas within this designation generally do not have development constraints. This designation often serves as a transition between mixed use or multi-dwelling designations and lower density single dwelling

designations. The maximum density is generally 17.4 units per acre. The corresponding zone is R2.5.

Mixed Use — Neighborhood. This designation promotes mixed-use development in neighborhood centers and along neighborhood corridors to preserve or cultivate locally serving commercial areas with a storefront character. This designation is intended for areas where urban public services, generally including complete local street networks and access to frequent transit, are available or planned, and development constraints do not exist. Areas within this designation are generally pedestrian-oriented and are predominantly built at low- to mid-rise scale, often with buildings close to and oriented towards the sidewalk. The corresponding zones are Commercial Mixed Use 1 (CM1), Commercial Mixed Use 2 (CM2), and Commercial Employment (CE).

The proposed designations are described in Policy 10.1 of the Comprehensive Plan as follows:

Multi-Dwelling — Urban Center. This designation is intended for the Central City, Gateway Regional Center, Town Centers, and transit station areas where a residential focus is desired and urban public services including access to high-capacity transit, very frequent bus service, or streetcar service are available or planned. This designation is intended to allow high-density multi-dwelling structures at an urban scale. Maximum density is based on a floor-area-ratio, not on a unit-per-square-foot basis. Minimum density is 43 units an acre. The corresponding zones are RM3 and RM4. This designation is accompanied by the Design overlay zone.

Multi-Dwelling — Corridor. This designation allows medium-scale multi-dwelling development. The scale of development is intended to accommodate transit-supportive densities while providing transitions to nearby single-dwelling residential. The designation is intended for areas near, in, and along centers, civic and neighborhood corridors, and transit station areas, where urban public services, generally including complete local street networks and access to frequent transit, are available or planned. Areas within this designation generally do not have development constraints. Maximum density is based on a floor area ratio, not on a units-per-square-foot basis. Minimum density is 30 units per acre. The corresponding zone is RM2.

The proposal has been evaluated against the Comprehensive Plan goals and policies in this staff report. Based on the findings below, staff finds the requested designations would, on balance, be equally or more supportive of the Comprehensive Plan than the existing designations. The new Comprehensive Plan adopted by the City in May of 2018 is a substantial expansion on the previous Comprehensive Plan and requires evaluation of a significant number of goals and policies. The applicant provided analysis of the relevant goals and policies in their narrative (Exhibit A.6).

The following Comprehensive Plan Goals and Policies are relevant to this proposal:

CHAPTER 1: THE PLAN

Policy 1.10 Compliance with the Comprehensive Plan. Ensure that amendments to the Comprehensive Plan’s elements, supporting documents, and implementation tools comply with the Comprehensive Plan. “Comply” means that amendments must be evaluated against the Comprehensive Plan’s applicable goals and policies and on balance be equally or more supportive of the Comprehensive Plan as a whole than the existing language or designation.

This policy is implemented by approval criterion for Comprehensive Plan Map Amendments in Zoning Code Section 33.810.050.A.1. The findings above and below analyze compliance with Zoning Code Section 33.810.050.A.1. Since Zoning Code Section 33.810.050.A.1 is found to be met in this report, staff finds the proposal is also consistent with Policy 1.10.

Policy 1.11 Consistency with Metro Urban Growth Management Functional Plan and Urban Growth Boundary.

Each title of the Urban Growth Management Functional Plan, last published on April 16, 2018, that is relevant to the requested Comprehensive Plan Map Amendment is addressed below.

***Title 1 – Housing Capacity** accomplishes the policies of the Regional Framework Plan by requiring each city and county to maintain or increase its housing capacity except as provided in section 3.07.120. The Regional Framework Plan calls for a compact urban form and a "fair share" approach to meeting regional housing needs.*

At this time, there is no development proposed on the properties. However, the proposed MD-U and MD-C Comprehensive Plan designations and corresponding RM4 and RM2 zones proposed for the west property and east property respectively, would increase the housing capacity on the identified lots, thereby increasing the overall housing capacity of the City.

As noted, three of the parcels on the west side of SE Milwaukie Ave are currently zoned CM1, a mixed-use commercial zone, where multi-dwelling residential development is allowed but at a lower intensity, and the other three parcels are zoned R5, a single-dwelling residential zone. The parcel east of SE Milwaukie Ave is also currently zoned a single-dwelling residential zone despite its current nonconforming use as a parking lot serving a commercial use. The proposed RM4 zone on the west side (the "West Property") would create the opportunity for a far more coherent and efficient multi-dwelling residential development in conjunction with the area to the north already zoned RM4. This consistency in zoning would allow a level of residential density and efficiency on the site that is consistent with the Title 1 policy of maintaining or increasing housing capacity that also avoids or minimizes impacts on the resources and functional values in the River overlay areas on the western portions of the site. Similarly, the RM2 designation proposed for the east side (the "East Property") would allow a density of residential development that is consistent with the Title 1 policy, but that remains consistent with existing multi-dwelling residential nodes east of SE Milwaukie Avenue and limits impacts on surrounding single-dwelling development.

For the reasons set forth above, the proposal is consistent with and furthers the goals of Title 1 by increasing the residential development capacity of a site within the Urban Growth Boundary and implementing multi-dwelling designation consistent with the compact urban form.

The proposal is equally consistent with Metro Title 1.

***Title 3 – Water Quality and Flood Management** protects beneficial water uses and functions and values of resources within Water Quality and Flood Management Areas by limiting or mitigating impacts from development activities and protecting life and property from dangers associated with flooding.*

As required by Title 3, the City has adopted regulations that apply to development within the FEMA Special Flood Hazard Area. The Properties are not located within the Special Flood Hazard Area. Therefore, the proposed Comprehensive Plan amendments are consistent with the flood management requirements of Title 3.

Compliance with Title 3 water quality requirements is achieved through the implementation of the City's Stormwater Management Manual and other development regulations at the time of building permit review. BES, which implements the Stormwater Management Manual, reviewed the proposal. BES expressed conditional support for approval of this application, with requirements that the applicant limit discharges into the combined sewer to a certain level to protect water

quality and ensure the sewer infrastructure can function successfully. BES states the geotechnical report submitted with the application (Exhibit A.3) shows infiltration can happen onsite without risk to the slope; additional infiltration data will also be required at time of Design Review or building permit (Exhibit E.1).

Erosion control is regulated through Title 10 of the City Code, which is implemented by the BDS Site Development Section at the time of building permit review. The BDS Site Development Section reviewed the application and expressed no concerns about the ability of development on the site to meet the Title 10 requirements (Exhibit E.5). In notes for the Pre-Application Conference, Site Development noted that a geotechnical report would be required for development (Exhibit G.3).

Three parcels of the West Property are fully or nearly fully within the regulatory landslide hazard area; one more has a small portion of its area within the landslide hazard boundary. These same properties have both the River General and River Environmental overlay zoning, and are located on the steep slope down to Oaks Bottom Wildlife Refuge. The overlay zoning regulations requiring standard be met or River Review be approved, and the geotechnical requirements that would need to be met at time of building permit, both work to protect the slope and prevent the functional values of natural resource areas from being degraded. These additional regulations, along with the complicated and expensive nature of building on such a steep slope, are both strong deterrents to development in these areas. The applicant states on page 5 of the Revised Narrative (Exhibit A.6), “future development on the West Property is expected to be concentrated on the eastern, upland portion of the site outside of the more steeply sloped overlay areas, thus providing water quality benefits for the Willamette River and habitat areas to the west...” City policies and requirements are consistent with Title 3 and, therefore, development meeting these requirements are equally consistent with the Title.

For these reasons, and with the proposed conditions from BES to limit discharge into the sewer and other requirements, the proposed Comprehensive Plan Map designations are equally supportive of Title 3.

Title 6 – Centers, Corridors, Station Communities and Main Streets
calls for enhancements of the identified areas as principal centers of urban life via actions and investments by cities and counties, complemented by regional investments.

This section of SE Milwaukie Ave is designated as a Corridor on Metro’s 2040 Concept Plan Map last published in 2018

(https://www.oregonmetro.gov/sites/default/files/2021/04/21/Concept2040_09042020.pdf).

According to Metro, corridors are streets that serve as major transportation routes for people and goods that are extensively served by transit (<https://www.oregonmetro.gov/2040-growth-concept>).

Consistent with Title 6, the City has adopted additional centers and corridors throughout the city through Chapter 3 of the 2035 Comprehensive Plan. In this document, SE Milwaukie Ave in this area is identified as a Neighborhood Corridor. The Urban Design Direction for the 2035 Comprehensive Plan describes Neighborhood Corridors thusly: “Neighborhood Corridors are narrower main streets that connect neighborhoods with each other and to other parts of the city. They support the viability of neighborhood business districts and provide locations for additional housing opportunities close to local services, amenities and transit lines”

(https://www.portland.gov/sites/default/files/2019-08/udd_final_042417_web.pdf).

Focusing denser development on corridors that provide the transit, local services, and amenities to accommodate them is consistent with the Centers, Corridors, Station Communities, and Main Streets approach to guiding development.

However, because Neighborhood Corridors tend to be narrower (the SE Milwaukie Ave right-of-way in this area, for example, is 60 feet wide, compared to roughly 80 feet wide for nearby SE

Woodstock Blvd), some care must be taken with the height allowances of the RM4 zone. The height limit of Zoning Code Section 33.120.215.B.1 for RM4 is 75 feet, or 100 feet within 500 feet of a transit street with 20-minute peak hour service. Both SE Milwaukie Ave and SE 17th Ave meet that definition according to the Close to Transit Service Map available on PortlandMaps.com (see below).



The Close to Transit Service Map, subject site with brown dot.
Blue indicates the area that is close to transit service.

Because SE Milwaukie Ave is somewhat narrower than other corridors, it is appropriate to consider context and the impacts a development under the new designations could have on the immediate area. For context, the height limit of the CM1-zoned parcels to the south is 35 feet; a four-story residential building was just constructed on the lot across SE Ellis St from the West Property. Across the street, if approved, the RM2 zone will have a height limit of 45 feet; the height limit for the R2.5 parcels is 35 feet. The RM4 parcels to the north and northeast have a height limit of 100 feet, while the R5 site to the west of the West Property is limited to 30 feet.

Beginning with the findings for Policy 1.19 Of the Comprehensive Plan, staff makes a case for providing a step-down height limit not just in the locations already required by code, but also to the single-dwelling residential neighbors across Milwaukie from the subject site. In addition, though SE Milwaukie does meet the threshold for being close to transit, staff proposes a condition that the maximum base height for the part of the site zoned RM4 be limited to the lower 75 feet. In this way, the RM4 portion of the site serves as a transition from the 100-foot height limit of the RM4 parcels to the north, to the lower-intensity commercial and residential zoning surrounding.

With this condition to limit height on the West Property to 75 feet and to require additional areas of step-down height, the proposed Comprehensive Plan Map designation is equally supportive of Title 6.

Title 7 – Housing Choice implements policies of the Regional Framework Plan regarding establishment of voluntary affordable housing production goals to be adopted by local governments, and assistance from them on reports on progress toward increasing the affordable housing supply.

Title 7 requires cities to ensure a diverse range of housing types and include actions and implementation measures in their comprehensive plans to increase the opportunities for new dispersed affordable housing and increase opportunities for households of all income levels to live in the jurisdiction. The City of Portland has complied with Title 7 through its 2035 Comprehensive Plan goals and policies addressed below. The City has also gone beyond the requirements of Title 7 by adopting Inclusionary Housing (IH) code provisions that are triggered by multi-dwelling buildings with 20 or more dwelling units.

The proposal to turn the existing patchwork of commercial and single-dwelling residential lots west of SE Milwaukie Avenue into a unified, higher density multi-dwelling zone would facilitate design and development of a larger, coherent multi-dwelling development that would trigger IH affordable housing criteria. In fact, creation of affordable housing is a key tool the City has to ensure people of all income levels can continue to reside here. The substantial proposed increase in development potential could strongly support the City's goals around affordable housing

production. To that end, in order to meet this and the many other goals and policies around housing, staff proposes a condition of approval that will guide how a development proposal on this site will provide affordable units within the context of the IH regulations of the Zoning Code, Chapter 33.245. The details are explained in the findings below under the findings for Goal 3.A.

With this condition directing the provision of affordable units, applying the requested MD-U Comprehensive Plan designation and RM4 zone to the West Property are actions consistent with the requirements of Title 7. Similarly, the proposed RM2 zone on the East Property would enable development of a moderate density, multi-dwelling residential building that is consistent with the Title 7 goal of increasing housing opportunities and providing a diverse range of housing types while limiting impacts on the surrounding adjacent residential areas.

With the condition that will direct affordable housing production with future development, the proposal is consistent with Title 7.

Title 8 – Compliance Procedures ensures all cities and counties are fairly and equitably held to the same standards and that the Metro 2040 Growth Concept is implemented. It sets out compliance procedures and establishes a process for time extensions and exemptions to Metro Code requirements. It requires Metro’s chief operating officer submit an annual compliance report: how cities and counties are complying with the Urban Growth Management Functional Plan’s requirements in Metro Code Chapter 3.07, titles 1, 3, 4, 11 and 13; and how they are complying with the Regional Transportation Functional Plan’s requirements Metro Code Chapter 3.08, titles 1-5.

The proposal equally meets this title because the public notice requirements for Type III land use reviews, as outlined in Zoning Code Section 33.730.030, are met. In addition to notifying City-recognized organizations within a 1,000-foot radius of the site and neighbors within a 400-foot radius of the site, notice of the proposal was posted at the subject site and sent to Metro and to the Oregon State Department of Land Conservation and Development.

Title 12 – Protection of Residential Neighborhoods intends to protect existing residential neighborhoods from air and water pollution, noise and crime, and provides adequate levels of public services. Cities are allowed to permit limited retail and commercial opportunities in neighborhood centers, and must make parks and greenspaces available to neighborhood residents.

To the extent that the public services approval criterion in Zoning Code Section 33.855.050.B for the Zoning Map Amendment is met, the proposal is consistent with providing adequate levels of public services. As discussed later in this report, staff finds the approval criterion in Zoning Code Section 33.855.050.B on adequacy of public services can be met with a condition limiting flows into the combined sewer. The proposal would not cause any significant changes in the impacts related to noise or pollution. Issues related to water pollution would be addressed through the requirements of the Stormwater Management Manual and other regulations that apply during building permit reviews of proposed development.

For these reasons, and with the conditions discussed in the findings for both Goal 8.E and the approval criterion in Zoning Code Section 33.855.050.B.2.b regarding limits to sewer discharge, the proposal is equally supportive of Title 12.

Title 13 (Sections 3.07.1310 – 3.07.1370) – Nature in Neighborhoods
The purposes of this program are to conserve, protect and restore a continuous ecologically viable streamside corridor system, from the streams’ headwaters to their confluence with other streams and rivers and with their floodplains in a manner that is integrated with upland wildlife habitat and with the

surrounding urban landscape; and to control and prevent water pollution for the protection of the public health and safety and to maintain and improve water quality throughout the region.

The western portion of the west site has River general “g*” and River environmental “e” overlay zoning, which is proposed to remain. Any development within that portion of the site would require that standards related to protection of environmental resources be met or that the project be approved through River Review. The site is not within the flood plain. During building permit review, any development would be required to meet the applicable Stormwater Management Manual requirements, thereby mitigating for water pollution and protecting water quality. In addition, tree preservation is required through the City’s Title 11, Trees Therefore, the proposal is equally supportive of this title.

Summary: As discussed above, the requested MD-U and MD-C designations on the Properties would remain consistent with the intent of the relevant titles in the Urban Growth Management Functional Plan, or these titles would be satisfied through compliance with other applicable City regulations. The proposal supports a tight Urban Growth Boundary by increasing the housing development capacity of sites that are inside the existing boundary. For these reasons, staff finds the proposed Comprehensive Plan designations are consistent with and supportive of Policy 1.11.

Policy 1.12 Consistency with Statewide Planning Goals. *Ensure that the Comprehensive Plan, supporting documents, and implementation tools remain consistent with the Oregon Statewide Planning Goals.*

Findings: The City’s Comprehensive Plan was written to comply with the Oregon Statewide Land Use Planning Goals. The Statewide Planning Goals are comparable to chapters in the City’s Comprehensive Plan as follows:

- Statewide Planning Goal 1 (Citizen Involvement) – Comprehensive Plan Chapter 2 (Community Involvement)
- Statewide Planning Goal 2 (Land Use Planning) – Comprehensive Plan Chapter 1 (The Plan) and Chapter 10 (Land Use Designations and Zoning)
- Statewide Planning Goal 5 (Open Spaces, Scenic and Historic Areas and Natural Resources) – Comprehensive Plan Chapter 4 (Design and Development), Chapter 7 (Environment and Watershed Health), and Chapter 8 (Public Facilities and Services)
- Statewide Planning Goal 6 (Air, Water, and Land Resources Quality) – Comprehensive Plan Chapter 7 (Environment and Watershed Health)
- Statewide Planning Goal 7 (Areas Subject to Natural Disasters and Hazards) – Comprehensive Plan Chapter 4 (Design and Development) and Chapter 7 (Environment and Watershed Health)
- Statewide Planning Goal 8 (Recreation Needs) – Comprehensive Plan Chapter 8 (Public Facilities and Services)
- Statewide Planning Goal 9 (Economy of the State) – Comprehensive Plan Chapter 6 (Economic Development)
- Statewide Planning Goal 10 (Housing) – Comprehensive Plan Chapter 5 (Housing)
- Statewide Planning Goal 11 (Public Facilities and Services) – Comprehensive Plan

Chapter 8 (Public Facilities and Services)

- Statewide Planning Goal 12 (Transportation) – Comprehensive Plan Chapter 9 (Transportation)
- Statewide Planning Goal 13 (Energy) – Comprehensive Plan Chapter 4 (Design and Development)
- Statewide Planning Goal 14 (Urbanization) – Comprehensive Plan Chapter 3 (Urban Form)
- Statewide Planning Goal 15 (Willamette Greenway) – Comprehensive Plan Chapter 7 (Environment and Watershed Health)

Statewide Planning Goals not listed above relate to agricultural resources (Goal 3), forestry (Goal 4), estuarine resources (Goal 16), coastal shorelands (Goal 17), beaches and dunes (Goal 18), and ocean resources (Goal 19). These goals do not apply to the subject site.

For quasi-judicial Comprehensive Plan Map Amendments, compliance with the City's Comprehensive Plan goals shows compliance with applicable Statewide Planning Goals. The analysis in this report shows that the City goals and policies are equally or more supported by the proposed Comprehensive Plan Map designation compared to the existing designations. Therefore, the proposal is consistent with all applicable Statewide Planning Goals and equally supports Policy 1.12.

Policy 1.13 Consistency with State and Federal Regulations. *Ensure that the Comprehensive Plan remains consistent with all applicable state and federal regulations, and that implementation measures for the Comprehensive Plan are well coordinated with other City activities that respond to state and federal regulations.*

Compliance with state and federal regulations is a burden on the City rather than applicants for quasi-judicial land use applications. However, the proposal to change the Comprehensive Plan designations from R5 – Residential 5,000; R2.5 – Residential 2,500; and MU-N – Mixed-Use – Neighborhood to MD-U – Multi-Dwelling – Urban Center on the parcels west of SE Milwaukie Ave; and MD-C – Multi-Dwelling – Corridor on the parcel east of SE Milwaukie Ave will not affect requirements that any uses or development on the sites remain consistent with applicable state and federal regulations. As such, the proposal is equally as supportive of this policy.

Policy 1.14 Public facility adequacy. *Consider impacts on the existing and future availability and capacity of urban public facilities and services when amending Comprehensive Plan elements and implementation tools. Urban public facilities and services include those provided by the City, neighboring jurisdictions, and partners within Portland's urban services boundaries, as established by Policies 8.2 and 8.6.*

The proposed Multi-Dwelling – Urban Center and Multi-Dwelling – Corridor designations correspond to the proposed RM4 and RM2 multi-dwelling residential zones, respectively. To the extent that the public services approval criterion in Zoning Code Section 33.855.050.B for the Zoning Map Amendment to RM4 and RM2 is met, the proposal is consistent with providing adequate levels of public services for water, sanitary sewer, stormwater disposal, police and fire protection, and the transportation system. As discussed below in the findings for both Goal 8.E and the approval criterion in Zoning Code Section 33.855.050.B.2.b, staff finds the approval criterion in Zoning Code Section 33.855.050.B can be met with conditions around sewer discharge.

In addition, Portland Public Schools, the Port of Portland, and Tri-Met were all notified in writing of the proposal and invited to comment. As of the date of this report, none has submitted any comments.

For these reasons, and with BES' conditions of approval, staff finds the proposal can equally support Policy 1.14.

Policy 1.15 *Intergovernmental coordination.* *Strive to administer the Comprehensive Plan elements and implementation tools in a manner that supports the efforts and fiscal health of the City, county and regional governments, and partner agencies such as school districts and transit agencies.*

By allowing an increase in allowable residential density, the Comprehensive Plan Map Amendment would likely increase the value of the property and therefore increase the property tax base for the local governments and Portland Public Schools. The cost of public improvements to serve the increased development on the site would be borne by the property owner rather than by public service providers. In addition, system development charges (SDCs) would apply at the time of development to contribute to long-term impacts to services related to the development.

In addition, the proposal increases the allowable residential density on a site that is within a quarter mile of four Tri-Met bus lines and within a half mile of a MAX light rail station at the SE 17th Ave and SE Holgate St. Therefore, the proposal supports Tri-Met's efforts to provide efficient transit services.

For these reasons, staff finds the proposal equally supports Policy 1.15.

Policy 1.18 *Quasi-judicial amendments to the Comprehensive Plan Map.* *Applicants for quasi-judicial amendments to the Comprehensive Plan Map must show that the requested change adheres to Policies 1.10 through 1.15 and:*

- *Is compatible with the land use pattern established by the Comprehensive Plan Map.*
- *Is not in conflict with applicable adopted area-specific plans as described in Policy 1.19, or the applicable hearings body determines that the identified conflict represents a circumstance where the area specific plan is in conflict with the Comprehensive Plan and the proposed amendment is consistent with the Comprehensive Plan.*

The Hearings Officer must review and make recommendations to the City Council on all quasi-judicial amendments to the Comprehensive Plan Map using procedures outlined in the Zoning Code.

As discussed in the findings above, staff finds the proposal is consistent with Policies 1.10 – 1.15.

The proposed Multi-Dwelling – Urban Center designation for the western parcels would be contiguous with the Multi-Dwelling – Urban Center area (zoned RM4) to the north, and near several other RM4 areas north and east of the site (Exhibit B.1). The proposed Multi-Dwelling – Corridor designation for the eastern parcel is within a block to a block and a half from much larger Multi-Dwelling – Corridor areas. The parcel's block has two other lots with the same designation, as does the block to the south. Specifically, the lots that make up the northeast corner of the block that the East Property is located on have a MD-C designation with RM2 zoning, and two individual lots on the block directly south of East Property also have a MD-C designation and are zoned RM2.

The Single-Dwelling – 2,500 designation is often used as a transition zone between a higher-traffic corridors and lower-density single-dwelling designations. For example, south of the subject site, there is a long strip of properties designated Single-Dwelling – 2,500 separating the CM2-zoned

properties along SE Milwaukie Ave from the Single-Dwelling 5,000 designation to the east; moreover, this area runs along SE 17th Ave, a busier street with a bus line. It is an appropriate designation for areas that are more active and adjacent to denser zones. Because of this, the presence of an additional lot with the Multi-Dwelling – Corridor designation will still be compatible with the land use pattern established by the Comprehensive Plan Map both in the immediate area, and more generally with how the Single-Dwelling – 2,500 designation is often used.

Finally, the properties currently designated and zoned R2.5 along SE Milwaukie Ave within the two blocks that include and are adjacent to the East Property are the only single-dwelling zoned properties that front SE Milwaukie Avenue along its entire length from SE Nehalem Street to SE Gideon Street, a 2.5 mile stretch. Every other property that fronts SE Milwaukie Avenue has either a commercial designation or a multi-dwelling designation. That established zoning pattern is consistent with the importance of SE Milwaukie Avenue as a designated corridor. The East Property is the only large undeveloped property designated and zoned R2.5 that fronts SE Milwaukie. Therefore, the requested Comprehensive Plan amendment would allow it to be developed with a multi-dwelling use compatible with and entirely consistent with the land use pattern established by the Comprehensive Plan.

The proposal is also found to be consistent with the Sellwood-Moreland Neighborhood Plan (SMNP) and with Policy 1.19, as discussed below.

For these reasons, staff finds the proposal is equally consistent with Policy 1.18.

Policy 1.19 ***Area-specific plans.** Use area-specific plans to provide additional detail or refinements applicable at a smaller geographic scale, such as for centers and corridors, within the policy framework provided by the overall Comprehensive Plan.*

1.19.a. Area-specific plans that are adopted after May 24, 2018 should clearly identify which components amend Comprehensive Plan elements, supporting documents, or implementation tools. Such amendments should be appropriate to the scope of the Comprehensive Plan; be intended to guide land use decisions; and provide geographically-specific detail. Such amendments could include policies specific to the plan area, land use designation changes, zoning map changes, zoning code changes, and public facility projects necessary to serve designated land uses.

1.19.b. Area-specific plan components intended as context, general guidance, or directives for future community-driven efforts should not amend the Comprehensive Plan elements or implementation tools but be adopted by resolution as intent. These components include vision statements, historical context, existing conditions, action plans, design preferences, and other background information.

1.19.c. Community, area, neighborhood, and other area-specific plans that were adopted by ordinance prior to May 24, 2018 are still in effect. However, the elements of this Comprehensive Plan supersede any goals or policies of a community, area, or neighborhood plan that are inconsistent with this Plan. See Figure 1-2 – Area-Specific Plans Adopted by Ordinance Prior to January 1, 2018, and Figure 7-2 — Adopted Environmental Plans.

As noted above, the SMNP is the neighborhood plan for the Properties and the surrounding neighborhood. The SMNP was adopted by the City of Portland in April of 1998. As demonstrated below, the requested amendments are consistent with the relevant SMNP policies and objectives.

Policy I: Historic Preservation

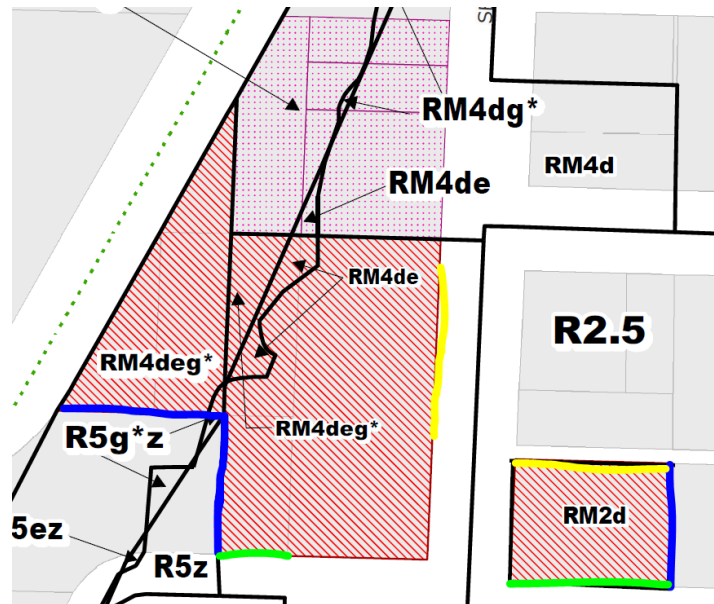
Objective 3. Respect the character of Sellwood-Moreland by sensitively integrating new development with the historic elements of the community.

There are no designated historic resources in the immediate area around the subject site. However, the two houses across the street from the area currently zoned CM1, noted above as the only single-dwelling zoning along SE Milwaukie Ave (with the exception of the parking lot that is part of this site on the same block), were constructed more than 100 years ago, as are the other houses on that block.

One way the Zoning Code protects single-dwelling lots from denser development that is either adjacent or across the street is to require step-down heights in certain areas. Zoning Code Section 33.120.215.B.2 and Table 120-3 state those required height limits. For sites zoned both RM2 and RM4, the height limit is 35 feet within 25 feet of a lot line abutting RF-R2.5 zones; and 45 feet within 15 feet of a lot line across a local service street from RF-R2.5 zones. These limits already apply across SE Ellis from single-dwelling zoning (the green property lines in image below), and to adjacent single-dwelling zoning (blue lines). However, there is no step-down limit abutting alleys, regardless of the width of the alley. To provide more of a buffer to the 1908 house to the north, a step-down in height that will mimic that in the code for adjacent parcels is appropriate.

To ensure protection for the historic homes near the subject site, a condition of approval will require the following step-down heights along the property lines highlighted in yellow below:

- For the West Property, along the roughly 125-foot length across SE Milwaukie from single-dwelling zoning, a condition will limit height within 15 feet of the east lot line to 45 feet; and
- For the East Property, a condition will limit height within 15 feet of the north lot line to 35 feet.



Secondly, all RM4 and RM2 properties will have the “d” Design overlay. One purpose of this overlay is to build on context by enhancing the distinctive physical, natural, historic and cultural qualities of the location while accommodating growth and change. Depending on the scale of the development, location in the city, and other criteria, projects proposed in the Design overlay can often choose between using design standards, or going through discretionary Design Review.

To adequately ensure that the new development is “sensitively integrated” with the “small h” historic elements of the community, staff finds it is necessary to require through condition of

approval that all initial development proposed on the subject site go through discretionary Design Review. This gives neighborhood residents a chance to weigh in on the proposal, and will require that the specific context of the development be considered through the lens of the values of the Design Review process.

With these conditions, staff finds the proposal equally supports Policy I.

Policy II: Sense of Place

Objective V: Enhance the neighborhood's established character as a mixed-use village, emphasizing residential areas surrounding a number of business districts, orientation to public transit, and a healthy pedestrian environment.

The "residential areas" referenced in the objective refer, seemingly, to the single-dwelling residential areas located close to but generally not along the business districts and bus lines. The proposal to increase the density of several properties along SE Milwaukie Ave will contribute to the vitality of the north end of SE Milwaukie Ave. The condition described above to require discretionary Design Review will work to ensure the new development will enhance the area and contribute to a healthy pedestrian environment. One of the action steps proposed under this policy was to require the RH-zoned properties to be subject to Design Review. RM4 is the equivalent zone under the current multi-dwelling designations; the condition to require the discretionary Design Review for the initial site development implements this action step for both the RM4 West Property and the RM2 East Property. The condition to implement further step-down height limits will protect the single-dwelling immediate neighbors of the site. More residents will lead to higher usage of the existing rich public transit options in the immediate neighborhood.

Staff finds that, with the two conditions referenced, the proposal equally supports Policy II.

Policy IV: Subareas

Recognize and reinforce distinct neighborhood subareas, considering their unique strengths, character, challenges, and opportunities.

The West Property is located on the eastern edge of the City View subarea and the East Property is located on the western edge of the North End subarea. The relevant subarea policies for each property are addressed below.

Pedestrian-Oriented Commercial Areas – Milwaukie Avenue Commercial Areas

Desired Character: The commercial areas should maintain or enhance the pedestrian orientation of storefront shopping areas. The streetscape should have a sense of enclosure, formed by a strong building edge...Building styles should be compatible with the historic structures that set the tone for each district.

Policy VII: Balanced Growth

Preserve the health and vitality of neighborhood commercial areas and maintain the balance among residential, commercial and industrial interests.

The SE Milwaukie Avenue corridor that extends south of the Properties is primarily zoned commercial and includes a primary neighborhood village area near the intersection of SE Milwaukie Ave and SE Bybee Blvd. The requested amendments would allow multi-dwelling development that would contribute to the vitality of that commercial area to the south and contribute to the pedestrian-oriented feel of SE Milwaukie Ave through structures that meet the applicable development standards of the multi-dwelling zones that require strong building edges close to the street and other pedestrian oriented building features. The requested higher-density designations also provide the desired balance between residential uses and nearby commercial areas within the corridor. Finally, both the RM4 and RM2 zones permit a limited amount of small

retail and office uses along SE Milwaukie Avenue which further contributes to this policy supporting balanced growth.

For these reasons, staff finds that the proposal is supportive of both Policy IV and Policy VII.

Policy X: North End – A New Neighborhood Center

Encourage the emergence of a new neighborhood center in the North End which will become the focal point for transit and pedestrian-oriented residential, commercial and employment uses.

The plan describes the North End as having “a significant concentration of multi-dwelling units in a mix of styles...The street wall patterns are broken by parking lots near the apartments, churches, and businesses in the area...” The desired character statement for the North End states “[t]he outer edges of the area, along transit corridors, should be built more densely to create more substantial, well-designed buildings, with parking below ground or behind the building and pedestrian plazas or courtyards in front. The northern gateway into the North End should have a mixed-use., transit-oriented development, taking advantage of Willamette River and Oaks Bottom views and prominent location at the intersection of major transportation corridors.” The desired character statement also provides that the core of historic older homes should be protected, with only compatible infill allowed.

The proposed amendments place higher density residential opportunities along the outer edge of the North End at the northern gateway. The densities allowed under the proposed zones would facilitate higher density residential development that can support the commercial center to the south and attract additional retail and commercial businesses to extend to the north with the existing commercial areas along SE Milwaukie Ave. The redevelopment of the East Property, which currently “breaks” the street wall as a surface parking lot, will instead contribute to the pedestrian environment with denser development appropriately along a corridor. Both of the proposed zones permit small retail and office uses along SE Milwaukie Avenue which could contribute to the desired neighborhood center in the north end. For these reasons, staff finds the proposal is consistent with Policy X.

Policy XI: Residential Areas [City View]

Preserve the predominantly pedestrian scale and design of the neighborhood’s residential areas, emphasizing the street as an important public space element.

Objective 1: Ensure a mix of housing units to serve the needed range of types, sizes and income levels that will accommodate a socially and economically diverse neighborhood population.

Objective 2: Designate existing business areas, transportation corridors, transit stations and activity centers as the appropriate locations for concentrating higher density residential and mixed-use zones.

While a specific development is not proposed at this time, the proposed zones would facilitate a potentially larger multi-dwelling development that triggers the Inclusionary Housing requirements of the Zoning Code. The proposal, if approved, will enable the subject site owner to build at a higher intensity than currently allowed. Accommodating people of all income levels throughout the city is a goal that comes up repeatedly throughout the plans that are referenced in the approval criteria. However, the goals for creation of affordable housing are still much larger than what has been accomplished through the IH regulations. This proposal is an opportunity to gain a public benefit from the requested increase in development allowances. To that end, and so that the proposal better supports this and many other policies and goals, staff recommends a condition of approval that requires the creation of units affordable at the 60 percent area median family income level to meet the IH requirements. The details of the condition are spelled out under Goal 3.A below. With this condition, the requested amendments will be in alignment with the objective

of having a neighborhood that provides a mix of housing to serve the needed range of types, sizes and income levels to accommodate a diverse neighborhood.

The SE Milwaukie Ave corridor is an appropriate location for the requested higher density residential options that align with the neighborhood objective. For these reasons, and with a condition of approval requiring the provision of affordable units, staff finds the proposal is consistent with Policy XI.

Since the proposal is found to support each of the relevant policies of the Sellwood-Moreland Neighborhood Plan discussed above with conditions, staff finds that with the suggested conditions of approval, the proposed change equally supports Policy 1.19 of the Comprehensive Plan.

CHAPTER 2: COMMUNITY INVOLVEMENT

Goals:

Goal 2.A: Community involvement as a partnership

The City of Portland works together as a genuine partner with all Portland communities and interests. The City promotes, builds, and maintains relationships, and communicates with individuals, communities, neighborhoods, businesses, organizations, Neighborhood Associations, Business Associations, institutions, and other governments to ensure meaningful community involvement in planning and investment decisions. Partnerships with historically under-served and under-represented communities must be paired with the City's neighborhood organizations to create a robust and inclusive community involvement system.

Goal 2.B: Social justice and equity

The City of Portland seeks social justice by expanding choice and opportunity for all community members, recognizing a special responsibility to identify and engage, as genuine partners, under-served and under-represented communities in planning, investment, implementation, and enforcement processes, particularly those with potential to be adversely affected by the results of decisions. The City actively works to improve its planning and investment-related decisions to achieve equitable distribution of burdens and benefits and address past injustices.

Goal 2.C: Value community wisdom and participation

Portland values and encourages community and civic participation. The City seeks and considers community wisdom and diverse cultural perspectives, and integrates them with technical analysis, to strengthen land use decisions.

Goal 2.D: Transparency and accountability

City planning and investment decision-making processes are clear, open, and documented. Through these processes a diverse range of community interests are heard and balanced. The City makes it clear to the community who is responsible for making decisions and how community input is taken into account. Accountability includes monitoring and reporting outcomes.

Goal 2.F: Accessible and effective participation

City planning and investment decision-making processes are designed to be accessible and effective, and responsive to the needs of all communities and cultures. The City draws from acknowledged best practices and uses a wide variety of tools, including those developed and recommended by under-served and under-represented communities, to promote inclusive, collaborative, culturally-responsive, and robust community involvement.

Goal 2.G: Strong civic infrastructure

Civic institutions, organizations, and processes encourage active and meaningful community involvement and strengthen the capacity of individuals and communities to participate in planning processes and civic life.

Policy 2.1 **Partnerships and coordination.** *Maintain partnerships and coordinate land use engagement with:*

2.1.a. *Individual community members.*

2.1.b. *Communities of color (including those whose families have been in this area for generations such as Native Americans, African Americans, and descendants of immigrants), low-income populations, Limited English Proficient (LEP) communities, Native American communities, immigrants and refugees, and other under-served and under-represented communities.*

2.1.c. *District coalitions, Neighborhood Associations, watershed councils, and business district associations as local experts and communication channels for place-based projects.*

2.1.d. *Businesses, unions, employees, and related organizations that reflect Portland's diversity as the center of regional economic and cultural activity.*

2.1.e. *Community-based, faith-based, artistic and cultural, and interest-based non-profits, organizations, and groups.*

2.1.f. *People experiencing disabilities.*

2.1.g. *Institutions, governments, and Sovereign tribes.*

Policy 2.2 **Broaden partnerships.** *Work with district coalitions, Neighborhood Associations, and business district associations to increase participation and to help them reflect the diversity of the people and institutions they serve. Facilitate greater communication and collaboration among district coalitions, Neighborhood Associations, business district associations, culturally-specific organizations, and community-based organizations.*

Policy 2.3 **Extend benefits.** *Ensure plans and investments promote environmental justice by extending the community benefits associated with environmental assets, land use, and public investments to communities of color, low-income populations, and other under-served or under-represented groups impacted by the decision. Maximize economic, cultural, political, and environmental benefits through ongoing partnerships.*

Policy 2.8 **Channels of communication.** *Maintain two-way channels of communication among City Council, the Planning and Sustainability Commission (PSC), project advisory committees, City staff, and community members.*

Policy 2.12 **Roles and responsibilities.** *Establish clear roles, rights, and responsibilities for participants and decision makers in planning and investment processes. Address roles of City bureaus, elected officials, and participants, including community and neighborhood leadership, business, organizations, and individuals.*

Policy 2.13 **Project scope.** *Establish clear expectations about land use project sponsorship, purpose, design, and how decision makers will use the process results.*

Policy 2.15 **Documentation and feedback.** *Provide clear documentation for the rationale supporting decisions in planning and investment processes. Communicate to participants about the issues raised in the community involvement process, how public input affected outcomes, and the rationale used to make decisions.*

- Policy 2.24 Representation.** *Facilitate participation of a cross-section of the full diversity of affected Portlanders during planning and investment processes. This diversity includes individuals, stakeholders, and communities represented by race, color, national origin, English proficiency, gender, age, disability, religion, sexual orientation, gender identity, and source of income.*
- Policy 2.25 Early involvement.** *Improve opportunities for interested and affected community members to participate early in planning and investment processes, including identifying and prioritizing issues, needs, and opportunities; participating in process design; and recommending and prioritizing projects and/or other types of implementation.*
- Policy 2.38 Accommodation.** *Ensure accommodations to let individuals with disabilities participate in administrative, quasi-judicial, and legislative land use decisions, consistent with or exceeding federal regulations.*
- Policy 2.39 Notification.** *Notify affected and interested community members and recognized organizations about administrative, quasi-judicial, and legislative land use decisions with enough lead time to enable effective participation. Consider notification to both property owners and renters.*
- Policy 2.40 Tools for effective participation.** *Provide clear and easy access to information about administrative, quasi-judicial, and legislative land use decisions in multiple formats and through technological advancements and other ways.*
- Policy 2.41 Limited English Proficiency (LEP).** *Ensure that limited English proficient (LEP) individuals are provided meaningful access to information about administrative, quasi-judicial, and legislative land use decisions, consistent with federal regulations.*

The City mailed notice of the proposed Comprehensive Plan Map Amendment to neighbors within 400 feet of the site, including both property owners and renters. The notice was mailed to 231 addresses (Exhibit D.6). After an error was noticed on the proposed zoning map on a property outside of the subject site, a revised proposal was sent out again with the corrected map (Exhibit D.8).

In addition to owners and residents, the notice was mailed to the Sellwood-Moreland Improvement League, the Sellwood-Moreland Business Association and the Southeast Uplift district coalition office.

In addition, per Zoning Code requirements, the site has been posted with signs advertising the public hearing. A summary of the proposal and a phone number to obtain further information are included on the signs.

Notice of the application and the public hearing was also posted on BDS' website.

The notice that was mailed and posted online clearly identified the applicant's proposal, the applicable approval criteria, the decision-making process, and the opportunity for interested parties to comment on the proposal and/or testify at two public hearings: one before the Hearings Officer and the other before City Council. The roles that staff, the Hearings Officer, the City Council, and other interested parties play in the land use review process were described in the notice.

BDS offers translation services so that non-English speakers can obtain information on land use reviews. The availability of translation services was advertised in multiple languages on the first

page of the mailed notice (Exhibit D-5). The notice also included a phone number for persons with disabilities to call and request accommodations for the public hearing.

Finally, staff notes the applicant held a non-required meeting with neighbors on January 20, 2022, to discuss the application (Exhibit F.2).

Therefore, information about the proposal has been distributed broadly, and those interested in or potentially affected by the proposal have meaningful opportunities to participate in the decision-making process.

For the above reasons, staff finds the proposal equally supports Policies 2.1, 2.2, 2.3, 2.8, 2.12, 2.13, 2.15, 2.24, 2.25, 2.38, 2.39, 2.40, and 2.41.

CHAPTER 3: URBAN FORM

GOAL 3.A: A city designed for people

Portland's built environment is designed to serve the needs and aspirations of all Portlanders, promoting prosperity, health, equity, and resiliency. New development, redevelopment, and public investments reduce disparities and encourage social interaction to create a healthy connected city.

Policy 3.3 ***Equitable development.** Guide development, growth, and public facility investment to reduce disparities; encourage equitable access to opportunities, mitigate the impacts of development on income disparity, displacement and housing affordability; and produce positive outcomes for all Portlanders.*

Policy 3.9 ***Growth and development.** Evaluate the potential impacts of planning and investment decisions, significant new infrastructure, and significant new development on the physical characteristics of neighborhoods and their residents, particularly under-served and under-represented communities, with particular attention to displacement and affordability impacts. Identify and implement strategies to mitigate the anticipated impacts. More detailed policies are in Chapter 5: Housing.*

The proposal would not cause displacement of existing residents; the only development on the site is an office building. In the narrative, the applicant makes the case that the proposal would allow multi-dwelling development at the site that would likely trigger the Inclusionary Housing requirements now in the Zoning Code.

The Inclusionary Housing regulations require that larger developments (new buildings with more than 20 units or alterations to existing buildings that add more than 20 units) provide some affordable units along with their market-rate units. The percentage of units is tied to the amount of affordability: if units are targeted at those making 60 percent or less of the area median family income, then 10 percent of the units provided must be affordable. If units are affordable to those making 80 percent of the area median family income, then 20 percent of the units must be affordable. There are other ways to meet the requirements as well – for example, providing larger units or providing affordable housing offsite – that might change the calculations.

As of January 2022, 423 IH units have completed construction (building permits finalized), with another 382 under construction (permits issued) and more in the pipeline (<https://www.portland.gov/sites/default/files/2022/january-2022-ih-unit-list.pdf>). While impressive for such a young program, the City has identified the need for an additional 23,000 housing units to serve low- and moderate-income households (<https://www.portland.gov/policies/housing/program-specific-administrative-rules/hou-304-inclusionary-housing-program>). In particular, units affordable to individuals and families making significantly less than the area median family income are in short supply.

Portland City Council first declared a housing state of emergency in 2015. Access to housing and housing affordability remain a critical issue for the city, perhaps now more so than when the emergency was first declared. This proposal would increase the intensity of possible development on the 1.36-acre subject site, but the issue of access to housing and housing affordability is one of the key challenges the city faces, and is tied to the rising tide of homelessness our region is experiencing. For these reasons, goals and policies that address equity and affordability are crucial to address adequately on a proposal for additional housing capacity.

For these reasons, and to target the types of units that are most needed, staff is proposing a condition of approval that requires all new development on the site to provide affordable housing through the Inclusionary Housing process regardless of building size. Further, the condition requires that the Inclusionary Housing requirements be met using the option described in Zoning Code Section 33.245.040.A.1.a. Namely, the affordable units will be provided onsite, and 10 percent of the total number of dwelling units in the new building(s) must be affordable to those earning no more than 60 percent of the area median family income. With this condition, the proposal can meet the goals and policies above.

GOAL 3.B: A climate and hazard resilient urban form

Portland's compact urban form, sustainable building development practices, green infrastructure, and active transportation system reduce carbon emissions, reduce natural hazard risks and impacts, and improve resilience to the effects of climate change.

Policy 3.5 ***Energy and resource efficiency.** Support energy-efficient, resource-efficient, and sustainable development and transportation patterns through land use and transportation planning.*

Policy 3.82 ***Willamette River Greenway.** Maintain multi-objective plans and regulations to guide development, infrastructure investments, and natural resource protection and enhancement within and along the Willamette Greenway.*

The proposal supports energy efficiency, environmental quality, and efficient use of urban land use by increasing housing opportunities within walking distance of existing transit service (thereby increasing the efficiency and viability of the transit system) and within walking distance of the services and amenities in the Westmoreland commercial area to the south. Furthermore, a residential unit in a multi-dwelling building is typically smaller and consumes fewer resources than a single-dwelling house.

The River overlay zones implement the Willamette River Greenway policy 3.82 by regulating development along the Central and South reaches of the Willamette River Greenway area. Any future development proposed within the River environmental overlay areas would be required to either meet standards or obtain River Review approval which requires an alternatives analysis and mitigation for any adverse impacts that are unavoidable under the approved alternative. Therefore, future development on the West Property must be simultaneously consistent with this policy that prioritizes natural resource enhancement and protection along the river's greenway area and the corresponding River overlay provisions. Therefore, the requested amendments are equally or more supportive of policy 3.82 than the current Comprehensive Plan and zone designations.

For the reasons stated above, and with the condition requiring 10 percent of all units constructed on the site be made affordable to those at 60 percent the area median family income, , staff finds the proposed designation equally supports Chapter 3 of the Comprehensive Plan.

GOAL 3.C: Focused growth

Household and employment growth is focused in the Central City and other centers, corridors, and transit station areas, creating compact urban development in areas with a high level of service and amenities, while allowing the relative stability of lower-density single-family residential areas.

GOAL 3.D: A system of centers and corridors

Portland's interconnected system of centers and corridors provides diverse housing options and employment opportunities, robust multimodal transportation connections, access to local services and amenities, and supports low-carbon complete, healthy, and equitable communities.

- Policy 3.1 Urban Design Framework.** *Use the Urban Design Framework (UDF) as a guide to create inclusive and enduring places, while providing flexibility for implementation at the local scale to meet the needs of local communities. See Figure 3.1 — Urban Design Framework.*
- Policy 3.2 Growth and stability.** *Direct the majority of growth and change to centers, corridors, and transit station areas, allowing the continuation of the scale and characteristics of Portland's residential neighborhoods.*
- Policy 3.6 Land efficiency.** *Provide strategic investments and incentives to leverage infill, redevelopment, and promote intensification of scarce urban land while protecting environmental quality.*
- Policy 3.52 Neighborhood Corridors.** *Enhance Neighborhood Corridors as important places that support vibrant neighborhood business districts with quality multi-family housing, while providing transportation connections that link neighborhoods.*
- Policy 3.87 Inner Neighborhoods main streets.** *Maintain and enhance the Streetcar Era pattern of street-oriented buildings along Civic and Neighborhood corridors.*
- Policy 3.89 Inner Neighborhoods infill.** *Fill gaps in the urban fabric through infill development on vacant and underutilized sites and in the reuse of historic buildings on adopted inventories.*
- Policy 3.8 Leadership and innovation in design.** *Encourage high-performance design and development that demonstrates Portland's leadership in the design of the built environment, commitment to a more equitable city, and ability to experiment and generate innovative design solutions.*

The requested Comprehensive Plan amendments and corresponding zone changes are consistent with these Urban Form goals and policies. The City has adopted centers and corridors throughout the city through Chapter 3, and SE Milwaukie Avenue is identified as a Neighborhood Corridor in the Comprehensive Plan. It serves as an important connection between the Central City center and the designated Sellwood-Moreland neighborhood center to the south.

While there is currently no development proposed on the Properties, the higher density housing permitted in the proposed RM4 and RM2 zones is consistent with goal 3.C and 3.D and policies 3.2, 3.6, 3.52 to increase multi-dwelling housing opportunities and activity along corridors and in close proximity to transit and city centers.

Since the site is well within the Urban Growth Boundary, the increase of allowable density on the subject site reduces outward pressure on the Urban Growth Boundary while making efficient use of urban land. This in turn helps to preserve the rural character of land outside the Urban Growth Boundary.

The proposal will enable the redevelopment of a surface parking lot in an inner neighborhood, as well as redevelopment of a commercial site which is currently developed with a one and two-story office building with a large surface parking area. The proposed amendment to apply a multi-dwelling designations and zoning would allow productive redevelopment of the property with needed housing, in a prime location along a designated neighborhood corridor with access to transit along the corridor and commercial services nearby.

CHAPTER 4: DESIGN AND DEVELOPMENT

Goal 4.A: Context-sensitive design and development

New development is designed to respond to and enhance the distinctive physical, historic, and cultural qualities of its location, while accommodating growth and change.

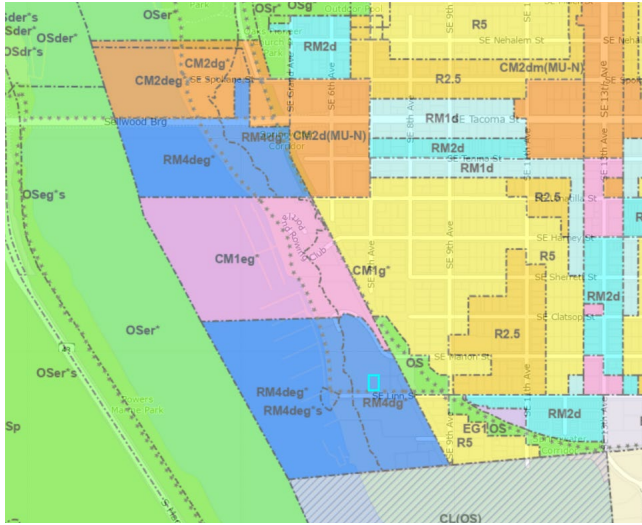
- Policy 4.5 Pedestrian-oriented design.** *Enhance the pedestrian experience throughout Portland through public and private development that creates accessible, safe, and attractive places for all those who walk and/or use wheelchairs or other mobility devices.*
- Policy 4.6 Street orientation.** *Promote building and site designs that enhance the pedestrian experience with windows, entrances, pathways, and other features that provide connections to the street environment.*
- Policy 4.11 Access to light and air.** *Provide for public access to light and air by managing and shaping the height and mass of buildings while accommodating urban- scale development.*
- Policy 4.12 Privacy and solar access.** *Encourage building and site designs that consider privacy and solar access for residents and neighbors while accommodating urban-scale development.*
- Policy 4.20 Walkable scale.** *Focus services and higher-density housing in the core of centers to support a critical mass of demand for commercial services and more walkable access for customers.*

The proposal is to move the site to multi-dwelling residential. For the East Property, the Multi-Dwelling – Corridor designation is appropriate for SE Milwaukie Ave, which is a neighborhood corridor. As noted earlier, the block on which the East Property is part, and the block immediately to the south, is the only area the entire length of SE Milwaukie Ave that has single-dwelling zoning. The proposed designation is consistent with multi-dwelling properties to the south and the north, and equivalent in intensity to the Mixed-Use – Neighborhood designation of the commercially-zoned areas to the south. The redevelopment of a surface parking lot to multi-dwelling housing would fill in one of the “missing teeth” of the streetscape in this area, providing a stronger urban enclosure of the street and more visual interest for pedestrians.

Similarly, the request to apply the Multi-Dwelling – Urban Center designation to the West Property will enable new development to better meet Policies 4.5 and 4.6. Currently, the West Property is developed with a C-shaped one- to two-story office development largely set back from the street, with parking the central feature closest to the street. The maximum setback allowed for buildings in the corresponding RM4 zone is 10 feet. Meeting this standard will bring more development close to the street, which similarly will contribute to a varied development that will be connected to the pedestrian realm.

The proposal to apply the Multi-Dwelling – Urban Center designation to the West Property continues this designation from the north of the site, and in other pockets to the north and northeast. This urban designation allows more intense development than the lower intensity multi-dwelling designations, but not as intense as the Central Residential designation that is applied exclusively within the Central City and Gateway Plan Districts.

This designation is used sparingly across the city. There are some concentrated, larger areas outside of downtown and I-405, such as in Nob Hill, the Alphabet Historic District area, the Northwest Plan District area, in Goose Hollow, etc., but it shows up in other unexpected places as well.



Large areas of MD-U and RM4 along the river in Sellwood shown in dark blue.

For example, in Sellwood, there is a roughly 11-acre site with the MD-U designation at the end of a local service street along the Willamette River at the south end of the city, a quarter mile from the nearest bus line. Given its location, the area also has the River General and River Environmental overlays across parts of the site. Another almost 5-acre site immediately south of the Sellwood Bridge has the same designation (with the same River Overlays applied). In comparison, the part of the subject site for which the applicant is asking for this designation is approximately 1.13 acres.

Other smaller pockets also appear around the city: one block north of PCC Cascades north of Killingsworth has the Multi-Dwelling – Urban Center designation immediately across one

street and one alley to a larger area of R5 – Residential 5,000, for example. Another small area is in Kenton on a local service street. It appears some designations might have been driven by existing development, but the designation has been placed and future owners can make use of the allowances when redeveloping.

While the designation is to be applied in more urban applications, it is not so urban as to be used in the downtown area or in our burgeoning urban Gateway area. In practice, the designation is not even only applied on major corridors or near frequent transit, or separated from single-dwelling residences. In this case, there are several areas of the designation already applied to the north of the subject site. The area is just outside the “inner ring” area designated in the Urban Design Framework of Figure 3-1 in the Comprehensive Plan, located on a neighborhood corridor and with access to several bus lines and a light rail stop within a half mile. With this context, and with a greater understanding of how this denser zoning is applied throughout the city, the application of this designation will simplify the zoning of a limited area and allow for a cohesive design for redevelopment of the overall site (the owner of the subject site owns the RM4 parcels to the north as well).

Requirements for development in the corresponding multi-dwelling zones include window requirements on street-facing façades; requirements that main entrances face the street or a courtyard; a requirement that building façades be articulated when greater than a certain size to limit the bulk of buildings close to the street and provide visual interest; and other standards that control how a building works within its context.

One of these requirements is a step-down height when multi-dwelling zones are immediately adjacent to or across a local service street from single-dwelling zones. To address Goal 4.A and Policy 4.11, staff finds a condition of approval to expand the step-down requirements is warranted, specifically to address the two parcels zoned R2.5 on the east side of SE Milwaukie Ave. As discussed above, to ensure protection for the single-dwelling zoning near the subject site, a condition of approval will require the following step-down heights along additional property lines beyond what is already required:

- For the West Property, along the roughly 125-foot length across SE Milwaukie from single-dwelling zoning, a condition will limit height within 15 feet of the east lot line to 45 feet; and

- For the East Property, a condition will limit height within 15 feet of the north lot line to 35 feet.

The Properties are not located within a designated Center. However, the Properties are located along a critical Neighborhood Corridor that connects two Centers, and residents would be within walking distance of the Sellwood-Moreland Center to the south along the corridor. The proposed zones also allow a limited amount of small commercial uses and therefore, future development could provide a variety of goods and services within walking distance of many of the surrounding neighbors, as well as the new residents. Therefore, the requested amendments are equally or more supportive of policy 4.20 than the existing designations.

With this condition of approval, staff finds the proposal equally meets Goal 4.A and Policies 4.5, 4.6, 4.11, 4.12, and 4.20.

Policy 4.15 Residential area continuity and adaptability. *Encourage more housing choices to accommodate a wider diversity of family sizes, incomes, and ages, and the changing needs of households over time. Allow adaptive reuse of existing buildings, the creation of accessory dwelling units, and other arrangements that bring housing diversity that is compatible with the general scale and patterns of residential areas.*

The requested amendments would result in more housing choices for people wishing to move to the area or stay in the area as family sizes, incomes, and ages of existing neighborhood residents change. Locating the higher-density, multi-dwelling uses along SE Milwaukie Avenue achieves the expansion of housing types and opportunity for more affordable options in an area that is consistent with the goals of the City and with established patterns. Specifically, the Multi-Dwelling – Urban Center designation proposed on the West Property is consistent with the same designation to the north and is compatible with the commercial designations to the south along the corridor and the limited single-dwelling residential area to the west and southwest that currently abuts the commercial zoning. The Multi-Dwelling – Corridor designation proposed on the East Property is similarly consistent with other RM2 nodes in the immediate area, with the multi-dwelling residential designations along the SE Milwaukie Avenue corridor, and would be compatible with the general scale of surrounding single-dwelling areas as a result of compliance with development standards intended to protect abutting and nearby single-dwelling residential properties. For these reasons, the requested amendments are equally or more supportive of this policy than the existing designations.

Policy 4.16 Scale and patterns. *Encourage design and development that complements the general scale, character, and natural landscape features of neighborhoods. Consider building forms, scale, street frontage relationships, setbacks, open space patterns, and landscaping. Allow for a range of architectural styles and expression.*

The requested amendments would facilitate future redevelopment at the Properties that would be required to comply with applicable development standards and be consistent with applicable design guidelines directed at being compatible with and complementing existing development. To ensure that future development proposed is reviewed closely for both quality and ability to fit in with the surrounding context, staff proposes several conditions:

- The initial redevelopment proposal for the site will require discretionary Design Review;
- The height limit for the West Property with the RM4d zoning is 75 feet; and
- There are additional step-down height requirements for both Properties in the context of the R2.5 lots along SE Milwaukie Ave.

In this way, the development proposal will be given more scrutiny to ensure it builds on contexts and promotes quality and long-term resilience in the face of changes; and the bulk and massing will make allowances for the existing zoning pattern across the street.

As discussed above, the standards dictate maximum building height, massing and coverage, as well as required pedestrian oriented development. The RM2 zone characteristics states that development is intended to “integrate with residential neighborhood characteristics” and provide “transitions in scale and characteristics to lower-scale residential neighborhoods.” These development objectives are appropriately achieved through application of the RM2 development standards, as modified with the condition noted above. The RM4 purpose statement does not directly reference the scale of surrounding residential areas. However, located on the west side of SE Milwaukie Avenue with RM4 zoning to the north, CM1 zoning to the south, and open space to the west, the West Property has limited areas that abut the R5 single-dwelling zoning and development to the southwest of the Property. Nonetheless, the same development standards that limit massing and height, including step-down height, require future development to be designed in a way that compliments the scale of surrounding residential areas. Finally, the Properties would be subject to design review which allows for a range of architectural styles and expressions, but also requires a structure that is consistent with guidelines aimed at achieving this policy. Therefore, with the conditions listed above, the requested amendments are more supportive of this policy than the existing designations.

Policy 4.21 *Street environment.* *Encourage development in centers and corridors to include amenities that create a pedestrian-oriented environment and provide places for people to sit, spend time, and gather.*

The Properties are located along a designated Neighborhood Corridor, SE Milwaukie Ave. The proposed amendments facilitate future development that would be subject to development standards and design guidelines consistent with the policy. In contrast, the existing aging office development on the West Property and the surface parking lot on the East Property do not contribute to a pleasant pedestrian environment along the corridor. Additionally, while redevelopment of commercial or mixed-use development on the West Property under the existing designation and zoning would also be subject to current development standards and Design Review, single-dwelling development on the East Property under the current R2.5 zoning would not contribute to a built-up urban form expected on a designated corridor along SE Milwaukie Avenue. Therefore, with the condition of approval requiring discretionary Design Review, the requested amendments are equally or more supportive of this policy than the existing designations.

Policy 4.22 *Relationship between building height and street size.* *Encourage development in centers and corridors that is responsive to street space width, thus allowing taller buildings on wider streets.*

The maximum building height within the RM2 zone is 45 feet. The maximum building height on the West Property would be 100 feet under proposed designations since the site is within 500 feet of frequent service buses (Zoning Code Section 33.120.215.B.1). A building of that height may more often be found on streets wider than 60-foot SE Milwaukie Ave. The West Property is uniquely located directly south of a property zoned RM4 and adjacent to an expansive open space area at the far edge of the surrounding neighborhood. However, staff has proposed two conditions to better reflect the narrower street width, and the single-dwelling zoning across the street:

- The height limit for the West Property with the RM4d zoning is 75 feet; and
- There are additional step-down height requirements for both Properties in the context of the R2.5 lots along SE Milwaukie Ave.

With these conditions, the additional height on the West Property will serve as a transition between the RM4 zoning to the north with the 100-foot height limit and the lower-intensity multi-dwelling and commercial zoning south of the subject site, and is generally consistent with the policy and on balance equally or more supportive of the Comprehensive Plan as a whole.

Policy 4.25 Residential uses on busy streets. *Improve the livability of places and streets with high motor vehicle volumes. Encourage landscaped front setbacks, street trees, and other design approaches to buffer residents from street traffic.*

The Transportation Study measured vehicular volumes on SE Milwaukie in October 2020 and found a total daily volume of 8,800 vehicles per day (Exhibit A.4). This likely represents a lower figure than “normal” due to the continuing Covid pandemic at that point. To meet this policy, the City has required a minimum front setback for multi-dwelling residential zones located along corridors, with landscaping or hardscaping requirements. Additionally, the Title 11 street tree requirements would apply to any redevelopment of the Properties. For these reasons, the requested amendments are equally or more supportive of this policy than the existing designations.

Policy 4.30 Scale transitions. *Create transitions in building scale in locations where higher-density and higher-intensity development is adjacent to smaller-scale single-dwelling zoning. Ensure that new high-density and large-scale infill development adjacent to single dwelling zones incorporates design elements that soften transitions in scale and limit light and privacy impacts on adjacent residents.*

As detailed above, this policy is implemented through massing and height limits that apply to the proposed multi-dwelling residential zones. Specifically, both the RM2 and RM4 zones include setback and step-down heights intended to soften transitions and limit light and privacy impacts of taller multi-dwelling structures. A condition of approval to specifically protect the single-dwelling lots located along SE Milwaukie Ave will ensure a transition even along the corridor.

Additionally, the RM2 zone purpose statements specifically state that the zone is intended to provide transitions in scale and characteristics to lower-scale residential neighborhoods. The proposed RM4 zone on the West Property allows additional height, but also includes setbacks and step-down heights identical to the RM2 zone to provide a transition that softens the differences in scale. Additionally, as noted above, the West Property is uniquely located adjacent to existing RM4 zoning and CM1 zoning, and the area of abutting single-dwelling residential area is limited. Where the West Property abuts the R5 zone, the existing downward slope to the west would further protect the privacy of neighbors to the west and southwest because the change in grade would largely prevent views into those homes. Therefore, the requested amendments are equally or more supportive of this policy than the existing designations.

Policy 4.79 Natural hazards and climate change risks and impacts. *Limit development in or near areas prone to natural hazards, using the most current hazard and climate change-related information and maps.*

Policy 4.80 Geological hazards. *Evaluate slope and soil characteristics, including liquefaction potential, landslide hazards, and other geologic hazards.*

Policy 4.81 Disaster-resilient development. *Encourage development and site- management approaches that reduce the risks and impacts of natural disasters or other major disturbances and that improve the ability of people, wildlife, natural systems, and property to withstand and recover from such events.*

The site is not prone to flooding or other natural hazards that could result from climate change. However, as discussed above, the West Property site is located on steep slopes and is within a potential landslide hazard area. Therefore, the City will require submittal of a geotechnical report at the time of plan review for any future development to ensure that any new building is constructed to account for the landslide hazards and is disaster resilient. Additionally, future development must comply with the Stormwater Management Manual for landslide hazard areas to confirm that the stormwater management approach is appropriate for the site. The exhibited

Revised Drainage Report (Exhibit A.7) and the GeoDesign Geotechnical Report (Exhibit A.3) cited in and attached to the Drainage Report demonstrate the feasibility of safe onsite disposal of stormwater with future development on the West Property. Therefore, the requested amendments are equally or more supportive of this policy than the existing designations.

CHAPTER 5: HOUSING

Goals:

Goal 5.A: Housing diversity

Portlanders have access to high-quality affordable housing that accommodates their needs, preferences, and financial capabilities in terms of different types, tenures, density, sizes, costs, and locations.

Goal 5.B: Equitable access to housing

Portland ensures equitable access to housing, making a special effort to remove disparities in housing access for people with disabilities, people of color, low-income households, diverse household types, and older adults.

Goal 5.D: Affordable housing

Portland has an adequate supply of affordable housing units to meet the needs of residents vulnerable to increasing housing costs.

Goal 5.E: High-performance housing

Portland residents have access to resource-efficient and high-performance housing for people of all abilities and income levels.

The proposed amendments would facilitate development of medium-density multi-dwelling housing and the East Property and higher-density multi-dwelling housing on the West Property. The proposed amendments would provide needed additional housing opportunities in the Sellwood-Moreland inner neighborhood. While the Sellwood-Moreland neighborhood has some multi-dwelling development, with many recent projects coming online, the neighborhood is still dominated by single-dwelling residences, many of which have a price point not affordable to many in the Portland community. The proposed amendments allow a needed housing type at densities consistent with the size and location of each property. The condition of approval discussed above would direct the provision of affordable residential units through the Inclusionary Housing requirements of Zoning Code Chapter 33.245. This would provide the most-needed units of the IH regulations – those affordable to people and families making 60 percent of the area median family income. As noted above, multi-dwelling housing is more resource-efficient than single-dwelling residences, and current building code standards for efficiency are more stringent than what was in place decades ago. Providing affordable housing in new developments makes resource-efficient housing available to people of all income levels. For these reasons, and with the condition of approval directing the provision of affordable residential units in future development on the site, the request is more supportive of these goals as implemented through the policies addressed below than the existing designations.

Goal 5.C: Healthy connected city

Portlanders live in safe, healthy housing that provides convenient access to jobs and to goods and services that meet daily needs. This housing is connected to the rest of the city and region by safe, convenient, and affordable multimodal transportation.

The proposed amendments facilitate the development of new housing that would be safe and healthy housing as demonstrated by meeting all Building Code requirements needed for construction. The site is on a designated corridor and transit street with existing bus service. The Properties also provide convenient access to existing and future bicycle and pedestrian routes that can safely connect residents to the centers to the south and to a light rail transit station a half mile to the north of the Properties. For these reasons, the request is supportive of this goal as implemented through the policies addressed below.

- Policy 5.1** ***Housing supply.** Maintain sufficient residential development capacity to accommodate Portland's projected share of regional household growth.*
- Policy 5.2** ***Housing growth.** Strive to capture at least 25 percent of the seven-county region's residential growth (Multnomah, Washington, Clackamas, Yamhill, Columbia, Clark, and Skamania counties).*

While housing is already permitted on both Properties, the requested amendments shift the focus of future development to multi-dwelling development opportunities. The increased capacity would help the City's overall capacity to accommodate regional growth and capture the target percentage of the region's growth. Additionally, while housing is permitted on the existing zones, no housing is currently developed on the Properties. Therefore, this request offers an opportunity to provide needed higher-density housing without demolishing existing housing supply. Therefore, the requested amendments are more supportive of this policy than the existing designations.

- Policy 5.4** ***Housing types.** Encourage new and innovative housing types that meet the evolving needs of Portland households, and expand housing choices in all neighborhoods. These housing types include but are not limited to single- dwelling units; multi-dwelling units; accessory dwelling units; small units; pre-fabricated homes such as manufactured, modular, and mobile homes; co-housing; and clustered housing/clustered services.*

The Sellwood-Moreland neighborhood has many more single-dwelling residences than multi-dwelling units, even accounting for recent multi-dwelling developments. The multi-dwelling unit housing type is prevalent in many Portland neighborhoods, especially along corridors. The proposed multi-dwelling Comprehensive Plan designations and corresponding zones ensures that a fuller range of housing types meeting the evolving needs of existing and future households is available in the neighborhood, and in an appropriate location. Therefore, the requested amendments are more supportive of this policy than the existing designations.

- Policy 5.10** ***Coordinate with fair housing programs.** Foster inclusive communities, overcome disparities in access to community assets, and enhance housing choice for people in protected classes throughout the city by coordinating plans and investments to affirmatively further fair housing.*
- Policy 5.11** ***Remove barriers.** Remove potential regulatory barriers to housing choice for people in protected classes to ensure freedom of choice in housing type, tenure, and location.*
- Policy 5.12** ***Impact analysis.** Evaluate plans and investments, significant new infrastructure, and significant new development to identify potential disparate impacts on housing choice, access, and affordability for protected classes and low-income households. Identify and implement strategies to mitigate the anticipated impacts.*

Coordination with fair housing programs, regulatory changes, and the evaluation of plans are primarily a City obligation. However, the proposed amendments will increase the opportunity for affordable and inclusive multi-dwelling development projects that could come to fruition as a result of the City's efforts. The additional housing stock within an area that is currently primarily single-dwelling residences will serve to increase the housing options in the Sellwood-Moreland neighborhood for protected classes and all residents. Through the condition of approval directing the provision of affordable residential units through the IH process, these amendments are more supportive of these policies than the existing designations.

- Policy 5.15** ***Gentrification/displacement risk.** Evaluate plans and investments, significant new infrastructure, and significant new development for the potential to increase housing costs for, or cause displacement of communities of color, low- and moderate-*

income households, and renters. Identify and implement strategies to mitigate the anticipated impacts.

Policy 5.22 New development in opportunity areas. *Locate new affordable housing in areas that have high/ medium levels of opportunity in terms of access to active transportation, jobs, open spaces, high-quality schools, and supportive services and amenities. See Figure 5-1 — Housing Opportunity Map.*

Policy 5.26 Regulated affordable housing target. *Strive to produce and fund at least 10,000 new regulated affordable housing units citywide by 2035 that will be affordable to households in the 0-80 percent MFI bracket.*

As discussed above, the proposed amendments will facilitate development that will continue to diversify the range of housing types and housing costs in the Sellwood-Moreland neighborhood. Based upon Figure 5-1 it appears that the site is located in a medium- to high-opportunity area. The condition of approval directing the provision of affordable residential units create more opportunities for lower-income Portlanders to find safe and affordable housing in an opportunity area. The site is not developed with any housing currently, so no immediate displacement will be caused by new development. Requiring greater affordability will enable the City to get closer to its affordable housing target faster than without the proposal. With this condition, the proposal is more supportive of these policies than the existing designations.

Policy 5.23 Higher-density housing. *Locate higher-density housing, including units that are affordable and accessible, in and around centers to take advantage of the access to active transportation, jobs, open spaces, schools, and various services and amenities.*

The Properties are not located in a designated center, but are in close proximity to a center as the Sellwood-Moreland Center is approximately half a mile to the south along SE Milwaukie Avenue. The Properties are also within or at the edge of the City's Inner Ring as shown in the Urban Design Direction document and are located along a transit street that is a designated Neighborhood Corridor.

The West Property in particular is uniquely located for higher density housing normally suggested for center areas. As discussed above, the proposed Comprehensive Plan designation and corresponding RM4 zoning on the West Property is located directly south of RM4-zoned property and near to additional RM4-zoned sites. Therefore, a consistent multi-dwelling zone along that stretch of SE Milwaukie Avenue would create an opportunity for a cohesive development under a single set of standards. Additionally, the West Property and the existing RM4 property are located at the far northwest edge of the Sellwood-Moreland neighborhood and adjacent to open space to the west and north where additional height and density would have reduced impacts on the surrounding neighborhood.

Finally, as demonstrated in the Zoning Study (Exhibit A.2), the proposed designation would allow a density similar to what would be spread across the Property under the existing zones if not for the presence of the River overlay and steep slope to the west. Therefore, the proposed amendment to the West Property would allow an appropriate level of needed housing to be clustered in the upland portion of the site, thereby preserving and protecting the resources and functional values on the western portion of the property and providing a buffer for the sensitive wildlife habitat and water resources west of the property boundary. For these reasons, the requested amendments are more supportive of this policy than the existing designations.

Policy 5.24 Impact of housing on schools. *Evaluate plans and investments for the effect of housing development on school enrollment, financial stability, and student mobility. Coordinate with school districts to ensure plans are aligned with school facility plans.*

The Properties are located within the Portland Public School district. The district has not yet adopted a school facility plan. Therefore, this policy cannot be applied to this application.

- Policy 5.49 *Housing quality.*** Encourage housing that provides high indoor air quality, access to sunlight and outdoor spaces, and is protected from excessive noise, pests, and hazardous environmental conditions.
- Policy 5.50 *High-performance housing.*** Encourage energy efficiency, green building practices, materials, and design to produce healthy, efficient, durable, and adaptable homes that are affordable or reasonably priced.
- Policy 5.51 *Healthy and active living.*** Encourage housing that provides features supportive of healthy eating and active living such as useable open areas, recreation areas, community gardens, crime-preventive design, and community kitchens in multifamily housing.

There is not a specific development plan for the Properties at this time. Therefore, because these policies relate to development design and amenities, the policies are not directly relevant to this request. However, to the extent the proposed amendments result in new multi-dwelling residential development on the Properties, the development must comply with development standards related to outdoor and common spaces and current building code requirements related to indoor spaces and nonhazardous construction materials. The Design overlay will be applied to both the East and West Properties and new development will require Design Review approval that includes guidelines related to community spaces and quality of materials. In terms of active living, the immediate area has a complete street network, with pedestrian facilities widely available. A pedestrian entrance to Oaks Bottom Wildlife Refuge is located on SE Milwaukie Ave only 700 feet away from the site. Easy access to this natural area will encourage more active living. For these reasons, to the extent the Policies are relevant, the requested amendments are equally or more supportive of these policies than the existing designations.

CHAPTER 7: ENVIRONMENT AND WATERSHED HEALTH

Goal 7.A: Climate

Carbon emissions are reduced to 50 percent below 1990 levels by 2035.

Goal 7.B: Healthy watersheds and environment

Ecosystem services and ecosystem functions are maintained and watershed conditions have improved over time, supporting public health and safety, environmental quality, fish and wildlife, cultural values, economic prosperity, and the intrinsic value of nature.

Goal 7.C: Resilience

Portland's built and natural environments function in complementary ways and are resilient in the face of climate change and natural hazards.

Goal 7.D: Environmental equity

All Portlanders have access to clean air and water, can experience nature in their daily lives, and benefit from development designed to lessen the impacts of natural hazards and environmental contamination.

Goal 7.E: Community stewardship

Portlanders actively participate in efforts to maintain and improve the environment, including watershed health.

Many of the Environment and Watershed Health goals and policies are implemented through the City's resource overlay designations. In this case, and as detailed above, the western and central portions of the West Property have the River g* and/or e overlay designation. The applicant is not proposing changes to the overlays or the overlay boundaries. The overlay regulations will push development away from the slope. This will create an opportunity for a residential project concentrated or clustered on the upland portions of the property in locations that avoid and/or substantially minimize impacts on the resources in the River overlay areas and provides a vegetated buffer for the sensitive wildlife and river resources west of the property boundary. This approach is consistent with the goals for healthy watersheds and environment and resilience, while allowing residential densities in an inner neighborhood close to multi-modal transportation

opportunities that help satisfy the climate goal and related policies. Therefore, the requested changes are more supportive of the City's environment and watershed health goals, as implemented through the policies identified below, than the existing designations.

Policies:

Policy 7.1 ***Environmental quality.** Protect or support efforts to protect air, water, and soil quality, and associated benefits to public and ecological health and safety, through plans and investments.*

Any redevelopment of the Properties would be required to comply with current code provisions that have been adopted to implement this general environmental quality policy, a policy that was not in place when the existing building on the West Property was developed in 1963 or when the surface parking lot was located on the East Property. The relevant provisions include, but are not limited to, the River overlay regulations, the BES Stormwater Management Manual, landscaping standards, energy efficiency programs, and the Urban Forestry requirements of Title 11. Therefore, the proposed amendments are equally or more supportive of this policy than existing designations.

Policy 7.10 ***Habitat connectivity.** Improve or support efforts to improve terrestrial and aquatic habitat connectivity for fish and wildlife by using plans and investments, to:*

- *Prevent and repair habitat fragmentation.*
- *Improve habitat quality.*
- *Weave habitat into sites as new development occurs.*
- *Enhance or create habitat corridors that allow fish and wildlife to safely access and move through and between habitat areas.*
- *Promote restoration and protection of floodplains.*

Pursuant to Urban Form Figure 3-6 Urban Habitat Corridors, the western portion of the West Property appears to be located in an Existing/Enhanced Habitat Corridor that is consistent with the River overlay areas on the western portion of the West Property. Through these designations the City has fulfilled this policy by creating habitat corridor designations and connections between those corridors for wildlife movement. As discussed above, future development on the West Property would be subject to the River overlay requirements which would result in the avoidance or minimization on impacts to the designated corridor area. The habitat corridor area on the Property is also connected to the Oaks Bottom Wildlife Habitat area further west. The proposed amendments facilitate efficient development of needed housing on the upland portions of the West Property consistent with this policy. Therefore, the proposed amendments are equally or more supportive of this policy than existing designations.

Policy 7.11 ***Urban forest.** Improve, or support efforts to improve the quantity, quality, and equitable distribution of Portland's urban forest through plans and investments.*

7.11.a. Tree preservation. *Require and incent preservation of large healthy trees, native trees and vegetation, tree groves, and forested areas.*

7.11.b. Urban forest diversity. *Coordinate plans and investments with efforts to improve tree species diversity and age diversity.*

7.11.c. Tree canopy. *Coordinate plans and investments toward meeting City tree canopy goals.*

7.11.d. Tree planting. *Invest in tree planting and maintenance, especially in low-canopy areas, neighborhoods with under-served or under-represented communities, and within and near urban habitat corridors.*

7.11.e. Vegetation in natural resource areas. *Require native trees and vegetation in significant natural resource areas.*

- 7.11.f. Resilient urban forest.** *Encourage planting of Pacific Northwest hardy and climate change resilient native trees and vegetation generally, and especially in urban habitat corridors.*
- 7.11.g. Trees in land use planning.** *Identify priority areas for tree preservation and planting in land use plans, and incent these actions.*
- 7.11.h. Managing wildfire risk.** *Address wildfire hazard risks and management priorities through plans and investments.*

These Urban Forest policies are largely implemented through the Title 11 tree preservation, protection, mitigation and street tree requirements. In the case of the West Property, they are also implemented through the tree preservation elements of the River overlay zone that apply to the West Property. Any redevelopment or reuse of the Properties under the proposed Comprehensive Plan designations and corresponding zones must comply with the applicable implementing code provisions. Therefore, the proposed amendments are equally or more supportive of this policy than existing designations.

Policy 7.14 Natural hazards. *Prevent development-related degradation of natural systems and associated increases in landslide, wildfire, flooding, and earthquake risks.*

The West Property is located on steep slopes and is within a potential landslide hazard area. Therefore, the City will require submittal of a geotechnical report for the Property at the time of plan review for any future development to ensure that any new building is constructed to account for the landslide hazards and earthquake risks. Additionally, future development must comply with the Stormwater Management Manual for landslide hazard areas to confirm that the stormwater management approach is appropriate for the site. BES has required a condition of approval that the applicant must submit stormwater management reports with the results of infiltration testing for all subsequent land use and building permit reviews for future development of the subject properties. With this condition, the proposed amendments are equally or more supportive of this policy than existing designations.

CHAPTER 8: PUBLIC FACILITIES AND SERVICES

Goal 8.A: Quality public facilities and services

High-quality public facilities and services provide Portlanders with optimal levels of service throughout the city, based on system needs and community goals, and in compliance with regulatory mandates.

Goal 8.C: Reliability and resiliency

Public facilities and services are reliable, able to withstand or recover from catastrophic natural and manmade events, and are adaptable and resilient in the face of long-term changes in the climate, economy, and technology.

Goal 8.G: Water

Reliable and adequate water supply and delivery systems provide sufficient quantities of high-quality water at adequate pressures to meet the needs of the community on an equitable, efficient, and sustainable basis.

Policy 8.3 Urban service delivery. *Provide the following public facilities and services at urban levels of service to urban lands within the City's boundaries of incorporation:*

- *Public rights-of-way, streets, and public trails*
- *Sanitary sewers and wastewater treatment*
- *Stormwater management and conveyance*
- *Flood management*
- *Protection of the waterways of the state*
- *Water supply*

- *Police, fire, and emergency response*
- *Parks, natural areas, and recreation*
- *Solid waste regulation*

Policy 8.21 System capacity. *Establish, improve, and maintain public facilities and services at levels appropriate to support land use patterns, densities, and anticipated residential and employment growth, as physically feasible and as sufficient funds are available.*

The proposed Multi-Dwelling- Corridor and Multi-Dwelling – Urban Center designations correspond to the RM2 and RM4 multi-dwelling residential zones, respectively. To the extent that the public services approval criterion in Zoning Code Section 33.855.050.B for the Zoning Map Amendments to RM2 and RM4 is met, the proposal is consistent with providing adequate utilities and other public services. As discussed later in this report, staff finds the approval criterion in Zoning Code Section 33.855.050.B can be met for each of the factors mentioned in Goal 8.9 and the goals and policies above. Therefore, staff finds the proposed designation equally supports these goals and policies.

Policy 8.28 Shared costs. *Ensure the costs of constructing and providing public facilities and services are equitably shared by those who benefit from the provision of those facilities and services.*

Policy 8.29 System development. *Require private or public entities whose prospective development or redevelopment actions contribute to the need for public facility improvements, extensions, or construction to bear a proportional share of the costs.*

Any new development of the Properties will be subject to System Development Charges to ensure that costs of constructing and providing public services are equitably shared by the property owner who benefits from the services. Neither the existing building on the West Property nor the operator of the surface parking lot on the East Property are currently contributing directly to public service costs. For these reasons, the proposed amendments are equally or more supportive of these policies than existing designations.

Policy 8.34 Resource efficiency. *Reduce the energy and resource use, waste, and carbon emissions from facilities necessary to serve designated land uses to meet adopted City goals and targets.*

The proposed amendments would facilitate higher density multi-dwelling residential units that serve the housing needs in the inner neighborhood more efficiently. Efficient use of underutilized land within the urban area generally results in reduced energy and resource use. New development at the Properties could also take advantage of resource efficiency technologies to provide energy efficient development that reduces energy and resource use and waste. Therefore, the proposed amendments are equally or more supportive of this policy than existing designations.

Goal 8.E: Sanitary and stormwater systems

Wastewater and stormwater are managed, conveyed, and/or treated to protect public health, safety, and the environment, and to meet the needs of the community on an equitable, efficient, and sustainable basis.

Policy 8.61 Sewer connections. *Require all developments within the city limits to be connected to sanitary sewers unless the public sanitary system is not physically or legally available per City Code and state requirements; or the existing onsite septic system is functioning properly without failure or complaints per City Code and state requirements; and the system has all necessary state and county permits.*

- Policy 8.68 Stormwater facilities.** *Provide adequate stormwater facilities for conveyance, flow control, and pollution reduction.*
- Policy 8.69 Stormwater as a resource.** *Manage stormwater as a resource for watershed health and public use in ways that protect and restore the natural hydrology, water quality, and habitat of Portland's watersheds.*
- Policy 8.70 Natural systems.** *Protect and enhance the stormwater management capacity of natural resources such as rivers, streams, creeks, drainageways, wetlands, and floodplains.*
- Policy 8.72 Stormwater discharge.** *Avoid or minimize the impact of stormwater discharges on the water and habitat quality of rivers and streams.*
- Policy 8.73 On-site stormwater management.** *Encourage on-site stormwater management, or management as close to the source as practical, through land use decisions and public facility investments.*

There is a public 20-inch vitrified clay combined sewer in SE Milwaukie Avenue and an 8-inch concrete combined sewer in SE Ellis Street west of SE Milwaukie Avenue. BES modeling indicates that the combined sewers do not have capacity to take additional stormwater flow in addition to sewer flows. The revised drainage report submitted by the applicant (Exhibit A.7) indicates that on-site stormwater infiltration is feasible.

BES reviewed the drainage report (Exhibit A.7) and geotechnical engineering report (Exhibit A.3) to ensure the development the proposed designations would enable could be accommodated by the existing sewer system. As described in the findings for Zoning Code Section 33.855.050.B.2.b below, BES has conditioned limits on discharge into the combined sewer available to the site, with requirements that proposed development must discharge stormwater onsite following the Stormwater Management Manual (SWMM), the overall discharge cannot exceed certain thresholds without upgrading the public system. The applicant must provide more infiltration data either during a required Design Review process or at time of permit.

With these conditions from BES ensuring the sewer system will not be overtaxed and that stormwater will largely be addressed onsite, the proposed amendments are equally or more supportive of this policy than existing designations.

Goal 8.I: Public safety and emergency response

Portland is a safe, resilient, and peaceful community where public safety, emergency response, and emergency management facilities and services are coordinated and able to effectively and efficiently meet community needs.

- Policy 8.87 Fire protection.** *Provide adequate water facilities to serve the fire protection needs of all Portlanders and businesses.*
- Policy 8.104 Emergency preparedness, response, and recovery coordination.** *Coordinate land use plans and public facility investments between City bureaus, other public and jurisdictional agencies, businesses, community partners, and other emergency response providers, to ensure coordinated and comprehensive emergency and disaster risk reduction, preparedness, response, and recovery.*
- Policy 8.106 Police facilities.** *Improve and maintain police facilities to allow police personnel to efficiently and effectively respond to public safety needs and serve designated land uses.*

Findings: The Police Bureau and the Fire Bureau were both notified of the proposal and asked to comment. The Fire Bureau provided no objections to the requested amendment, but noted that future development would be required to comply with applicable Fire Code requirements at the time of building permit review (Exhibit E.4). The Police Bureau responded that “[t]he Police Bureau is currently able to serve the existing site and will be capable of providing police services to the additional density created by the new zoning”

(Exhibit E.8). For these reasons, staff finds the proposal equally supports Policies 8.87, 8.104, and 8.106.

Policy 8.113 School district capacity. *Consider the overall enrollment capacity of a school district – as defined in an adopted school facility plan that meets the requirements of Oregon Revised Statute 195 – as a factor in land use decisions that increase capacity for residential development.*

The Properties are located within the Portland Public School district and are served by Llewellyn Elementary School, Sellwood Middle School, and Cleveland High School. Portland Public Schools does not have an adopted school facility plan. Therefore, this policy cannot be applied to this proposal.

CHAPTER 9: TRANSPORTATION

Findings: The applicant provided a narrative response to each of the transportation policies listed in Chapter 9 (Exhibit A.6) and a transportation impact study (Exhibit A.4). PBOT analyzed the applicant's narrative and transportation impact study and provided the following response (Exhibit E.2):

Portland Transportation/Development Review has reviewed the application for its potential impacts regarding the public right-of-way, traffic impacts and conformance with adopted policies, street designations, Title 33, Title 17, and for potential impacts upon transportation services.

PBOT staff has reviewed the applicant's narrative addressing the Transportation Element of the Comprehensive Plan (Goal 12) and the approval criteria for a zone map amendment addressed in the Transportation Impact Study (TIS) prepared by Kittelson & Associates. PBOT staff concurs with their findings for the Comprehensive Plan map amendment and Zoning Map amendment that the transportation system is capable of supporting the proposed changes in addition to existing uses in the area. The proposal will not result in any significant transportation impacts and no mitigation measures are needed.

OVERVIEW OF PROPOSED REZONING

The portion of the site located west of SE Milwaukie Avenue that is currently zoned CM1 is approximately 34,445 square feet, and the portion zoned R5 is approximately 13,292 square feet (including 10,737 square feet of R5 zone on the parcel identified as Parcel 3 in Exhibit 1 and 2,555 square feet of R5 zone on the parcel identified as Parcel 2 in Exhibit 1). The entirety of the R5 zoned portion of the site is located within the River Overlay zones. The east property is 10,016 square feet in size and zoned R2.5. A comparison of the reasonable worst case development scenario for the existing zones and the proposed zones is provided in the TIS.

GOAL 12: TRANSPORTATION

To provide and encourage a safe, convenient and economic transportation system. Goal 12 sets forth the requirements local government transportation plans. The Oregon Transportation Planning Rule (TPR) implements Goal 12 and applies to amendments to acknowledged comprehensive plans. As discussed in the detail in the Transportation Study prepared by Kittelson & Associates attached as Exhibit C, the TPR established a two-step process for evaluating an amendment's impacts on the transportation system. The first step is to assess the trip generation potential for the site assuming a "reasonable worst-case" development scenario under the existing and proposed zoning. If the development under the proposed zoning could increase the trip generation potential, additional operational analysis

is required to assess whether the rezone will “significantly affect” the transportation system. In this case, Kittelson evaluated the reasonable worst-case development scenario for both the East Property and the West Property and concluded that the difference for each property under those scenarios would be less than 400 daily trips. Therefore, the proposed amendments do not exceed the established threshold for determining significance and additional traffic studies were not needed. PBOT has reviewed and approved a scoping memo prepared prior to submittal of this application and agreed with Kittelson’s conclusions. Consequently, the proposed amendment is consistent with both Goal 12 and the implementing TPR.

Based on PBOT’s analysis above of both the applicant’s narrative and the TIS provided by the applicant’s transportation engineer, staff finds the proposed Multi-Dwelling – Urban Center and Multi-Dwelling – Corridor designations to be equally consistent with the goals and policies in Chapter 9 – Transportation.

CHAPTER 10: LAND USE DESIGNATIONS AND ZONING

Goal 10.A: Land use designations and zoning

Effectively and efficiently carry out the goals and policies of the Comprehensive Plan through the land use designations, Zoning Map, and the Zoning Code.

Policy 10.1 Land use designations. *Apply a land use designation to all land and water within the City’s Urban Services Boundary. Apply the designation that best advances the Comprehensive Plan goals and policies. The land use designations are shown on the adopted Land Use Map and on official Zoning Maps...*

9. Multi-Dwelling — Corridor (MD-C)

This designation allows medium-scale multi-dwelling development. The scale of development is intended to accommodate transit-supportive densities while providing transitions to nearby single-dwelling residential. The designation is intended for areas near, in, and along centers, civic and neighborhood corridors, and transit station areas, where urban public services, generally including complete local street networks and access to frequent transit, are available or planned. Areas within this designation generally do not have development constraints. Maximum density is based on a floor area ratio, not on a units-per-square-foot basis. Minimum density is 30 units per acre. The corresponding zone is RM2.

10. Multi-Dwelling — Urban Center (MD-U)

This designation is intended for the Central City, Gateway Regional Center, Town Centers, and transit station areas where a residential focus is desired and urban public services including access to high-capacity transit, very frequent bus service, or streetcar service are available or planned. This designation is intended to allow high-density multi-dwelling structures at an urban scale. Maximum density is based on a floor-area-ratio, not on a unit-per-square-foot basis. Minimum density is 43 units an acre. The corresponding zones are RM3 and RM4. This designation is accompanied by the Design overlay zone.

The site is within the City’s Urban Services Boundary. As discussed in the findings above, staff finds the proposed Multi-Dwelling – Corridor and Multi-Dwelling – Urban Center designations are equally or more supportive of the Comprehensive Plan’s goals and policies compared to the current designations. The site is along a Neighborhood Corridor just outside of the Inner Ring area of central Portland, is close to bus and light rail transit service, within walking distance of commercial areas and, as discussed in the findings for Zoning Code Section 33.855.050.B, below, adequate public services are available. When taking into consideration all relevant goals and policies, and with the application of several key conditions of approval addressing affordable

housing; stormwater management; step-down heights for future development; overall height limit of 75 feet on the RM4 parcels; and the requirement of discretionary Design Review; on balance, the proposed designations would effectively and efficiently advance the goals and policies of the Comprehensive Plan. Staff finds the proposal equally supports Goal 10.A and Policy 10.1.

The West Property is not located in the Central City, a Gateway Regional Center, a Town Center, or a transit station area. However, the Multi-Dwelling – Urban Center has been applied only sparingly within Central City (in a few small areas in Goose Hollow and the part of the Alphabet Historic District that is in the Central City Plan District) and not at all that staff could find in Gateway. Further, the description does not say that the MD-U designation can only be applied in those areas. As detailed above, there are several locational and situational factors that support the conclusion that the MD-U is the designation that best advances the Comprehensive Plan factors on the West Property. Those factors include, but are not limited to:

- Providing zoning consistent with the property to the north. The West Property is located south of an existing MD-U/RM4 property that also has a significant swath of River overlay and therefore limited redevelopment potential as a standalone development area. Applying a consistent zone across both properties would allow a future developer to coherently design a residential community and streetscape that is governed by a singular zone instead of three different zones. The zoning consistency would reduce development costs, enhance community design, and make the project more financially feasible to deliver housing units across income levels.
- Providing a zone that make it feasible to redevelop the property with needed housing clustered on the upland portion of the property with minimal to no impacts on the sensitive resource area within the River overlay zones. The densities allowed in the RM4 zone are commensurate with the densities that would be allowed under the existing combined CM1/R5 zones if those units were spread across the entirety of the West Property and were not limited by the River overlays.
- The West Property is located at the far northwest edge of the Sellwood-Moreland neighborhood with RM4 zoning to the north, open space and a small area of R5 to the west, mixed-use commercial designations to the south, and a mix of residential densities across SE Milwaukie to the east. Impact from the additional density permitted in the MD-U designation and corresponding RM4 zone would be minimized by development standards intended to protect nearby single-dwelling zones, including setbacks, stepdown height limits, and landscaping, as well as compliance with design review guidelines that take into consideration the context of surrounding areas.
- The West Property is within easy biking and walking distance of a light rail station and has convenient access to frequent bus service.

The East Property is located along a designated Neighborhood Corridor and near a transit station area. It is surrounded by a complete local street network and in close proximity to transit opportunities and other multi-modal transportation options. The East Property is currently a surface parking lot and the proposed amendment is consistent with the established zoning pattern as the corresponding RM2 zone is already exists in larger areas and on smaller isolated lots on the east side of SE Milwaukie Avenue in the immediate vicinity of the East Parcel. For these reasons and for the collective reasons set forth under each relevant goal and policy above, the MD-C is the designation that best advances the Comprehensive Plan factors on the East Property.

For the reasons set forth above, and throughout this narrative, the requested amendments are more supportive of this policy than the existing designations.

Policy 10.2 ***Relationship of land use designations to base zones.** Apply a base zone to all land and water within the City’s urban services boundary. The base zone applied*

must either be a zone that corresponds to the land use designation or be a zone that does not correspond but is allowed according to Figure 10-1 — Corresponding and Less-Intense Zones for Each Plan Map Designation. In some situations, there are long-term or short-term obstacles to achieving the level of development intended by the land use designation (e.g., an infrastructure improvement to serve the higher level of development is planned but not yet funded). In these situations, a less intense zone (listed in Figure 10-1) may be applied. When a land use designation is amended, the zone may also have to be changed to a corresponding zone or a zone that does not correspond but is allowed.

Policy 10.3 Amending the Zoning Map.

10.3.a. *Amending a base zone may be done legislatively or quasi-judicially.*

10.3.b. *When amending a base zone quasi-judicially, the amendment must be to a corresponding zone (see Figure 10-1 — Corresponding and Allowed Zones for Each Land Use Designation). When a designation has more than one corresponding zone, the most appropriate zone, based on the purpose of the zone and the zoning and general land uses of surrounding lands, will be applied.*

10.3.c. *When amending a base zone legislatively, the amendment may be to a corresponding zone or to a zone that does not correspond but is allowed (see Figure 10-1 — Corresponding and Allowed Zones for each Land Use Designation for zones that are allowed). A legislative Zoning Map amendment may not be to a zone that is not allowed.*

10.3.d. *An amendment to a base zone consistent with the land use designation must be approved when it is found that current public services are capable of supporting the uses allowed by the zone, or that public services can be made capable by the time the development is complete. The adequacy of services is based on the proposed use and development. If a specific use and development proposal is not submitted, services must be able to support the range of uses and development allowed by the zone. For the purposes of this requirement, services include water supply, sanitary sewage disposal, stormwater management, transportation, school district capacity (where a school facility plan exists), and police and fire protection.*

10.3.e. *An amendment to apply or remove an overlay zone or plan district may be done legislatively or quasi-judicially, and must be based on a study or plan document that identifies a specific characteristic, situation, or problem that is not adequately addressed by the base zone or other regulations.*

West Property

The site is within the City's Urban Services Boundary. The applicant proposes a Comprehensive Plan Map Amendment on the West Property to the Multi-Dwelling – Urban Center designation. Concurrently with this Comprehensive Plan Map Amendment, the applicant proposes a quasi-judicial Zoning Map Amendment to apply the RM4 base zone to the site. As stated in Comprehensive Plan Policy 10.1, the proposed Multi-Dwelling – Urban Center designation has two corresponding base zones, RM3 (Residential Multi-Dwelling 3) and RM4 (Residential Multi-Dwelling 4). Both are urban zones; RM3 has lower allowances for height and floor area ratio, etc. As demonstrated in the findings for Zoning Code Section 33.855.050.A below, the RM4 base zone is the more appropriate corresponding zone based on the surrounding zoning, especially the areas of RM4 zoning immediately to the north of the site. In contrast, there is no RM3 zoning in the vicinity of the West Property.

Along many corridors in Portland, there will be a patchwork of zoning, often based on existing development when the zoning was applied. In this case, there is an opportunity to reverse a change that created a block with three different zones on it, and simplify the zoning pattern. This is especially important when the owner of the subject site also owns the parcel to the north (of the West Property) which has the RM4 designation but a relatively small development area given the slope to the west. In this case, RM4 is preferable over RM3.

No proposed changes to the River overlay zoning is proposed. The applicant proposes to remove the “z” Constrained Sites overlay from the R5 parcels in the West Property, as that overlay is only applied on certain R7, R5, or R2.5 single-dwelling sites. The applicant proposes to add the “d” Design overlay on any parcels that do not have it yet, because RM4 is always applied with the Design overlay.

East Property

The site is within the City’s Urban Services Boundary. The applicant proposes a Comprehensive Plan Map Amendment on the East Property to the Multi-Dwelling – Corridor designation. Concurrently with this Comprehensive Plan Map Amendment, the applicant proposes a quasi-judicial Zoning Map Amendment to apply the RM2 base zone to the site. As stated in Comprehensive Plan Policy 10.1, the proposed Multi-Dwelling – Corridor designation has only one corresponding base zone, the RM2 (Residential Multi-Dwelling 2) zone.

The applicant proposes to add the “d” Design overlay to the East Property. Not all properties with this zoning designation have the Design overlay, but all in the area do because the site was previously part of the Sellwood-Moreland Design District, and recent Zoning Code changes, while removing the “d” from single-dwelling sites, retained it on all commercial and multi-dwelling sites in the area. No other changes to the overlays are proposed.

For both properties, the approval criteria for the Zoning Map Amendment request are in Zoning Code Section 33.855.050, and as discussed later in this report, staff finds these approval criteria can be met. As discussed in the findings below for Zoning Code Section 33.855.050.B, adequate public services are available for the proposal. The approval criteria for other map amendments are in Zoning Code Section 33.855.060. Likewise, staff finds these approval criteria can be met.

For these reasons, staff finds the proposal equally supports Policies 10.2 and 10.3.

Summary for Zoning Code Section 33.810.050.A.1: Based on the above findings, and with the conditions of approval described above, the proposed Comprehensive Plan Map designation is equally or more supportive of the relevant goals and policies of the Comprehensive Plan than the current designations. Staff finds the approval criterion in Zoning Code Section 33.810.050.A.1 is met.

33.810.050.A - Approval Criteria for Comprehensive Plan Map Amendment (continued)

2. *The requested change is consistent with Statewide Land Use Planning Goals;*

Findings: As discussed above in the findings for 33.810.050.A.1, the proposal is found to be consistent with Statewide Land Use Planning Goals, and therefore this criterion is met.

3. *In order to prevent the displacement of industrial and employment uses and preserve land primarily for these uses, the following criteria must be met when the requested amendment is from an Industrial Sanctuary or Mixed Employment Comprehensive Plan Map designation:*
 - a. *The uses allowed by the proposed designation will not have significant adverse effects on industrial and employment uses in the area or compromise the area’s overall industrial character;*
 - b. *The transportation system is capable of supporting the uses allowed by the proposed designation in addition to the existing uses in the area. Evaluation factors include safety, street capacity, level of service, connectivity, transit availability, availability of pedestrian and bicycle networks, on-street parking*

impacts, access restrictions, neighborhood impacts, impacts on pedestrian, bicycle, and transit circulation. Evaluation factors may be balanced; a finding of failure in one or more factors may be acceptable if the failure is not a result of the proposed development, and any additional impacts on the system from the proposed development are mitigated as required by criterion A.3.c;

- c. Measures proportional to the impacts of the uses allowed by the proposed designation are proposed to mitigate on- and off-site transportation impacts. Measures may include transportation improvements to on-site circulation, public street dedication and improvement, private street improvements, intersection improvements, signal or other traffic management improvements, additional transportation and parking demand management actions, street crossing improvements, improvements to the local pedestrian and bicycle networks, and transit improvements; and*
- d. Transportation improvements adjacent to the development and in the vicinity needed to support the proposed development are available or will be made available when the development is complete or, if the development is phased, will be available as each phase of the development is completed.*
- e. The uses allowed by the proposed designation will not significantly interfere with industrial use of the transportation system in the area, including truck, rail, air, and marine facilities;*
- f. The site does not have direct access to special industrial services such as multimodal freight movement facilities;*
- g. The proposed designation will preserve the physical continuity of the area designated as Industrial Sanctuary or Mixed Employment and not result in a discontinuous zoning pattern;*
- h. The uses allowed by the proposed designation will not reduce the ability of Portland's Central City, Regional or Town Centers to attract or retain the principal retail, cultural, and civic facilities; and*
- i. The size of the area that may be given a new Comprehensive Plan Map designation is as follows:*
 - (1) If the site is designated Industrial Sanctuary, and Metro also has designated the site as part of a Regionally Significant Industrial Area, no more than 10 acres may be given a new Comprehensive Plan Map designation;*
 - (2) If the site is designated Industrial Sanctuary, and Metro has designated the site as an Industrial Area, but not as part of a Regionally Significant Industrial Area, no more than 20 acres may be given a new Comprehensive Plan Map designation;*
 - (3) If the site is designated Industrial Sanctuary, and Metro has designated the site as an Employment Area, no more than 40 acres may be given a new Comprehensive Plan Map designation;*
 - (4) If the site is designated Mixed Employment, no more than 40 acres may be given a new Comprehensive Plan Map designation;*
 - (5) Exception. If the site is not designated as industrial or employment by Metro, these size limits do not apply.*

Findings: The requested amendment is not from an Industrial Sanctuary or Mixed Employment Comprehensive Plan Map designation. This criterion does not apply.

ZONING MAP AMENDMENT APPROVAL CRITERIA

33.855.050 Approval Criteria for Base Zone Changes

An amendment to the base zone designation on the Official Zoning Maps will be approved (either quasi-judicial or legislative) if the review body finds that the applicant has shown that all of the following approval criteria are met:

- A. Compliance with the Comprehensive Plan Map.** *The zone change is to a corresponding zone of the Comprehensive Plan Map. When the Comprehensive Plan Map designation has more than one corresponding zone, it must be shown that the proposed zone is the most appropriate, taking into consideration the purposes or characteristics of each zone and the zoning pattern of surrounding land.*

Findings: Figure 10-1 in the Comprehensive Plan shows designations and corresponding zones. The Multi-Dwelling – Urban Center Comprehensive Plan designation proposed for the West Property has two corresponding zones, Residential Multi-Dwelling 3 (RM3) and Residential Multi-Dwelling 4 (RM4). Pursuant to Zoning Code Section 33.120.030.C, the RM3 zone has the following characteristics:

The RM3 zone is a medium to high density multi-dwelling zone applied near the Central City, and in centers, station areas, and along civic corridors that are served by frequent transit and are close to commercial services. It is intended for compact, urban development with a high percentage of building coverage and a strong building orientation to the pedestrian environment of streets. This zone is intended for areas where the established residential character includes landscaped front setbacks. Allowed housing is characterized by mid-rise buildings up to six stories tall. The Design overlay zone is applied to this zone.

Pursuant to Zoning Code Section 33.120.030.C, the RM4 zone has the following characteristics:

The RM4 zone is a high density, urban-scale multi-dwelling zone applied near the Central City, and in town centers, station areas, and along civic corridors that are served by frequent transit and are close to commercial services. It is intended to be an intensely urban zone with a high percentage of building coverage and a strong building orientation to the pedestrian environment of streets, with buildings located close to sidewalks with little or no front setback. This is a mid-rise to high-rise zone with buildings of up to seven or more stories. The Design overlay zone is applied to this zone.

As discussed above, the property directly north of the West Property is zoned RM4. The consistency in zoning would facilitate redevelopment of a coherently designed residential community and streetscape governed by a singular zone. In contrast there is no RM3 zoning in the vicinity of the West Property. The zoning pattern clearly points to the RM4 zone being more appropriate. The West Property is also near both the SE 17th and Holgate station area and the Sellwood-Moreland center, and the strong building orientation to the street is appropriate for the West Property given the large area of River overlay zones that occupy the western and central portion of the West Property. For these reasons and other set forth in the Comprehensive Plan section of the narrative above, the proposed RM4 zone is the most appropriate zone for the West Property.

The Multi-Dwelling – Corridor designation has only one corresponding zone: Residential Multi-Dwelling 2 (RM2). Because the proposal on the East Property is for RM2, this criterion is met for the East Property.

For these reasons, the requested zone changes meet this approval criterion.

B. Adequate public services.

1. *Adequacy of services applies only to the specific zone change site.*
2. *Adequacy of services is determined based on performance standards established by the service bureaus. The burden of proof is on the applicant to provide the necessary analysis. Factors to consider include the projected service demands of the site, the ability of the existing and proposed public services to accommodate those demand numbers, and the characteristics of the site and development proposal, if any.*
 - a. *Public services for water supply, and capacity, and police and fire protection are capable of supporting the uses allowed by the zone or will be capable by the time development is complete.*

Findings: The Water Bureau reviewed the proposal and responded with no concerns regarding the changes to the Comprehensive Plan Map and the Zoning Map (Exhibit E.3). The Pre-Application Conference response from the Water Bureau indicated that adequate water service is available for the proposed development from the 10" cast iron water main in SE Milwaukie Ave, and the 6" cast iron water main in SE Ellis Street (Exhibit G.3).

The Fire Bureau indicated no issues regarding the approval of the proposal for the Fire Bureau, and noted that all applicable Fire Code requirements shall apply at the time of permit review and development (Exhibit E.4). The Pre-Application Conference notes stated "the Fire Bureau has no concerns with the proposal of changing the zoning of the referenced parcels" (Exhibit G.3).

The Police Bureau reviewed the proposal and stated the following:

The Police Bureau has reviewed this land use case and has no concerns with the proposal. The proposal was evaluated on whether police can provide adequate public safety services to the proposed base zone change. The Police Bureau is currently able to serve the existing site and will be capable of providing police services to the additional density created by the new zoning. Police officers can reasonably access the site using the existing right of ways by foot and vehicle without restriction (Exhibit E-8).

For these reasons, staff finds this criterion is met.

- b. *Proposed sanitary waste disposal and stormwater disposal systems are or will be made acceptable to the Bureau of Environmental Services. Performance standards must be applied to the specific site design. Limitations on development level, mitigation measures or discharge restrictions may be necessary in order to assure these services are adequate.*

Findings: The Bureau of Environmental Services (BES) reviewed the drainage report and geotechnical engineering report submitted by the applicant and prepared the following comments regarding both sanitary waste and stormwater waste disposal systems (Exhibit E.1).

Sanitary System:

For the proposed comprehensive plan and zone map amendment (CP-ZC) application to be approved, the applicant must show that the proposed sanitary waste disposal systems are or will be acceptable to BES (refer to 33.855.050.B.2.b). Based on the submitted materials and per the 2022 Sewer and Drainage Facilities Design Manual, the proposed CP-ZC will increase the amount of sanitary flow (dry weather flow) to the public sewer system by 0.25 cfs compared to what is currently allowed under today's zoning designation. BES system

modeling staff have evaluated the capacity of the existing combined sewer system and found the system does not have the available capacity to handle additional sanitary or stormwater flows under the max build-out scenario for the proposed zoning compared to current conditions. Due to known downstream impacts such as basement sewer backups, BES has determined that increased sanitary flows can only be allowed under the condition that future development infiltrate stormwater onsite to the greatest extent practical according to the SWMM and that offsite stormwater discharges from the future development are decreased, at a minimum, an equivalent amount to the increase in sanitary flows.

To avoid increasing hydraulic risk to the public sewer system, the total peak wet weather discharges (sanitary dry weather and stormwater flows) from the development site in aggregate should not increase from today's estimated peak flow rate of 3.87cfs during the 25-year, 6-hour design storm. Based on this analysis, if the application is approved, BES recommends that future development on this site be restricted such that the peak wet weather discharges will not exceed those described above (or updated rates as provided by BES staff, as the system may change over time), or the applicant or owner will be required to improve the public sewer system or provide mitigation to offset hydraulic risk due to discharges above today's peak flow rates...

With the recommended conditions of approval, staff finds the applicant's proposed sanitary sewer service acceptable for the purpose of reviewing the zone map & comprehensive plan amendment application against the sanitary sewer disposal approval criterion...

Stormwater Management:

Staff reviewed the submitted Performance Approach stormwater report from DOWL (revised November 11, 2021) and geotechnical report from GeoDesign (May 15, 2020). The submitted geotechnical report includes encased falling-head infiltration test results of 8.2 inches per hour at a depth of 10ft bgs on the property west of SE Milwaukie Ave. The applicant proposes to infiltrate runoff from the development onsite via drywells that have been sized for the 100-year storm event using a design infiltration rate of 4.1 inches per hour. Conceptually, the stormwater management plan appears feasible and is sufficient for the purposes of this land use review. With each subsequent land use and/or building permit review for future development of the subject properties, the applicant must submit a stormwater management plan demonstrating how stormwater infiltration will be achieved according to the SWMM. Additionally, the applicant will be required to submit the following information with the stormwater management plans:

1. Per the submitted materials, the proposed stormwater management system includes drywells with reduced setbacks to the steep western slope. The submitted plans also indicate the proposed drywells may need to be located under buildings or may have reduced setbacks to buildings. BES has determined that the proposed facilities are an allowable method of stormwater management per the SWMM and the submitted sizing information is sufficient. Additionally, the geotechnical report did not indicate issues within onsite infiltration and BDS Site Development did not express concerns regarding the location of the drywells in relation to the western slope. Therefore, the submitted information is sufficient for the purposes of this land use review. However, to address the proposed setback encroachments, at the time of any subsequent design review and/or building permit review the applicant must submit additional documentation and analysis from a geotechnical engineer, structural engineer, registered geologist or other environmental professional as described in Section 2.2.4 of the SWMM. In addition, structural design of the building will need to accommodate the drywells

and will be reviewed by BDS during permit review.

2. According to the submitted materials, infiltration test results were not provided for the Basin 2 area (5528 SE Milwaukie Ave) and the applicant used the same design infiltration rate of Basin 1 which may not reflect true onsite conditions. As available nearby soil boring records indicate onsite infiltration is likely feasible within the Basin 2 area, BES will not require additional infiltration testing prior to approval of this land use review. However, at the time of any subsequent design review and/or building permit reviews for development in the Basin 2 area, the applicant will be required to provide infiltration test results for the property in Basin 2 in order to establish a site-specific design infiltration rate...

For the proposed CP-ZC to be approved, the applicant must show that the proposed stormwater disposal systems are or will be acceptable to BES (refer to 33.855.050.B.2.b). BES understands the applicant is proposing to infiltrate stormwater onsite according to the SWMM. Based on assumed existing conditions, managing stormwater onsite will decrease stormwater flows currently discharging to the combined sewer. However, due to increased hydraulic risks from the proposed development (as mentioned above in Section B.2), if during future land use and/or building permit reviews the applicant proposes offsite stormwater discharge to the combined system, the stormwater management system must meet the SWMM and limit stormwater discharges from the development to ensure the total peak wet weather discharges (stormwater and dry weather flows) from the development site do not increase from the current estimated peak flow rate of 3.87cfs during the 25-year, 6-hour design storm (or updated numbers as provided by BES staff, as the system may change over time)...

With the recommended conditions of approval, staff finds the applicant's proposed stormwater management plan acceptable for the purpose of reviewing the zone map & comprehensive plan amendment application against the stormwater management approval criterion.

For the reasons discussed above, and with the condition of approval suggested by BES, staff finds this criterion is met.

- c. *Public services for transportation system facilities are capable of supporting the uses allowed by the zone or will be capable by the time development is complete. Transportation capacity must be capable of supporting the uses allowed by the zone by the time development is complete, and in the planning period defined by the Oregon Transportation Rule, which is 20 years from the date the Transportation System Plan was adopted. Limitations on development level or mitigation measures may be necessary in order to assure transportation services are adequate.*

Findings: PBOT reviewed the application and submitted the following response (Exhibit E.2):

[T]he Oregon Transportation Planning Rule (TPR) implements Statewide Planning Goal 12, "Transportation." OAR Section 660-012-0060(1) and (2) apply to amendments to zoning map designations. OAR 660-012-0060(1) and (2) establishes a two-step process for evaluating an amendment's impacts on the transportation system. First, the trip generation potential of the site assuming a "reasonable worst-case" development scenario under the existing and proposed zoning is assessed. If the development under the proposed zoning meets the "significance threshold" per Oregon Highway Plan (OHP) Policy 1F.5, additional operational analysis is required to assess whether the rezone will "significantly affect" the

transportation system. Conversely, if the significance threshold is not met, no additional operational analysis is necessary to conclude that the proposal does not “significantly affect” the transportation system.

OHP Policy 1F.5 establishes the following thresholds for determining significance:

Any proposed amendment that does not increase the average daily trips by more than 400.

Any proposed amendment that increases the average daily trips by more than 400 but less than 1,000 for state facilities where:

- *The annual average daily traffic is less than 5,000 for a two-lane highway*
- *The annual average daily traffic is less than 15,000 for a three-lane highway*
- *The annual average daily traffic is less than 10,000 for a four-lane highway*
- *The annual average daily traffic is less than 25,000 for a five-lane highway*
- *If the increase in traffic between the existing plan and the proposed amendment is more than 1,000 average daily trips, then it is not considered a small increase in traffic and the amendment causes further degradation of the facility and would be subject to existing processes for resolution.*

As will be discussed below, neither the west nor east property rezoning could result in development that would increase the daily trip making by more than 400 trips. As such, this TIS presents a qualitative evaluation of conformance of the proposed zone change with the applicable City criteria.

Transportation Capacity Impacts

Based on the potential development scenarios outlined above, we calculated the trip generation potential based on information contained in the Trip Generation Manual (Institute of Transportation Engineers, 10th Edition). Tables 1 and 2 present a comparison of potential trip-making associated with the west property whereas Table 3 presents a comparison for the east property. Note that pass-by reductions were not applied to the retail uses given that the intended purpose of retail is to serve the surrounding neighborhoods and the volumes on the adjacent streets would not support a typical 34 percent pass-by associated with retail.

Table 1. West Property Comparison – CM1/R5 as Office/Retail versus RM4

Land Use	ITE Code	Size	Total Daily Trips	Weekday AM Peak Hour			Weekday PM Peak Hour		
				Total Trips	In	Out	Total Trips	In	Out
Existing Zoning - CM1/R5									
Office	710	57,409 sq ft	560	67	58	9	66	11	55
Retail	820	28,704 sq ft	1,084	27	17	10	109	52	57
Total Trips for the Existing Zoning			1,644	94	75	19	175	63	112
Proposed Zoning - RM4									
Mid-Rise Residential	221	309 units	1,680	111	29	82	136	83	53
Retail	820	6,000 sq ft	226	6	4	2	23	11	12
Total Trips for the Proposed Zoning			1,906	117	33	84	159	94	65
Difference in Total Trips (RM4 - CM1/R5)			262	23	-42	65	-16	31	-47

Table 2. West Property Comparison – CM1/R5 as Retail/Residential versus RM4

Land Use	ITE Code	Size	Total Daily Trips	Weekday AM Peak Hour			Weekday PM Peak Hour		
				Total Trips	In	Out	Total Trips	In	Out
Existing Zoning - CM1/R5									
Mid-Rise Residential	221	88 units	478	32	8	24	39	24	15
Retail	820	28,704 sq ft	1,084	27	17	10	109	52	57
Total Trips for the Existing Zoning			1,562	59	25	34	148	76	72
Proposed Zoning - RM4									
Mid-Rise Residential	221	309 units	1,680	111	29	82	136	83	53
Retail	820	6,000 sq ft	226	6	4	2	23	11	12
Total Trips for the Proposed Zoning			1,906	117	33	84	159	94	65
Difference in Total Trips (RM4 - CM1/R5)			344	58	8	50	11	18	-7

Table 3. East Property Comparison – R2.5 versus RM2

Land Use	ITE Code	Size	Total Daily Trips	Weekday AM Peak Hour			Weekday PM Peak Hour		
				Total Trips	In	Out	Total Trips	In	Out
Existing Zoning - R2.5									
Single Family	210	4 homes	38	3	1	2	4	3	1
Proposed Zoning - RM2									
Mid-Rise Residential	221	32 units	174	12	3	9	14	9	5
Retail	820	2,000 sq ft	76	2	1	1	8	4	4
Total Trips Proposed Zoning			250	14	4	10	22	13	9
Difference in Total Trips (RM2 - R2.5)			212	11	3	8	18	10	8

As shown, none of the scenarios analyzed for either property meet the 400 daily trip increase established by OHP 1F.5 for determining significance. Further, per the City's traffic counting data base, vehicular volumes on SE Milwaukie north of SE Ellis, as measured in October 2020 (during COVID-19 when traffic volumes were lower than typical), revealed a total daily volume of approximately 8,800 vehicles per day.¹ Given this level of traffic volume and the policy guidance of OHP 1F.5, no significant effects are associated with the zone change. As such, we conclude that no capacity-based analysis is needed to meet the requirements of Oregon's TPR and this criterion is met.

On-Street Parking Impacts

No on-street parking analyses are needed to satisfy the zone change requirements.

Availability of Transit Networks

Today, the property is served by TriMet Routes 19 and 70. The closest bus stops for both routes are located approximately two blocks from the site, as discussed below.

- *Route 19 (Woodstock/Glisan) connects “Mt. Scott, SE Portland, Woodstock, Eastmoreland, Portland City Center, Laurelhurst and Gateway, via Flavel, Duke, 82nd, Woodstock, Bybee, Milwaukie, Powell, 5th/6th, Burnside and Glisan”. Service is generally provided between 6 AM and midnight on the weekdays and 8 AM – 10 PM on the weekends. The nearest bus stops for Route 19 are located to the north near the SE Insley Street/SE Milwaukie Avenue intersection and to the south near the SE Ramona Street/SE Milwaukie Avenue intersection.*
- *Route 70 (12th/NE 33rd Ave) connects “the Sunderland neighborhood, SE Portland, Sellwood and Milwaukie, via 33rd, Columbia, Broadway, 21st, Multnomah, 11th/12th and 17th.” Service is generally provided between 5 AM and 11 PM on the weekdays and 8 AM – 8 PM on the weekends. The nearest bus stop for Route 70 is located to the northeast near the SE 17th Avenue/SE Harold Street intersection.*

Further, the TIA notes that the surrounding streets have the following transit classifications per the City’s Transportation System Plan (TSP): SE Milwaukie Avenue and SE 17th Avenue are both transit access streets whereas the remainder are local transit service streets. Finally, although there is limited data within ITE’s Trip Generation Manual about person trip-making, given the low increase in daily vehicular trips associated with the zone changes, one could postulate that the number of daily transit trip increases would also be low. This minor increase in transit usage can reasonably be concluded to be accommodated by the existing transit service and be consistent with the transit street designations. Therefore, PBOT staff concurs with the applicant’s findings, and this criterion is met.

Availability of Bicycle Networks

Today, cyclists “share the road” on the adjacent streets. SE Ellis Street, SE Milwaukie Avenue and SE 17th Avenue are all classified as city bikeways whereas the remainder are local bicycle service bikeways.

As discussed above, although there is limited data within the Trip Generation Manual about person trip-making, given the low increase in daily vehicular trips associated with the zone changes, one could postulate that the number of daily bike trip increases would also be low. This minor increase in people riding bikes can reasonably be concluded to be accommodated by the existing bicycle network and be consistent with the bicycle street designations. Therefore, PBOT concludes that there will be no impacts to the bicycle network and this criterion is met.

Availability of Pedestrian Networks

For the most part, there are sidewalks on the streets surrounding the property and the TSP classifies the streets as follows:

- *SE Ellis Street = neighborhood walkway*
- *SE Milwaukie Avenue = major city walkway*
- *SE 17th Avenue = city walkway*
- *The remainder of the streets are local walkways.*

As discussed above, although there is limited data within the Trip Generation Manual about person trip-making, given the low increase in daily vehicular trips associated with the zone changes, one could postulate that the number of daily walking trip increases would also be low. This minor increase in people walking can reasonably be concluded to be accommodated by the existing pedestrian network and be consistent with the walkway designations. Therefore, PBOT staff concurs that there will be no impacts to the pedestrian network and this criterion is met.

Portland Transportation System Plan (TSP) Projects

The Portland TSP identifies the implementation of a neighborhood greenway along SE Ellis Street as part of the SE 14th/SE 15th Avenue Neighborhood Greenway Project. The rezoning of the

property would benefit from additional opportunities for walking and cycling associated with this connection. Further, the proposed change in zoning of the property will not change the need or the timing of the project; therefore, no impacts to the TSP projects are anticipated as part of the zone change and this criterion is met.

FINDINGS

As documented in the TIA, the proposed zone change complies with the applicable transportation-related criteria outlined in Chapter 33.855.050.2.c of the City's zoning code. A summary of findings is presented below.

Transportation Capacity Impacts

- *Based on a review of the reasonable worse case scenarios under the existing and proposed zoning for both properties, the estimated vehicular trip increase associated with the proposed rezone is less than 400 daily trips. This daily increase, combined with the measured traffic volumes on SE Milwaukie north of SE Ellis, does not meet the criteria established by the Oregon Highway Plan (OHP) Policy 1F.5 constituting a "significant effect" for the purposes of the TPR. For this reason, PBOT concludes that there are no significant effects associated with the zone change either by the TPR or by the City's criterion and, as such, this criterion is met.*

Transit Availability and Impacts

- *Today, the property is served by TriMet Routes 19 and 70. The closest bus stops for both routes are located approximately two blocks from the site, which can be considered a comfortable walking distance. Further, with no development proposed at this time, the rezone would not generate additional transit trips. However, given the minor increase in daily trips associated with the "reasonable worse case scenarios" of the proposed zoning, one could postulate that the number of daily transit trip increases would also be low if the properties were rezoned and redeveloped. This minor increase in transit usage can reasonably be concluded to be accommodated by the existing transit service and be consistent with the transit street designations. Therefore, PBOT concludes that there will be no impacts to the transit network and this criterion is met.*

Bicycle System Availability and Impacts

Today, cyclists "share the road" on the adjacent streets. SE Ellis Street, SE Milwaukie Avenue and SE 17th Avenue are all classified as city bikeways whereas the remainder are local bicycle service bikeways. Given the low increase in daily vehicular trips associated with the zone changes, one could postulate that the number of daily bike trip increases would also be low if the properties were rezoned and redeveloped. This minor increase in people riding bikes can reasonably be concluded to be accommodated by the existing bicycle network and be consistent with the bicycle street designations. Therefore, PBOT concludes that there will be no impacts to the bicycle network and this criterion is met.

Pedestrian System Availability and Impacts

For the most part, there are sidewalks on the streets surrounding the property. The City's TSP classifies the streets as follows: SE Ellis Street as a neighborhood walkway, SE Milwaukie Avenue as a major city walkway, SE 17th Avenue as a city walkway, with the remaining streets shown as local walkways. Given the low increase in daily vehicular trips associated with the zone changes, one could postulate that the number of daily walking trip increases would also be low if the properties were rezoned and redeveloped. This minor increase in people walking can reasonably be concluded to be accommodated by the existing sidewalk network and be consistent with the walkway designations. Therefore, PBOT concludes that there will be no impacts to the pedestrian network and this criterion is met.

Consistency with the Portland TSP Projects

The Portland TSP identifies the implementation of a neighborhood greenway along SE Ellis Street as part of the SE 14th/SE 15th Avenue Neighborhood Greenway Project. The rezoning of the property would benefit from additional opportunities for walking and cycling associated with this connection. Further, the proposed change in zoning of the property will not change the need or the timing of the project; therefore, no impacts to the TSP projects are anticipated as part of the zone change and this criterion is met...

RECOMMENDATION

No objection to approval.

Given PBOT's findings above, staff finds this criterion to be met.

- d. The school district within which the site is located has adequate enrollment capacity to accommodate any projected increase in student population over the number that would result from development in the existing zone. This criterion applies only to sites that are within a school district that has an adopted school facility plan that has been acknowledged by the City of Portland.*

Findings: The site is within the Portland Public School District, which has not adopted a school facility plan. Therefore, compliance with this criterion is not required.

- 3. Services to a site that is requesting rezoning to IR Institutional Residential, will be considered adequate if the development proposed is mitigated through an approved impact mitigation plan or conditional use master plan for the institution.*

Findings: The proposal does not rezone property to the Institutional Residential base zone. This criterion is not applicable.

- C. When the requested zone is IR, Institutional Residential.** *In addition to the criteria listed in subsections A. and B. of this Section, a site being rezoned to IR, Institutional Residential must be under the control of an institution that is a participant in an approved impact mitigation plan or conditional use master plan that includes the site. A site will be considered under an institution's control when it is owned by the institution or when the institution holds a lease for use of the site that covers the next 20 years or more.*

Findings: The proposal does not rezone property to the Institutional Residential base zone. This criterion is not applicable.

- D. When the requested zone change is CI1 or CI2.** *When the requested zone change is CI1 or CI2, a Transportation Impact Review is required as part of the zoning map amendment.*

Findings: The proposal does not rezone property to the Campus Institutional base zones. This criterion is not applicable.

- E. Location.** *The site must be within the City's boundary of incorporation. See Section 33.855.080.*

Findings: The subject site is within the incorporated boundaries of the City of Portland. This criterion is met.

APPROVAL CRITERIA FOR OTHER CHANGES

33.855.060 Approval Criteria for Other Changes

In addition to the base zones and Comprehensive Plan designations, the Official Zoning Maps also show overlay zones, plan districts, and other items such as special setback lines, recreational trails, scenic viewpoints, and historic resources. Amendments to all of these except historic resources and the creation of plan districts are reviewed against the approval criteria stated in this section. Historic resources are reviewed as stated in Chapter 33.846, Historic Resource Reviews. The creation of a new plan district is subject to the approval criteria stated in 33.500.050. An amendment will be approved (either quasi-judicial or legislative) if the review body finds that all of the following approval criteria are met:

- A.** *Where a designation is proposed to be added, the designation must be shown to be needed to address a specific situation. When a designation is proposed to be removed, it must be shown that the reason for applying the designation no longer exists or has been addressed through other means;*

Findings: Changes to two overlay zones are proposed for the site overall: application of the Design overlay where it is not applied currently, and removal of the Constrained Sites overlay from the R5 parcels on the west side of the site.

Design Overlay

Currently, the lots zoned CM1 on the West Property have the “d” Design overlay, but the R5 and R2.5 lots do not. RM4 is always applied with the Design overlay; therefore, it is proposed on all lots that are proposed to be rezoned to RM4 that don’t already have it. The Design overlay is also proposed to be added to the RM2 property. Not all properties with this zoning designation have the Design overlay throughout the city, but all in the area do. The site was previously part of the Sellwood-Moreland Design District, and recent Zoning Code changes, while removing the “d” from single-dwelling sites, retained it on all commercial and multi-dwelling sites in the area. Adding the Design overlay to the East Property will be consistent with the zoning pattern and avoid a situation where a property with the same zoning as other properties nearby is subject to different standards and regulations with no justification.

Constrained Sites Overlay

As of August 1, 2021, the R5-zoned lots within the West Property, which have one or both of the River overlays, also have the new “z” Constrained Sites overlay. This zoning designation was developed in response to the Residential Infill Project’s increased allowances for properties in the R2.5, R5, and R7 zones to, in certain circumstances, be developed with up to six units. Properties with at least one of six constraints, such as being located within the special flood hazard area or floodway, or being identified as within areas with special landslide hazard risk, would not be allowed to take advantage of the new allowances for creating more dwelling units on the site beyond the previous allowance for a house plus an Accessory Dwelling Unit. Since this overlay zone is only applied to those three single-dwelling zoning designations, it is proposed to be removed from the lots with the base zone change away from those single-dwelling designations.

The River overlay designations are not proposed to change; these overlays continue to apply and have the ability to limit development on those lots as well, either through standards or through River Review.

It is clear, therefore, that the changes to the zoning overlays is not arbitrary but are guided by the base zones and the local context. For these reasons, staff finds this criterion is met.

- B.** *The addition or removal is consistent with the purpose and adoption criteria of the regulation and any applicable goals and policies of the Comprehensive Plan and any area plans; and*

Findings: Changes to both the Design overlay and the Constrained Sites overlay are considered below.

Design Overlay

The purpose of the Design overlay is stated in Zoning Code Section 33.420.010:

The Design overlay zone ensures that Portland is both a city designed for people and a city in harmony with nature. The Design overlay zone supports the city's evolution within current and emerging centers of civic life. The overlay promotes design excellence in the built environment through the application of additional design standards and design guidelines that:

- *Build on context by enhancing the distinctive physical, natural, historic and cultural qualities of the location while accommodating growth and change;*
- *Contribute to a public realm that encourages social interaction and fosters inclusivity in people's daily experience; and*
- *Promotes quality and long-term resilience in the face of changing demographics, climate and economy.*

Adding the Design overlay to the RM4-zoned parcels, where it is required, and to the RM2 parcel, where it will be consistent with other RM2-zoned lots in the immediate area, will result in additional oversight and review of development proposals on the site. The Design overlay ensures that new development and exterior alterations to existing development is either consistent with objective design standards or is approved through a more discretionary design review process. The design elements highlighted in the purpose statement will be important considerations for larger multi-dwelling buildings on the subject properties. The design review process also provides the surrounding community a right to participate in a public process and comment on the proposed design. The application of the Design overlay addresses the important role of thoughtful building and site design in future multi-dwelling development in this area. In this way, the proposal to add the Design overlay will be compatible with the many Comprehensive Plan goals and policies addressing urban form, community involvement, design and development and more. Further, in the response to approval criterion 33.810.050.A.1, the findings above highlight the goals and policies of the Sellwood-Moreland Neighborhood Plan, many of which will be addressed through the additional design attention proposed developments or future alterations get with the application of this overlay. Neighborhood character, urban design, pedestrian orientation, subarea context will all be addressed through Design Review.

For these reasons, staff finds that applying the Design overlay is consistent with the purpose of the overlay and the goals and policies of the Comprehensive Plan and the Sellwood-Moreland Neighborhood Plan.

Constrained Sites Overlay

The purpose for this overlay is stated in Zoning Code Section 33.418.010:

Under some circumstances, up to four dwelling units is allowed per lot in the R7, R5 and R2.5 zones. The Constrained Sites overlay zone reduces that development potential on lots that have certain development constraints. The constraints make the lots unsuitable for three or more dwelling units.

Removing the Constrained Sites overlay is necessary as the overlay is not applied with any zones other than R7, R5, and R2.5 currently. The overlay purpose is focused specifically to development allowances in these three zones.

The removal of the overlay is not a statement that the parcels should be developed to a high intensity – indeed, the remaining River Environmental overlay that has been applied over almost all of the three R5 parcels included in the West Property would require any proposed development on the site to go through River Review, since the standards path would not be able to be met due to the amount of area on the site outside that overlay. In addition, development on a slope as steep as the one on the west side of the property would be extremely challenging and expensive, even if development could be approved through River Review.

Instead, the overlay must be removed, because it can only be applied with one of the three single-dwelling base zones listed above. For these reasons, the removal of the Constrained Sites overlay from the West Property is consistent with its purpose.

For the reasons stated above, staff finds this criterion is met.

- C.** *In the Marquam Hill plan district, relocation of a scenic viewpoint must be shown to result in a net benefit to the public, taking into consideration such factors as public access, the quality of the view, the breadth of the view, and the public amenities that are or will be available.*

Findings: The subject site is not within the Marquam Hill Plan District. This criterion is not applicable.

DEVELOPMENT STANDARDS

Unless specifically required in the approval criteria listed above, this proposal does not have to meet the development standards in order to be approved during this review process. The plans submitted for a building or zoning permit must demonstrate that all development standards of Title 33 can be met, or have received an Adjustment or Modification via a land use review prior to the approval of a building or zoning permit.

CONCLUSIONS

With certain conditions of approval, the proposed Comprehensive Plan Map and Zoning Map Amendment is on balance found to be equally or more supportive of the relevant goals and policies of the 2035 Comprehensive Plan, Oregon Statewide Planning Goals, the Metro Urban Growth Management Functional Plan, and the Sellwood-Moreland Neighborhood Plan. A review of the proposal was conducted in part by the City's service bureaus, most of which found that adequate public services are available on the site that will accommodate the development intensities allowed by the proposed designations. BES required a condition of approval to ensure the combined sewer system could accommodate the new designations. With the application of the conditions of approval, staff finds that the applicable approval criteria are met, and the proposal should be approved.

TENTATIVE STAFF RECOMMENDATION

(May be revised upon receipt of new information at any time prior to the Hearings Officer decision)

Approval of the following:

West Property:

- Comprehensive Plan Map Amendment from R5 – Residential 5,000 and MU-N – Mixed-Use – Neighborhood to MD-U – Multi-Dwelling – Urban Center;
- Zoning Map Amendment from R5 – Single-Dwelling Residential 5,000 and CM1 – Commercial Mixed-Use 1 to RM4 – Residential Multi-Dwelling 4;

- Removal of the “z” Constrained Sites Overlay zoning from the three lots zoned R5; and
- Application of the “d” Design Overlay zoning on the three lots zoned R5.

East Property:

- Comprehensive Plan Map Amendment from R2.5 – Residential 2,500 to MD-C – Multi-Dwelling – Corridor; and
- Zoning Map Amendment from R2.5 – Single-Dwelling Residential 2,500 to RM2 – Residential Multi-Dwelling 2
- Application of the “d” Design Overlay zoning.

Approval is per the following conditions:

- A. It must be shown that one of the following is achieved prior to design review approval or building permit issuance for the first vertical development, whichever comes first:
 - a. The private stormwater management system can be designed to meet the requirements of the SWMM and so any offsite stormwater discharges are limited such that the total peak wet weather flow rate from the aggregate zone change site – both storm and sanitary – do not exceed the current estimated peak flow of 3.87cfs during the 25-year, 6-hour design storm (or updated rate from BES staff if appropriate to reflect system changes and/or modeling assumptions). If building and stormwater designs for the other parcels within the zone change site are unknown, wet weather flow calculations must assume offsite stormwater discharge in compliance with SWMM flow control standards for those future projects; or
 - b. The applicant or owner will be required to improve the public sewer system or provide mitigation to offset hydraulic risk due to discharges above the current estimated peak flow rate (or updated rate from BES if appropriate to reflect system changes and/or modeling assumptions).
- B. The applicant must submit stormwater management reports with the results of infiltration testing for all subsequent land use and building permit reviews for future development of the subject properties.
- C. In addition to the step-down height limits stated in Zoning Code Section 33.120.215.B.2 and Table 120-3, development on the site must meet the following additional step-down height limits:
 - a. For the West Property, along the roughly 125-foot length across SE Milwaukie from single-dwelling zoning, building height within 15 feet of the east lot line is limited to 45 feet; and
 - b. For the East Property, building height within 15 feet of the north lot line is limited to 35 feet.
- D. Maximum height on the RM4-zoned lots is limited to 75 feet.
- E. Discretionary Design Review is required for initial redevelopment of the site, including both the West Property and the East Property. Level of review will be determined by Zoning Code Section 33.825.025.A and Table 825-1. After primary buildings have been constructed, subsequent alterations may meet Design Standards if eligible.

- F. All residential development on the site must meet Inclusionary Housing requirements of Zoning Code Chapter 33.245, regardless of number of units per building. The Inclusionary Housing requirements must be met using the option described in Zoning Code Section 33.245.040.A.1.a. Namely, the affordable units will be provided onsite, and 10 percent of the total number of dwelling units in the new building(s) must be affordable to those earning no more than 60 percent of the area median family income. The alternative calculation method in 33.245.040.A.1.c and the fee-in-lieu option may not be used.

Procedural Information. The application for this land use review was submitted on October 8, 2021, and was determined to be complete on January 3, 2022.

Zoning Code Section 33.700.080 states that Land Use Review applications are reviewed under the regulations in effect at the time the application was submitted, provided that the application is complete at the time of submittal, or complete within 180 days. Therefore, this application was reviewed against the Zoning Code in effect on October 8, 2021.

Some of the information contained in this report was provided by the applicant.

As required by Section 33.800.060 of the Portland Zoning Code, the burden of proof is on the applicant to show that the approval criteria are met. The Bureau of Development Services has independently reviewed the information submitted by the applicant and has included this information only where the Bureau of Development Services has determined the information satisfactorily demonstrates compliance with the applicable approval criteria. This report is the recommendation of the Bureau of Development Services with input from other City and public agencies.

Conditions of Approval. If approved, this project may be subject to a number of specific conditions, listed above. Compliance with the applicable conditions of approval must be documented in all related permit applications. Plans and drawings submitted during the permitting process must illustrate how applicable conditions of approval are met. Any project elements that are specifically required by conditions of approval must be shown on the plans, and labeled as such.

These conditions of approval run with the land, unless modified by future land use reviews. As used in the conditions, the term “applicant” includes the applicant for this land use review, any person undertaking development pursuant to this land use review, the proprietor of the use or development approved by this land use review, and the current owner and future owners of the property subject to this land use review.

This report is not a decision. This report is a recommendation by the Bureau of Development Services to the Land Use Hearings Officer. The Land Use Hearings Office may adopt, modify, or reject this recommendation. The Hearings Officer will make a recommendation to the City Council within 17 days of the close of the record. You will receive mailed notice of the decision if you write a letter received before the hearing or testify at the hearing, or if you are the property owner or applicant.

If you are interested in viewing information in the file, please contact the planner listed on the front of this staff report. The planner can provide information over the phone or via email. Please note that due to COVID-19 and limited accessibility to files, only digital copies of material in the file are available. A digital copy of the Portland Zoning Code is available on the internet at <https://www.portland.gov/code/33>.

Your comments to the Hearings Office should be mailed c/o Land Use Hearings Officer, 1900 SW Fourth Ave., Suite 3100 Portland, OR 97201 faxed to 503-823-4347 or e-mailed to HearingsOfficeClerks@portlandoregon.gov, or you can testify during the hearing. Please see link

to instructions on how to testify at the top of this staff report or contact the Hearings Office at 503-823-7307 or the email listed above.

City Council Hearing. The City Code requires the City Council to hold a public hearing on this case and you will have the opportunity to testify. The hearing will be scheduled by the City Auditor upon receipt of the Hearings Officer's recommendation. If you wish to speak at the Council hearing, you are encouraged to submit written materials upon which your testimony will be based, to the City Auditor.

This decision, and any conditions associated with it, is final. It may be appealed to the Oregon Land Use Board of Appeals (LUBA), within 21 days of the date of decision, as specified in the Oregon Revised Statute (ORS) 197.830. Among other things, ORS 197.830 requires that a petitioner at LUBA must have submitted written testimony during the comment period for this land use review. You may call LUBA at 1-503-373-1265 for further information on filing an appeal.

Recording the final decision.

If this Land Use Review is approved the final decision will be recorded with the Multnomah County Recorder.

- *Unless appealed*, the final decision will be recorded by the Bureau of Development Services when the decision becomes effective.

The applicant, builder, or a representative does not need to record the final decision with the Multnomah County Recorder.

For further information on your recording documents please call the Bureau of Development Services Land Use Services Division at 503-823-0625.

Expiration of approval. Zone Change and Comprehensive Plan Map Amendment approvals do not expire.

Applying for your permits. A building permit, occupancy permit, or development permit may be required before carrying out an approved project. At the time they apply for a permit, permittees must demonstrate compliance with:

- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations of the City.

Planner's Name: Amanda Rhoads

Date: February 4, 2022

EXHIBITS

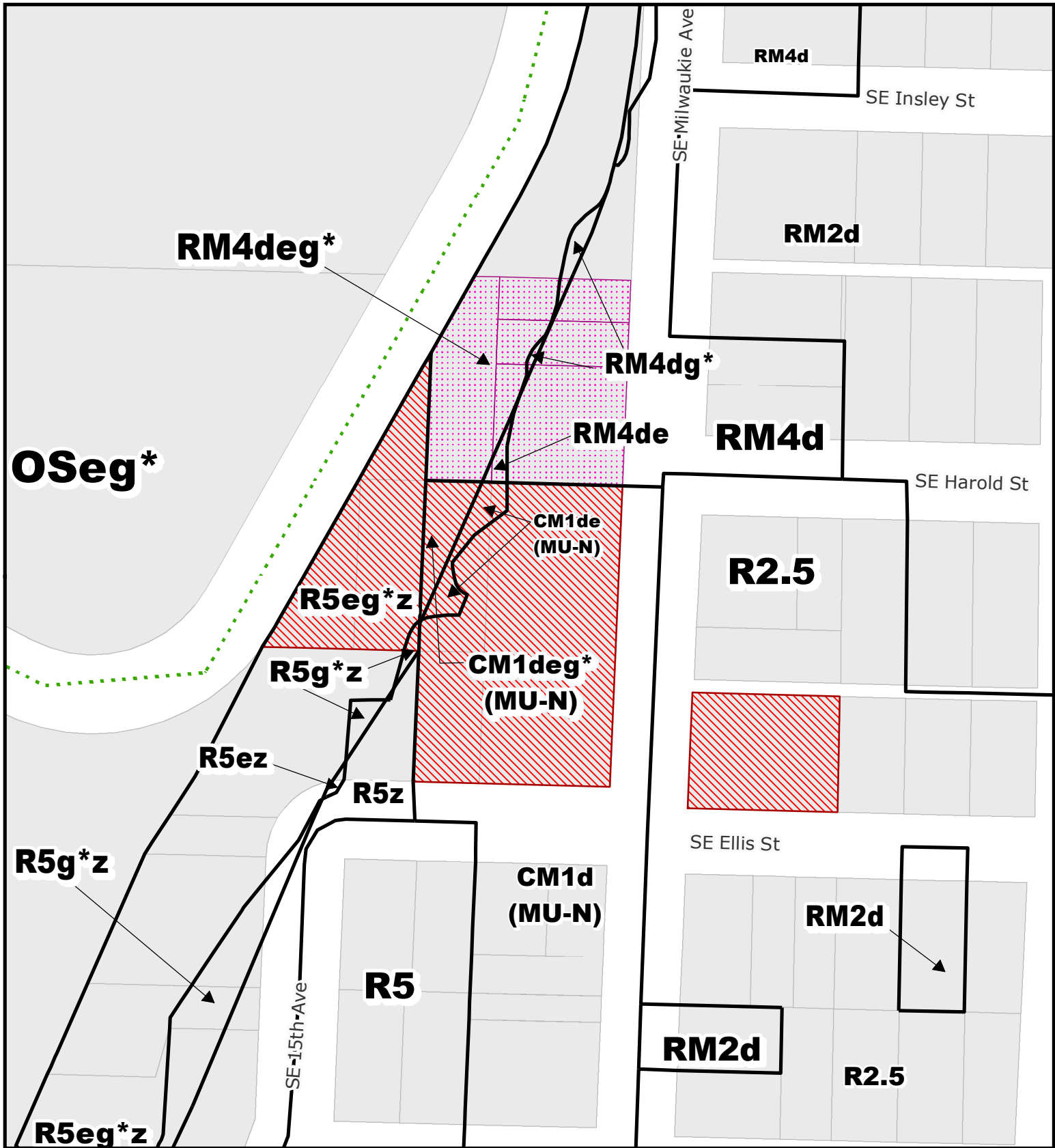
NOT ATTACHED UNLESS INDICATED

A. Applicant's Statement:

1. Original Narrative (superseded by A.6 below)
2. Zoning Study
3. Original Drainage Report (superseded by A.7 below)

4. Transportation Study
5. Trio for all 7 parcels
6. Revised Narrative
7. Revised Drainage Report
- B. Zoning Map (attached):
 1. Existing Zoning
 2. Proposed Zoning
- C. Plans & Drawings: none
- D. Notification information:
 1. Request for response
 2. Posting letter sent to applicant
 3. Notice to be posted
 4. Applicant's statement certifying posting
 5. Mailing list – January 27, 2022
 6. Mailed notice – January 27, 2022
 7. Revised Mailing list – February 3, 2022
 8. Revised Mailed notice – February 3, 2022
- E. Agency Responses:
 1. Bureau of Environmental Services
 2. Bureau of Transportation
 3. Water Bureau
 4. Fire Bureau
 5. Site Development Review Section of Bureau of Development Services
 6. Life Safety Plans Examiner
 7. Bureau of Parks, Urban Forestry Division
 8. Police Bureau
- F. Letters:
 1. Dasha Peterman, Verizon, January 21, 2022, stating Verizon has no facilities in the area of the subject site.
 2. David Schoellhamer, Sellwood Moreland Improvement League Land Use Committee, January 31, 2022, with opposition to the proposal
- G. Other:
 1. Original Land Use Application
 2. Incomplete Letter, dated November 3, 2021
 3. Pre-Application Conference Notes
- H.

The Bureau of Development Services is committed to providing equal access to information and hearings. Please notify us no less than five business days prior to the event if you need special accommodations. Call 503-823-7300 (TTY 503-823-6868).



EXISTING ZONING

For Zoning Code in effect Post August 1, 2021



Site



Also Owned Parcels



Recreational Trails

File No. LU 21 - 094203 CP ZC

1/4 Section 3532 & 3632

Scale 1 inch = 100 feet

State ID 1S1E14DB 17000

Portland Hearing Office
Case #4220002

Bureau Case #LU 21-094203 CP ZC
Exhibit #5

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Exhibit B.1

Feb. 02, 2022