

S·M·I·L·E

SELLWOOD MORELAND IMPROVEMENT LEAGUE
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May 13, 2022

Council Clerk
1221 SW Fourth Avenue, Room 130
Portland, OR 97204
(submitted via Email)

Re: Case file LU21-094203 CP_ZC

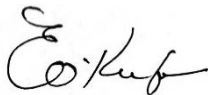
The Sellwood-Moreland Improvement League (SMILE) opposes the proposed amendment to Portland's 2035 Comprehensive Plan. The SMILE Board of Directors unanimously approved this testimony on February 11, 2022. The following pages state our objections and provide research in support of those objections:

- Landslide risk decreases the safety of housing.
- Degradation of the benefits of Oaks Bottom Wildlife Refuge, this City's natural gem.
- Proposed changes are not applicable to this location and not compatible with the land use pattern set by the Comprehensive Plan Map.

SMILE supports the 112 units of inclusionary housing that have been added to the neighborhood since 2017 and wants more. However, where that need is met must be balanced with safety of residents, previous land use planning, and conservation of Oaks Bottom Wildlife Refuge. We encourage the applicant to consider our proposed outcome (Appendix, p. 11) which supports the Comprehensive Plan, fulfills zoned housing potential of the property, and improves feasibility of development in a way that is safer and in compliance with the zoning code.

Please contact me (president@sellwood.org) or the Chair of our Land Use Committee, David Schoellhamer, at land-use-chair@sellwood.org with questions about this testimony.

Sincerely,



Elaine O'Keefe
President
president@sellwood.org

Attachment

The Sellwood-Moreland Improvement League (SMILE) opposes the proposed amendment to Portland's 2035 Comprehensive Plan. The SMILE Board of Directors unanimously approved this testimony on February 11, 2022.

This proposal because it fails to adhere to any of the five Guiding Principles for Portland's 2035 Comprehensive Plan.

Economic Prosperity: *Support a low-carbon economy and foster employment growth, competitiveness and equitably distributed household prosperity.* Placing high-density housing far from the Central City, town centers, transit stations, frequent transit, and commercial services does not support a low-carbon economy.

Human Health: *Avoid or minimize negative health impacts and improve opportunities for Portlanders to lead healthy, active lives.* Placing high-density housing in a landslide zone endangers human health.

Environmental Health: *Weave nature into the city and foster a healthy environment that sustains people, neighborhoods, and fish and wildlife. Recognize the intrinsic value of nature and sustain the ecosystem services of Portland's air, water and land.* Tall and high-density development adjacent to the Oaks Bottom Wildlife Refuge threatens scenic and wildlife resources.

Equity: *Promote equity and environmental justice by reducing disparities, ... Specifically recognize, address and prevent repetition of the injustices suffered by communities of color throughout Portland's history.*

Although not the intent of this proposal, if it were approved, Portland's zoning would protect homeowners along the Sellwood bluff from landslides by restricting density while a much greater density of less wealthy tenants (and thus more likely to be people of color) at this site



Photo: The steep slope of the Sellwood bluff at the property. The Hearings Officer states that the property “does pose a substantial landslide risk” (page 8) but still recommends the property zoning be changed to more than double the building height and residential density. An example why the recommendation is precarious is the Newell Creek affordable housing project in Oregon City which was built in a landslide zone. Two buildings were subsequently demolished due to landslides, and legal battles ensued^{1,2}.

¹Burns, S.F., 2006, The Newell Creek Village Apartment landslide, Oregon City, Oregon 2006: we told you not to build there!. Geological Society of America, 38(7), 155. <https://eurekamag.com/research/020/260/020260752.php>

²Apartment owner sues Oregon City for \$2.6 million in long-running water line dispute, The Oregonian, February 15, 2013, https://www.oregonlive.com/oregon-city/2013/02/apartment_owner_sues_oregon_ci.html

would be exposed to the risk of landslides. Portland has a tragic history of housing and lives being lost to natural disasters, specifically, Vanport provided housing for people of color in a natural hazard zone and was destroyed by a catastrophic flood³.

Resilience: *Reduce risk and improve the ability of individuals, communities, economic systems, and the natural and built environments to withstand, recover from, and adapt to changes from natural hazards, human-made disasters, climate change, and economic shifts.* Expanding high density housing in a landslide zone increases risk. Climate change will increase the risk of landslides.

Details of why the proposal is not supportive of the Comprehensive Plan are presented in our attached testimony to the Hearings Officer. We are willing to work with the applicant to improve the proposal. On page 11 of the Appendix, we propose an outcome that is supportive of the Comprehensive Plan, fulfills the zoned housing potential of the property, improves the feasibility of development, and does so in a way that is safer and in compliance with the zoning code. In this testimony to Council we focus issues most relevant for Council.

Balancing housing quantity versus planning, landslide risk, and Oaks Bottom

Council must make the subjective decision whether the proposal ‘on balance has been found to be equally or more supportive of the Comprehensive Plan as a whole’. While the proposal is more supportive of housing quantity policies, it is less supportive of policies regarding Design and Development, Housing safety and location, and Environment and Watershed Health. See page 2 of the attachment for a list of specific policies.

Can I just offer an observation which is one of the reasons that I think these are among the most interesting things that we take up as a Council is that uniquely we get to balance competing values that are written in a very general term and we can have sharp disagreements among the five of us about the relative weight to give to various things. ... We often disagree fundamentally although we are playing in the same sandbox so I would just say that this is uniquely an area where you get to follow what your head and your heart guide you and you get to balance.

-Commissioner Nick Fish, September 20, 2018, commenting on LU 18-112666 CP ZC.

The benefit of the proposal, potentially more housing units than current zoning (roughly 90 additional units⁴, 9⁵ of which may be inclusionary), is minor compared to the available zoned capacity of Sellwood-Moreland's mixed-

³BPS, Historical Context of Racist Planning, p. 6, <https://www.portland.gov/sites/default/files/2019-12/portlandracistplanninghistoryreport.pdf>

⁴ Applicant's Exhibit A shows an increase of 99 units on west side of Milwaukie Avenue, ignoring proposed conditions, so estimate 90.

⁵ Assume 10% inclusionary housing, the condition recommended by staff but not the Hearings Officer.

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use corridors (8,600 units⁶ or a 1% increase). As part of the Comprehensive Plan, the City determined that there is enough zoned capacity to meet housing demands⁷. The number of additional units the proposal would provide is also small compared to the number of units added in the Sellwood-Moreland neighborhood since 2013 (1,414, including 112 inclusionary units since 2017⁸), and number of units in the development pipeline (657, not including development on the subject property). Developers and the neighborhood are creating much more housing that follows the rules and supports the Comprehensive Plan than this proposal offers.

Failure to satisfy objective zoning definitions

As you consider the Comprehensive Plan policies, one of the most important questions is whether the location is appropriate for the proposed designation.

The proposal seeks to expand the Multi-dwelling - Urban Center (MD-U) designation in the Comprehensive Plan and the RM4 zone.

Comprehensive Plan policy 10.1.10 defines MD-U:

10. 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.

The Portland zoning code (33.120.030.D) defines the RM4 zone:

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. ...

The proposal location satisfies none of these criteria. Page 6 of the attachment provides details. Some additional specific points:

- The Hearings Officer states that “the properties are located in a neighborhood that is relatively close to the City’s center.” (page 16). This is incorrect. Portland City Hall and downtown are across the River, a 3.3 mile drive from the property. For comparison, Milwaukie’s City Hall and downtown are only a 2.7 mile drive from the property.

⁶ 2.7 miles of mixed-use corridor, assume 19-unit capacity per 50 feet of frontage, about 11,000 units. There are about 6300 existing housing units in the neighborhood (Census Bureau), 3900 single-dwelling properties (zoning data), so about 2,400 units are in the mixed-use corridors. 11,000-2,400=8,600 available zoned capacity in mixed-use corridors.

⁷ Housing Demand and Supply Projections, p. 4, <https://www.portland.gov/sites/default/files/2019-08/housing-demand-and-supply-projections.pdf>

⁸<https://www.portland.gov/sites/default/files/2022/january-2022-ih-unit-list.pdf>

- The Hearings Officer states that “The transit station (located approximately 0.5 miles away at 17th and Holgate)... [is] sufficiently close in proximity to the properties” (page 16). This is also incorrect. The property is located 0.7 miles away from a transit station⁹ and research shows that almost no transit riders walk more than 0.5 miles to transit¹⁰. The commonly accepted standard distance is 0.25 miles¹¹.
- The Hearings Officer and Staff Report use obsolete, pre-Covid information to incorrectly state that there is frequent transit service. Neither very frequent bus service nor frequent transit service are available (the 19 bus on Milwaukie Avenue is not classified as frequent service by TriMet and does not have frequent service as defined by the zoning code). If a building permit application were filed today, the required current bus schedule would show that bus service is not frequent.
- During the Comprehensive Plan process, commercial zoning was recommended for 5415-5515 SE Milwaukie Avenue because the area lacked commercial services and neighbors wanted them. An early assistance request near the end of the Comprehensive Planning process retained RH/RM4 zoning at 5415 and 5425 SE Milwaukie Avenue.
- SE Milwaukie Avenue is a neighborhood corridor, not a civic corridor.
- The Comprehensive Plan process eliminated MD-U and RM4 (formerly RH) where possible because they are not applicable to this area.
- When opponents say the proposal is not compatible with the neighborhood, the definitions of MD-U and RM4 clearly support them and they cannot be dismissed as NIMBYs.

Hearings Officer and staff support demonstrate the dysfunction of City Government

Hearings Officer and Bureau of Development Services staff (HO&BDS) support for this proposal demonstrates the siloed dysfunction of the City’s bureaus and governance. The table lists site characteristics where BDS and the Bureau of Planning and Sustainability (BPS) have completely opposed findings or HO&BDS rely on factual errors. The resulting recommendation of the Hearings Officer, which include denying climate science and using obsolete transit schedules, creates a false justification for the proposal. City Council has the responsibility and authority to make City policy coherent and factually-based.

⁹ pedestrian walking distance, maps.google.com

¹⁰ National Academy of Science, Transportation Research Board, Transit Capacity and Quality of Service Manual, 2nd edition, Part 3, Chapter 2, exhibit 3-5, <https://onlinepubs.trb.org/onlinepubs/tcrp/docs/tcrp100/Part3.pdf>

¹¹Walker, J., “Basics: Walking Distance to Transit,” <https://humantransit.org/2011/04/basics-walking-distance-to-transit.html>

Comparison of facts and previous findings to findings of the Hearings Officer and BDS

Site characteristics	Previous finding or fact	Hearings Officer and BDS finding
MD-U and RM4 appropriate	No (BPS, Comprehensive Plan)	Yes
Commercial services	Needed (BPS, Comprehensive Plan)	Sufficient
Height limit along bluff	Three stories (BPS, Comprehensive Plan)	Seven stories
Restrict zoned density to manage landslide risk along bluff	Constrained sites overlay zone, 2 unit maximum (BPS, Residential Infill Project)	Seven stories OK
Maximum base zone density allowed along bluff with geotechnical report	No (BPS, Residential Infill Project)	Yes
Landslides could result from climate change	Yes (Fifth Oregon Climate Assessment)	No
Frequent transit service	No (30-minute headway, 2022 TriMet bus 19 schedule)	Yes
Proximity to Portland City Center	Closer drive to city hall of Milwaukie (2.7 miles) than Portland (3.3 miles)	Close

In conclusion, discarding years of planning, increasing landslide risk, and blighting the Oaks Bottom Wildlife Refuge for a comparatively small number of housing units is not on balance supportive of the Comprehensive Plan. We urge you to deny this proposal. We encourage the applicant to consider our proposed outcome on page 11 of the Appendix that is supportive of the Comprehensive Plan, fulfills the zoned housing potential of the property, improves the feasibility of development, and does so in a way that is safer and in compliance with the zoning code.

Appendix: SMILE testimony to Hearings Officer

Objections to the proposed Comprehensive Plan Amendment

On January 20, 2022, the SMILE Land Use Committee held a neighborhood meeting with the developer to learn about the proposal and solicit community input¹. We received additional input via email. Most comments opposed the proposal.

Overview: 2035 Comprehensive Plan Guiding Principles

SMILE opposes this proposal because it fails to adhere to any of the five Guiding Principles for Portland's 2035 Comprehensive Plan.

Economic Prosperity: Support a low-carbon economy and foster employment growth, competitiveness and equitably distributed household prosperity. Placing high-density housing far from the Central City, town centers, transit stations, frequent transit, and commercial services does not support a low-carbon economy.

Human Health: Avoid or minimize negative health impacts and improve opportunities for Portlanders to lead healthy, active lives. Placing high-density housing in a landslide zone endangers human health.

Environmental Health: Weave nature into the city and foster a healthy environment that sustains people, neighborhoods, and fish and wildlife. Recognize the intrinsic value of nature and sustain the ecosystem services of Portland's air, water and land. Tall and high-density development adjacent to the Oaks Bottom Wildlife Refuge threatens scenic and wildlife resources.

Equity: Promote equity and environmental justice by reducing disparities, ... Specifically recognize, address and prevent repetition of the injustices suffered by communities of color throughout Portland's history. Although not the intent of this proposal, if it were approved, Portland's zoning would protect homeowners along the Sellwood bluff from landslides by restricting density while a much greater density of less wealthy tenants (and thus more likely to be people of color) at this site would be exposed to the risk of landslides. Portland has a tragic history of housing and lives being lost to natural disasters. For example, Vanport provided housing for people of color in a natural hazard zone and was destroyed by a catastrophic flood².

Resilience: Reduce risk and improve the ability of individuals, communities, economic systems, and the natural and built environments to withstand, recover from, and adapt to changes from natural hazards, human-made disasters, climate change, and economic shifts. Expanding high density housing in a landslide zone increases risk. Climate change will increase the risk of landslides.

¹ <https://youtu.be/-878wHby9p4>

² <https://www.opb.org/television/programs/oregon-experience/article/vanport-2/>

Sequential Index

If your review evaluates Comprehensive Plan policies and Statewide Land Use Planning Goals in numerical order, we provide the following sequential index. Click on a policy or Goal title to be taken to the testimony citing that policy or Goal.

Cited Comprehensive Plan Policies (Click on the title to see relevant testimony)

[Policy 1.18 Quasi-judicial amendments to the Comprehensive Plan Map](#), page 11

[Policy 1.19 Area-specific plans](#), page 9

[Policy 3.1 Urban Design Framework](#), page 12

[Policy 3.9 Growth and development](#), page 12

[Goal 4.C: Human and environmental health](#), page 3

[Goal 4.D: Urban resilience](#), page 5

[Policy 4.3 Site and context](#), page 12

[Policy 4.16 Scale and patterns](#), page 12

[Policy 4.20 Walkable scale](#), page 8

[Policy 4.22 Relationship between building height and street size](#), page 7

[Policy 4.27 Protect defining features](#), page 14

[Policy 4.30 Scale transitions](#), page 12

[Policy 4.41 Scenic resources](#), page 14

[Policy 4.44 Building placement, height, and massing](#), page 14

[Policy 4.73 Design with nature](#), page 14

[Policy 4.74 Flexible development options](#), page 14

[Policy 4.79 Natural hazards and climate change risks and impacts](#), page 4

[Policy 4.81 Disaster-resilient development](#), page 4

[Goal 5.B: Equitable access to housing](#), page 5

[Goal 5.C: Healthy connected city](#), page 3

[Policy 5.23 Higher-density housing](#), page 8

[Policy 5.39 Compact single-family options](#), page 13

[Policy 5.47 Healthy housing](#), page 3

[Policy 5.48 Housing safety](#), page 3

[Goal 7.B: Healthy watersheds and environment](#), page 14

[Policy 7.1 Environmental quality](#), page 14

[Policy 7.3 Ecosystem services](#), page 14

[Policy 7.19 Natural resource protection](#), page 14

[Policy 7.24 Regulatory hierarchy](#), page 14

[Policy 10.1.10. Multi-Dwelling — Urban Center](#), page 6

Cited Statewide Land Use Planning Goals (Click on the title to see relevant testimony)

[Goal 5, Natural Resources, Scenic and Historic Areas, and Open Spaces](#), page 14

[Goal 7: Areas Subject to Natural Hazards](#), page 4

[Goal 15: Willamette River Greenway](#), page 14

Failure to Provide Safe Housing

A fundamental governmental function is to provide for the safety of the community and protecting safety is part of the Comprehensive Plan:

Goal 4.C: Human and environmental health

Neighborhoods and development are efficiently designed and built to enhance human and environmental health: they protect safety and livability; support local access to healthy food; limit negative impacts on water, hydrology, and air quality; reduce carbon emissions; encourage active and sustainable design; protect wildlife; address urban heat islands; and integrate nature and the built environment.

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.

Policy 5.47 Healthy housing. *Encourage development and maintenance of all housing, especially multi-dwelling housing, that protects the health and safety of residents and encourages healthy lifestyles and active living.*

Policy 5.48 Housing safety. *Require safe and healthy housing free of hazardous materials such as lead, asbestos, and radon.*

The well-documented landslide hazard along the Oaks Bottom Bluff³ on the western half of these properties would endanger the additional residents housed at this site by this proposal. The Oregon Department of Geology and Mineral Industries (DOGMI) Landslide hazard and risk study⁴, the existing zoning map, Comprehensive Plan, and landslide history all support limiting density along the bluff to preserve human life. Present zoning considers single-dwelling properties along the bluff to be ‘unsuitable for three or more dwelling units’ because of the landslide hazard⁵. The Comprehensive plan zoned parcels along the bluff CM1, including the CM1 parcels in this proposal, to limit density because of the landslide hazard. Landslides are common. In 1996 there was a landslide at the center of the site⁶. One hundred yards from the proposal site, 1433 SE Reedway had a landslide in 2011⁷ that closed trails below for months and

³ Oregon Department of Geology and Mineral Industries, Shallow landslide susceptibility,

<https://www.oregongeology.org/pubs/ims/IMS-57/storymap/index.html>

⁴ Oregon Department of Geology and Mineral Industries, Interpretive Map 57

https://www.oregongeology.org/pubs/ims/IMS-57/IMS-57_report.pdf

⁵ Portland zoning code 33.418

⁶ Oregon Department of Geology and Mineral Industries, Landslide inventory, LS_3960,

<https://www.oregongeology.org/pubs/ims/IMS-57/storymap/index.html>

⁷ Oregon Department of Geology and Mineral Industries, Landslide inventory, PDX_1490,

<https://www.oregongeology.org/pubs/ims/IMS-57/storymap/index.html>

the house had to be moved 15 feet back from the bluff in 2014⁸. DOGMI (p. 1) states ‘These historical data are a clear indication of a significant landslide risk and thus the need for continued landslide risk reduction.’ DOGMI (p. 37-38) recommends ‘*Another long-term planning tool is the inclusion of the data in this report into comprehensive plans, which most cities and counties use to identify community goals. Some planning could result in the avoidance of proposed development in high-hazard areas and even public buyouts in very high or life-threatening areas.*’

The staff report states that risk will be managed by requiring a geotechnical report when development is proposed. The staff report also states (p. 5) ‘*The landslide hazard area is on the part of the site that has the River Environmental overlay zoning.*’ The landslide hazard area is actually slightly larger than the River overlay zone, but more importantly, the Comprehensive Plan and Statewide Land Use Planning Goals have higher standards of risk management. Policy 4.79 states ‘*Limit development in or near areas prone to natural hazards*’. The purpose of the proposed MD-U designation is to encourage development and the site is either in or near an area prone to a natural hazard. Policy 4.81 and Statewide Land Use Planning Goal 7 encourages development that reduces risk and impacts of natural disasters. Placing more people in and near a landslide zone increases risk and the potential impact of a landslide.

Hazard-resilient design

Portland has varied topography, with hills, buttes, abundant trees, and vegetation. It is also located at the confluence of two major river systems. As a result, there are periodic floods, wildfires, and landslides. The city is also in a seismically-active region, at risk for earthquakes from local faults and the Cascadia Subduction Zone in the Pacific Ocean. These policies direct development away from hazard-prone areas, seek to reduce hazard risks and impacts, and improve resilience to disasters and climate change.

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 4.81 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.*

⁸ https://www.portlandmaps.com/detail/permit/2012-149958-000-00-RS/3188372_did/?p=R122521

GOAL 7: AREAS SUBJECT TO NATURAL HAZARDS

A. NATURAL HAZARD PLANNING

- 1. Local governments shall adopt comprehensive plans (inventories, policies and implementing measures) to reduce risk to people and property from natural hazards.*
- 2. Natural hazards for purposes of this goal are: floods (coastal and riverine), landslides, earthquakes and related hazards, tsunamis, coastal erosion, and wildfires.*

The staff report incorrectly states *‘The site is not prone to flooding or other natural hazards that could result from climate change.’* The Fifth Oregon Climate Assessment⁹ states *‘Problems from landslides triggered by precipitation are expected to exacerbate over time as the intensity of some precipitation events increases.’* This proposal and the staff recommendation ignore climate science and the implications for policy 4.79 (above) and Comprehensive Plan Goal 4.D.

Goal 4.D: Urban resilience

Buildings, streets, and open spaces are designed to ensure long-term resilience and to adjust to changing demographics, climate, and economy, and withstand and recover from natural disasters.

Although not the intent of the proposal, if this proposal were approved, Portland’s zoning map would protect homeowners along the bluff from landslides by restricting density while a much greater density of less wealthy tenants at this site would be exposed and endangered. Properties along the bluff zoned single-dwelling are not considered safe at densities greater than 3 units per 5000 square feet of land area, a typical lot. This proposal would expand multi-dwelling densities of about 20-70 units per 5000 square feet along the bluff. Given the wealth gap between whites and people of color, approval of this proposal would worsen inequitable zoning.

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.

[Control-click to return to sequential Policy and Goal index](#)

⁹ Dalton, M., and E. Fleishman, editors. 2021. Fifth Oregon Climate Assessment. Oregon Climate Change Research Institute, Oregon State University, Corvallis, Oregon, p. 114. <https://blogs.oregonstate.edu/occri/oregon-climate-assessments/>

The MD-U designation and RM4 zone are not applicable

The proposal seeks to expand the Multi-dwelling - Urban Center (MD-U) designation in the Comprehensive Plan and the RM4 zone. The Comprehensive Plan process eliminated MD-U and RM4 (formerly RH) where possible because they are not applicable to this area.

Comprehensive Plan policy 10.1.10 defines MD-U:

10. 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.

The Portland zoning code (33.120.030.D) defines the RM4 zone:

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. ...

The MD-U designation and RM4 zone are not applicable to the proposal site because:

1. it is not near the Central City,
2. it is not the Gateway Regional Center,
3. it is not in a town center,
4. it is not in a transit station area,
5. high-capacity transit is not available (the Harold Street MAX Station was not built),
6. neither very frequent bus service nor frequent transit service are available (the 19 bus on Milwaukie Avenue is not classified as frequent service by Trimet and does not have frequent service as defined by the zoning code¹⁰). If a permit application were filed today, the required current bus schedule would show that bus service is not frequent. Please note that the Staff Report uses obsolete information on page 9 to incorrectly state that there is frequent transit service.
7. the streetcar does not serve this area,
8. it is not along a civic corridor (Milwaukie Avenue is a neighborhood corridor, see below), and
9. it is not close to commercial services.

¹⁰ 33.120.215.B.1.a, 20 -minute peak hour service (33.910.030). For the bus 19 schedule effective January 23, 2022, all buses are more than 20 minutes apart, <https://trimet.org/schedules/r019.htm#schedules>

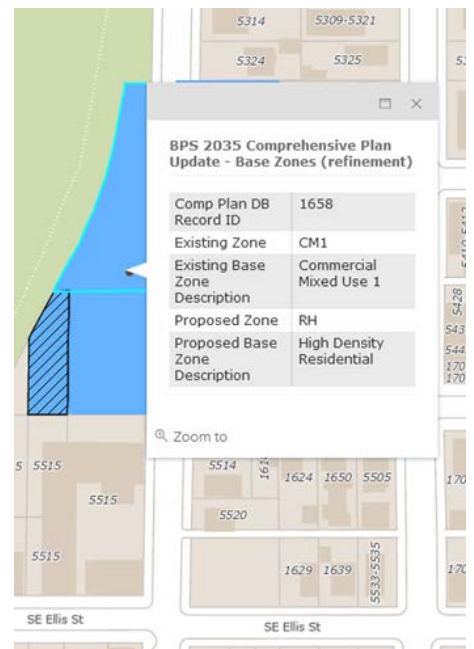
Milwaukie Avenue (see photo at proposal site) is classified as a neighborhood corridor, is clearly not a civic corridor, and there are no plans to make it so. The Comprehensive Plan Urban Design

Background: RM4/MD-U: The result of quirks, not intent

Many properties in north Westmoreland were upzoned to RH (which was renamed RM4 in 2020) in the 1980s in anticipation of a light rail station at Harold Street. The Orange Line was built without that station so in 2018 the new Comprehensive Plan map downzoned much of this area. The RM4 zones on the subject property and across Milwaukie Avenue are not there because of a planning process that concluded it was an appropriate zone, but from quirks in a planning process that otherwise would have eliminated the RH/RM4 zoning.

Quirk #1: One early assistance meeting upends years of planning: The RM4 parcels that are part of this proposal were going to be rezoned from RH to CM1 by the Comprehensive Plan, until the property owner asked for an early assistance meeting with the City for a potential development¹¹ before final approval of the Comprehensive Plan. The Map Refinement Project made the final adjustments to the Comprehensive Plan Map and reverted the proposed zoning from CM1 to RH¹². The development never happened. Without the early assistance meeting, the parcels would be zoned CM1 today.

Quirk #2: Different order changes the result: The Comprehensive Plan zoned some properties across Milwaukie from this proposal (5340, 5450, and 5455 SE Milwaukie) RH to be conforming because they had too many units for a less dense zone (R1, later renamed RM2). Afterwards, the Better Housing by Design Project (BHD) eliminated unit limits and renamed the zones with RH becoming RM4. If BHD had been implemented first, these properties would have been conforming with RM2 zoning, not RM4, and the subsequent Comprehensive Plan would have retained the RM2 zoning. Thus, a different sequencing of planning projects would have prevented this indirect upzone and these properties would be zoned RM2 today.



¹¹ 2017-190119-000-00-EA, https://www.portlandmaps.com/detail/permit/2017-190119-000-00-EA/4037290_did/?p=R328424

¹² Comprehensive Plan ID 1658, <https://pdx.maps.arcgis.com/apps/Minimalist/index.html?appid=a83d4817da67400ea81411b8968ab570>

Direction Framework¹³ (policy 3.1, page 12) defines Civic and Neighborhood corridors and describes their differences:

***Civic Corridors** are the city's largest, busiest streets with good transit connections, safe sidewalks, distinctive trees and planted areas, and big buildings creating active places where people want to be.*

***Neighborhood Corridors** are smaller and more common than civic corridors, featuring smaller buildings, good bus service and active intersections. While new development along neighborhood corridors is typically adjacent to the main street, along civic corridors it can be more dispersed, extending one or two blocks away.*

Expanding the MD-U designation along a neighborhood corridor would violate policy 4.22:

***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.*



View looking north on SE Milwaukie Avenue at SE Ellis Street

¹³ https://www.portland.gov/sites/default/files/2019-08/udd_final_042417_web.pdf. "This document is a supporting piece to Portland's 2035 Comprehensive Plan. It outlines an urban design direction for the city by compiling, illustrating and describing many goals and policies from the 2035 Comprehensive Plan that address the physical form of the city."

The MD-U designation does not satisfy policies 4.20 or 5.23 at this location because it is not in or around a Center. The location is about 900 feet from the northern boundary of the Sellwood-Moreland neighborhood center.

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.*

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.*

If approved, this would be the first time the MD-U designation would be intentionally applied in this neighborhood since the 1980s. The staff report says MD-U is applied in unexpected places and refers to two locations along the Willamette River in Sellwood-Moreland (p. 24-25). Just like the MD-U sites near the proposal site, and to the best of our knowledge, these properties are MD-U so existing buildings would conform to previous definitions of multi-dwelling zones, not because a recent planning process concluded it was an appropriate designation for that location. If they were intentionally zoned for high density decades ago, however, that decision does not justify repeating high density almost two miles to the north.

On page 25 the staff report states “*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.*” The fact that the City of Portland has not followed policy 10.1.10, the definition of MD-U, in the past does not justify continuing ignoring the policy. The provided justification for the MD-U designation effectively says ‘it is OK to ignore the law because we have previously ignored it.’

The 1998 *Sellwood Moreland Neighborhood Plan*¹⁴ (SMNP) is relevant because of Policy 1.19:

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...(not relevant)

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

¹⁴ <http://sellwood.org/wp-content/uploads/2017/03/Sellwood-Moreland-Neighborhood-Plan.pdf>

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 [effective date of this 2035 Comp Plan] 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.

SMNP Policy X for a new north end neighborhood center was written at the time ‘A high-capacity transit station is planned for the area just north of McLoughlin’ (p. 69). An objective was ‘Provide for housing redevelopment at densities that support a nearby high-capacity transit station’ (p. 71). In the 1990s when SMNP was written, TriMet said there would be a station on the north side of McLoughlin at SE 18th, connected to Westmoreland by a pedestrian bridge over the highway¹⁵. This transit station was never built.

The vision statement for the North End (p. 26) is

The North End has redeveloped with new amenities that make it an inviting urban scale mini-neighborhood. The pocket park, community garden and the north edge of Oaks Bottom, with access to the Willamette Greenway trail, provide natural getaways at the doorstep of the four- to five-story residential buildings. Landscaping and courtyards make these units attractive to residents, many who ride high-capacity transit, available nearby. Shops along Milwaukie Avenue and McLoughlin, as well as the complex at the old Vocational Village site, offer convenient services for residents in the area.

This 1998 vision statement includes a nearby transit station that was never built, 4-5 story buildings that would be half the height of the proposed MD-U designation, and shops along Milwaukie Avenue that have not been built. The absence of the envisioned transit station and commercial uses, along with the landslide concerns, were the impetus for applying the CM1 zone in the 2035 Comprehensive Plan.

Thus, the parts of the 1998 SMNP that are not obsolete do not support the MD-U designation.

Please note that on pages 16-17 of the staff report SMNP Policy VII Balance Growth is taken out of context because it is applicable to the core commercial areas that existed in 1998, not the subject properties.

[Control-click to return to sequential Policy and Goal index](#)

¹⁵ SMILE meeting minutes

MD-C is not compatible with the land use pattern established by the Comprehensive Plan Map

The proposed MD-C designation on the east side of Milwaukie Avenue would violate several Comprehensive Plan policies.

Comprehensive Plan Policy 1.18 requires that '*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.*'

Rezone for feasible and safer housing

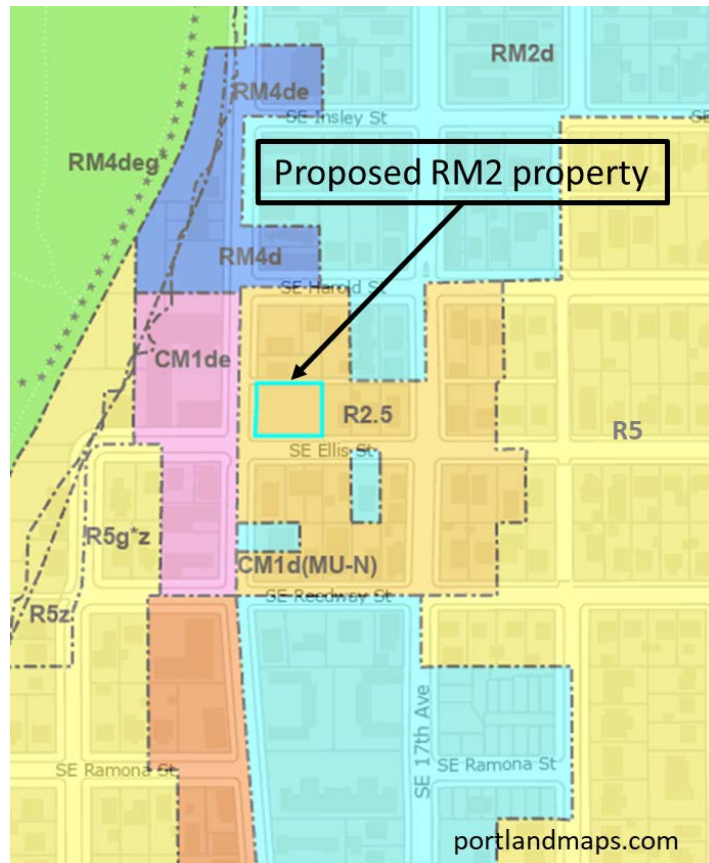
Although not within the scope of this public hearing, we believe that there is an outcome that would be more supportive of the Comprehensive Plan, fulfill the zoned housing potential of the property, improve the feasibility of development, and do so in a way that is safer and in compliance with the zoning code. Our concept is to zone all of the property west of Milwaukie Avenue CM2 or RM2. The RM4 parcels would lose buildable area and the CM1 parcels would gain buildable area (with contributing floor area from the R5 parcel). The numbers appear to roughly balance, but we could not make detailed calculations from the available information¹⁶. The zoning change could be fine-tuned so there is no net loss of buildable floor area. We ask the applicant to consider this alternative. Benefits compared to existing zoning are:

- Safer housing: Disperse future residents along the bluff to reduce potential casualties from a landslide.
- Increased likelihood of development: Improve feasibility by providing a single zone west of Milwaukie Avenue as desired by the applicant.
- Context: A CM2 and RM2 zones are supposed to be located along neighborhood corridors such as Milwaukie Avenue
- Oaks Bottom Wildlife Refuge: Four-story CM2 or RM2 development would have less impact on Oaks Bottom Wildlife Refuge.
- Additional benefits of CM2 are smaller setbacks, a more walkable neighborhood because of increased probability of retail development in an area that lacks it, and an entirely residential development would still be allowed so the developer could adapt to future market conditions.
- Additional benefits of RM2 are that unused floor area may be transferred or sold to other sites either by building 100% inclusionary housing or preserving trees on the bluff slope¹⁷. This would create housing off-site.

¹⁶ Exhibit A has an example development for existing zoning. The parcel areas slightly differ from those on portlandmaps.com. We found that Exhibit A neglects requirements for stepdown and setback adjacent to R5. Building dimensions are not provided. Optimized CM2 and RM2 building configurations would be required for comparability with the existing zoning design.

¹⁷ Portland zoning code 33.120.210.D.1

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. This would violate the Comprehensive Plan Urban Design Direction Framework (Policy 3.1) which states *'Ensuring that new structures complement existing districts and neighborhoods will help Portland meet goals around complete communities, transit, employment lands and green space.'*¹⁸



The pedestrian experience is a key tenant of urban design in Portland. For example, the Comprehensive Plan Urban Design Direction (p. 36) states *'New development in inner neighborhoods should enhance the fine-grain, pedestrian-scaled built environment of main streets, mixed-use districts and residential areas.'* In addition, the following policies emphasize evaluating development at the local neighborhood scale:

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.*

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-*

¹⁸ Urban Design Direction Framework, https://www.portland.gov/sites/default/files/2019-08/udd_final_042417_web.pdf, p. 9

represented communities, with particular attention to displacement and affordability impacts. Identify and implement strategies to mitigate the anticipated impacts.

Policy 4.3 Site and context. *Encourage development that responds to and enhances the positive qualities of site and context — the neighborhood, the block, the public realm, and natural features.*

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.*

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.*

Unfortunately, the staff report does not consider the pedestrian-scaled built environment when evaluating compatibility of the requested change with land use pattern for policy 1.18. On page 14 of the staff report, compatibility of the proposed MD-C designation is evaluated by comparison to the entire 2.5-mile length of SE Milwaukie Avenue. A pedestrian standing on the corner of Milwaukie Avenue and Ellis Street sees a hundred feet or so in either direction, not a mile. The proposed MD-C designation would be incompatible with the R2.5 on either side as viewed by the pedestrian standing at Milwaukie and Ellis and therefore violate policies 1.18, 3.1, 3.9, 4.3, 4.16, and 4.30. The land use pattern that pedestrian sees is the relevant viewpoint for evaluating compatibility, not the view from an airplane.

Policy 5.39 encourages compact single-family housing options:

Policy 5.39 Compact single-family options. *Encourage development and preservation of small resource-efficient and affordable single-family homes in all areas of the city.*

This policy is best accomplished by retaining the R2.5 designation which allows smaller lots and thus more affordable single-family homes than the R5 designation to the east and along the bluff to the west.

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Degradation of the benefits of Oaks Bottom Wildlife Refuge

Among the many concerns we have with this proposal are the potential impacts to the Oaks Bottom Wildlife Refuge, Portland's oldest wildlife refuge and the largest remaining natural wetland within the lower reach of the Willamette Valley. The proposal allows for significantly taller buildings on the bluffs just overlooking Oaks Bottom—buildings that risk creating large, visual blemishes at odds with the Comprehensive Plan policies of protecting and enhancing landmarks and natural features (Policy 4.27) and celebrating Portland's scenic resources (Policies 4.41 and 4.44). Moreover, by allowing such large buildings to be built next to the refuge, we risk degrading the watershed health and vibrant ecosystems (Policies 4.73, 7.1, 7.3, 7.14, and 7.19) in the refuge below. Statewide Land Use Goal 15.A.3 states that the Willamette River Greenway Program shall include 'management of uses on lands within and near the Greenway to maintain the qualities of the Greenway.' The Greenway passes through the proposal site and thus all of the site is near the Greenway and has to be managed to preserve Greenway qualities.

Oaks Bottom Wildlife Refuge is one of Portland's natural jewels, beloved by visitors from across the city. The presence of such large buildings on its doorstep presents an unnecessary threat to such a precious and environmentally-sensitive area (Statewide Land Use Goal 5 and Comprehensive Plan Policies 4.74 and 7.24,) and undermines rather than supports the intrinsic value of nature (Goal 7.B).

Policy 4.27 Protect defining features. *Protect and enhance defining places and features of centers and corridors, including landmarks, natural features, and historic and cultural resources, through application of zoning, incentive programs, and regulatory tools*

Policy 4.41 Scenic resources. *Enhance and celebrate Portland's scenic resources to reinforce local identity, histories, and cultures and contribute toward wayfinding throughout the city. Consider views of mountains, hills, buttes, rivers, streams, wetlands, parks, bridges, the Central City skyline, buildings, roads, art, landmarks, or other elements valued for their aesthetic appearance or symbolism.*

Policy 4.44 Building placement, height, and massing. *Maintain regulations and other tools related to building placement, height, and massing in order to preserve designated significant scenic resources.*

Policy 4.73 Design with nature. *Encourage design and site development practices that enhance, and avoid the degradation of, watershed health and ecosystem services and that incorporate trees and vegetation.*

Policy 4.74 Flexible development options. *Encourage flexibility in the division of land, the siting and design of buildings, and other improvements to reduce the impact of development on environmentally-sensitive areas and to retain healthy native and beneficial vegetation and trees.*

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.

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.*

Policy 7.3 Ecosystem services. *Consider the benefits provided by healthy ecosystems that contribute to the livability and economic health of the city.*

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

Policy 7.19 Natural resource protection. *Protect the quantity, quality, and function of significant natural resources identified in the City's natural resource inventory, including:*

- *Rivers, streams, sloughs, and drainageways.*
- *Floodplains.*
- *Riparian corridors.*
- *Wetlands.*
- *Groundwater.*
- *Native and other beneficial vegetation species and communities.*
- *Aquatic and terrestrial habitats, including special habitats or habitats of concern, large anchor habitats, habitat complexes and corridors, rare and declining habitats such as wetlands, native oak, bottomland hardwood forest, grassland habitat, shallow water habitat, and habitats that support special-status or at-risk plant and wildlife species.*
- *Other resources identified in natural resource inventories.*

Policy 7.24 Regulatory hierarchy: *avoid, minimize, mitigate. Maintain regulations requiring that the potential adverse impacts of new development on significant natural resources and their functions first be avoided where practicable, then minimized, then lastly, mitigated*

Statewide Land Use Planning Goals

Goal 5, NATURAL RESOURCES, SCENIC AND HISTORIC AREAS, AND OPEN SPACES

B. IMPLEMENTATION

2. The conservation of both renewable and non-renewable natural resources and physical limitations of the land should be used as the basis for determining the quantity, quality, location, rate and type of growth in the planning area.

GOAL 15: WILLAMETTE RIVER GREENWAY

To protect, conserve, enhance and maintain the natural, scenic, historical, agricultural, economic and recreational qualities of lands along the Willamette River as the Willamette River Greenway.

A. GENERAL

2. The Willamette Greenway Program shall be composed of cooperative local and state government plans for the protection, conservation, enhancement and maintenance of the Greenway, ...

3. The Greenway Program shall include:

b. Management of uses on lands within and near the Greenway to maintain the qualities of the Greenway;

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Approval Conditions

If the Comprehensive Plan Amendment were approved, the approval conditions in the Staff Report would help mitigate some of the adverse impacts and should be adopted.

The condition requiring inclusionary housing (IH) sounds great, but it is unlikely to produce additional inclusionary housing units over those already required. Most development in our neighborhood that is required to include IH provides it on site already as required by the approval condition. IH is normally required if there are more than 19 units per building, so the approval condition would only provide 1 to 2 units per building that is 19 or fewer units. If the building or buildings had more than 19 units, no additional IH would be generated.

A principle that we have advocated for is that any increase in zoned density should be dedicated to inclusionary housing. Exhibit A shows that the number of units at the site would increase 36% with this amendment, so this principle would require that 36% of the units be affordable, not 10%.

Development should be prohibited in the River overlay zones. The justification for MD-U on page 39, bullet 2 of the staff report assumes there will be no development in the River overlay zones, but development there is not prohibited. If density is increased in one place because no development is expected somewhere else, a future development should not be allowed in the supposedly protected area.

SMILE (Sellwood Moreland Improvement League) testimony to Hearings Officer
Re: LU21-094203 CP_ZC
February 11, 2022
APPENDIX Page 17 of 17

Summary

SMILE opposes the proposed Comprehensive Plan Amendment due to the following objections:

- Failure to provide safe housing
- The MD-U designation and RM4 zone are not applicable
- Incompatibility of the MD-C designation with the land use pattern established by the Comprehensive Plan Map, and
- Degradation of the benefits of Oaks Bottom Wildlife Refuge.

Please direct questions to the SMILE Land Use Committee at land-use-chair@sellwood.org.