

**IN THE CITY COUNCIL OF THE  
CITY OF  
PORTLAND OREGON**

**IN THE MATTER OF AN APPLICATION  
BY RENEE FRANCE, RADLER WHITE PARKS &  
ALEXANDER LLP FOR A COMPREHENSIVE PLAN  
MAP AND ZONING MAP AMENDMENT AT  
5505-5525 SE MILWAUKIE AVENUE AND THE  
NORTHEAST CORNER OF SE ELLIS STREET  
AND SE MILWAUKIE AVENUE**

**LU 21-094203 CP ZC**

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**FINDINGS AND CONCLUSIONS**

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**ADOPTED BY THE CITY COUNCIL ON  
August 31, 2022**

**APPROVAL WITH CONDITIONS OF A COMPREHENSIVE PLAN MAP AND ZONING MAP  
AMENDMENTS**

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FINDINGS AND CONCLUSIONS

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The findings and conclusions of the City Council in this matter are set forth below.

**I. 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](mailto: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, 1S1E14DB17000, 1S1E14DB 17300, 1S1E14AC 09700, 1S1E14DB 15900

**Quarter Section:** 3532 & 3632

**Neighborhood:** Sellwood-Moreland

**Business District:** Sellwood-Westmoreland

**District Coalition:** Southeast Uplift

**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” Designoverlay; “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. The Hearings Officer’s recommendation was considered was considered at a public hearing before the Portland City Council. This City Council decision is the final local government decision.

**Proposal:** The applicant proposed to change zoning for the above-cited seven properties. The properties west of SW Milwaukie Avenue included in the application and decision (R110000470, R110000490, R110000500, R110000510, R110000550, and R110000580) are collectively referred to in these findings and decision as the “West Property.” The property located east of SW Milwaukie Avenue (R568701110) is referred to in these findings and decision as the “East Property.” The West Property and the East Property are referred to collectively in these findings and decision as the “Properties.” The requested changes require changes to Portland’s Comprehensive Plan Map and Portland’s Zoning Map. The requested changes also involve different Comprehensive Plan Map and Zoning Map designations on the West Property and East Property, 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.

The changes to both the East Property and West Property are referred to collectively in these findings and decision are referred to collectively as the “Amendments.” No development was proposed with the 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

## II. PROCEDURAL HISTORY

**BDS Staff Recommendation to the Hearings Officer:** Approval with conditions.

**Public Hearings with Hearings Officer:** 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. Public testimony submitted after the close of the hearing was considered untimely and was not included in the analysis. 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. The Recommendation of the Hearings Officer was emailed on March 25, 2022. The Hearings Officer recommended approval of the Comprehensive Plan and Zoning Amendments for the Properties with conditions. The Hearings Officer recommended the conditions of approval identified by staff in the Staff Recommendation, with the exception of one recommended condition that the Hearings Officer excluded from his recommendation.

**City Council Hearings:** The initial City Council (“Council”) hearing was held on June 1, 2022 at 3:00 p.m. in the City Council Chambers, with testimony from the applicant, representatives of the neighborhood organization, and other members of the public. Council closed the public record during the hearing and continued the hearing until June 16, 2022 at 2:00p.m. Testimony submitted to the Council after the close of the record on June 1, 2022 was deemed untimely, is not part of the record of this case, and was not considered by Council. At the continued hearing, Council identified the following amendment to recommended Condition D and two new conditions of approval:

- Revise proposed Condition D: Maximum height on the lots designated as RM4 zoned by this decision is limited to 65 feet.
- Development on the West Property shall not include permanent disturbance area within the River Overlay Zone located on the West Property at the time of this decision.
- All new development on the West Property is subject to Bird-Safe Glazing standards of Zoning Code Section 33.475.235 on the exterior of west-facing facades.

The City Council voted 4 to 0 in favor of a motion to tentatively approve the requested Comprehensive Plan and Zoning Amendments for the Properties subject to the conditions proposed by the Hearings Officer, as modified above.

The City Council scheduled a hearing to consider and endorse these findings and ordinance on July 13, 2022 at 10:15a.m. At the applicant’s request that hearing was continued to August 24, 2022 at 9:45 a.m. These final findings and decision of the City Council were approved at that time.

## III. 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 in the West Property make up part of the slope down to Oaks Bottom Wildlife Refuge (“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 comprise 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 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 requested Comprehensive Plan and Zoning Amendments satisfies applicable approval criteria:

The proposed consistency in zoning along the identified 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.

The applicant also testified at the Hearings Officer hearing and the City Council hearing and provided written testimony and evidence in response to public comments submitted in opposition of the Amendments.

**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 (BES) 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). BES staff also testified at the June 1, 2022 Council hearing and confirmed that BES had no objections to the requested amendments with the recommended conditions of approval.

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:** A Notice of the Public Hearing for this case was mailed on January 27, 2022. Prior to issuance of the Staff Report, two written responses were received. The first was from Verizon stating they have no facilities in the area (Exhibit E.1). The second response was from the Sellwood-Moreland Improvement League (SMILE) Land Use Committee in opposition to the proposal (Exhibit E.2). Additional testimony was provided by SMILE, other organizations, and the public during the open record periods for the Hearings Officer and Council hearings. See Exhibits

for details on written testimony. Issues raised in this testimony that are relevant to the applicable approval criteria are discussed in the findings below. Many public comments were general in nature or were not related to the applicable approval criteria. The findings do not further address comments not relevant to the applicable approval criteria.

## **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:** Comprehensive Plan Map Amendments are approved if the requested designations satisfy the approval criteria. The Council finds that under this criterion is not necessary for proposed Comprehensive Plan amendments to meet or satisfy each individual Comprehensive Plan policy. Nor is it necessary for the proposed Comprehensive Plan amendments to be more supportive of the Comprehensive Plan than the existing designations. Instead, as indicated by the plain language of the criterion, it is necessary for the Council to evaluate the requested designations against relevant Comprehensive Plan policies and on balance find that the requested designations are equally or more supportive of the Comprehensive Plan as a whole than the old designations. The findings below demonstrate that the Council has made the necessary evaluation and weighed the relevant policies to find that on balance the proposed Comprehensive Plan designations are more supportive of the Comprehensive Plan as a whole than the old designations.

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 West Property; and MD-C – Multi-Dwelling – Corridor on the East Property.

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 these findings. Based on the findings below, Council finds the requested designations will, on balance, be equally or more supportive of the Comprehensive Plan than the existing designations. The applicant provided analysis of goals and relevant policies in their narrative.

The Council finds that the following Comprehensive Plan Policies are relevant to this proposal. The Council finds that under the plain language of 33.810.050.A.1, it is only necessary to evaluate the requested designations against the Comprehensive Plan Policies and not the more broadly worded Comprehensive Plan Goals. Nonetheless, in the event a future decision maker was to determine that it was necessary to also independently evaluate the requested designations against the Goals as well, the Council also addresses relevant Goals addressed by staff or raised by project opponents as well as Policies for each Comprehensive Plan chapter addressed in these findings. The Council further finds that Goals and Policies included in the Comprehensive Plan that are not addressed below are not relevant to these Comprehensive Plan Amendments, and therefore need not be evaluated in order to conclude that this approval criterion has been satisfied:

## **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 these findings, Council 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 Property 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 East Property 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 Property will 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 will 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. Similarly, the RM2 designation proposed for the East Property will 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.

SMILE provided written and oral testimony that there is enough zoned capacity to meet identified housing demands and that the number of additional units that could be developed on the Properties following the Amendments is small when compared to the number of units added to the Sellwood-Moreland neighborhood since 2017 and the number of units in the development pipeline. Evidence in the record, including the Applicant's Transportation Study, indicates that SMILE underestimated the potential increase in units available under the Amendments. However, even assuming a more moderate increase in potential units and assuming the new and approved residential unit count provided by SMILE is what is ultimately developed, it does not change the fact that the Amendments will increase the overall housing supply over the units permitted prior to the Amendments. Therefore, the Council finds that the Amendments increase the City's housing capacity in a manner consistent with Title 1.

For the reasons set forth above, the Council finds the Amendments are consistent with and further 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 Council finds that the Amendments are more consistent with Metro Title 1 than the existing designations.

**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 will be required for development (Exhibit G.3).

While not directly related to Title 3, the Council notes that 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 River General and River Environmental overlay zoning, and are located on the steep slope down to Oaks Bottom. As noted above, the Council has included Condition F that requires development on the West Property to avoid permanent disturbance in the River overlay zones. The River overlay regulations will further require that any temporary disturbance within the River overlay either satisfy the River overlay standards or be approved through River Review. Project-specific geotechnical requirements will also need to be satisfied at time of building permit. The condition of approval on permanent disturbance, the overlay regulations that will limit any temporary disturbance, and the requirements for a detailed, project-specific geotechnical analysis will collectively protect the slope and prevent development in hazardous areas. The applicant's geotechnical expert further testified that redevelopment on the West Property will require stormwater controls consistent with the Stormwater Management Manual applicable at the time of development, and that updated stormwater management on the West property will help reduce the flow of water to the steep slopes over current conditions and reduce landslide risks.

As conditioned, future development on the West Property must be concentrated on the eastern, upland portion of the site outside of the more steeply sloped overlay areas. The Council finds that consistent with Title 3, the locational development limitations and City water quality regulations will limit impacts of development on the Properties on 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 condition from BES to limit discharge into the sewer, the condition prohibiting permanent disturbance in the River overlay areas, and other requirements, the Council finds that the Amendments are consistent with Title 3 and equally supportive of Title 3 as the existing designations.

***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. According to Metro, corridors are streets that serve as major transportation routes for people and goods that are extensively served by transit.

Consistent with Title 6, the City has adopted additional centers and corridors throughout the city through Chapter 3 of the 2035 Comprehensive Plan. The Comprehensive Plan identifies SE Milwaukie Ave 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.” 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), the Council agrees with staff that 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 and included in the Staff Report. The Council acknowledges that project opponents argued and provided evidence to indicate that the current frequency of service is currently less than 20-minute peak hour service. However, the height regulations referenced above are based upon the adopted PBOT Close to Transit Service Map that is updated annually. Therefore, under the map currently in effect, the Properties are close to transit service and the permitted building height on the West Property would be 100 feet if a condition were not applied to limit the height.

Because SE Milwaukie Ave is somewhat narrower than other corridors, the Council agrees with staff that 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 recently constructed on the lot across SE Ellis St from the West Property. The surrounding RM2 zoned areas have a height limit of 45 feet, which includes the East Property under this decision. 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.

This decision controls the overall massing of future development on both the East Property and the West Property to be consistent with Title 6 and the Neighborhood Corridor designation of SE Milwaukie Ave. As discussed in greater detail in the Policy 1.19 Findings below and incorporated by reference here, the Council agrees with the staff and Hearings Officer recommendations for a step-down height limit for the West Property not just in the locations already required by code, but also to the single-dwelling residential neighbors across Milwaukie from the West Property. In addition, the Council has included a condition that limits the maximum height on the West Property to 65, which is 35 feet lower than the 100 feet generally allowed in the RM4 properties identified on the adopted PBOT map and just 20 feet higher than nearby RM2 zoned properties. As a result, the West Property will serve as a transition from the 100-foot height limit of the RM4 parcels to the north, to the lower-intensity commercial and residential zoning to the south, east and west.

With the conditions to limit height on the West Property to 65 feet and condition to require additional areas of step-down height on the West Property in relation to single-dwelling-zoned properties across SE Milwaukie Ave, the Council finds that the Amendments are consistent with Title 6 and equally supportive of Title 6 as the existing designations.

***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 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 and provide options that effectively increase the affordable housing supply.

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 will facilitate design and development of a larger, coherent multi-dwelling development that will 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.

The Council finds that applying the MD-U Comprehensive Plan designation and RM4 zone to the West Property are actions consistent with the requirements of Title 7. The Council further finds the RM2 zone on the East Property will 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. The Council further finds that the Comprehensive Plan Amendments are more supportive of Title 7 than the existing designations.

**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 Comprehensive Plan Amendments are consistent with 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. The Council finds the Amendments are consistent with Title 8.

**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 Amendments are consistent with providing adequate levels of public services. As detailed in the findings below and incorporated by reference here, the Council finds the approval criterion in Zoning Code Section 33.855.050.B on adequacy of public services is met with the condition limiting flows into the combined sewer applied through this decision. The Amendments will not cause significant changes in the impacts related to noise or pollution. Issues related to water pollution will be addressed through the requirements of the Stormwater Management Manual and other regulations that apply during building permit reviews of proposed development. Project opponents raised concerns about the risk of additional trash being deposited on the steep slopes of the West Property if the site were redeveloped. The Council finds no support for this concern. If redeveloped, the slopes will be easily viewed from windows facing west.

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 Council finds that the Amendments are consistent with Title 12 and are equally supportive of Title 12 as the existing designations.

**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 retains the River general “g\*” and River environmental “e” overlay zoning. The River overlays conserve and protect the Willamette River and surrounding upland areas and are consistent with the Nature in Neighborhoods provisions of Metro Title 13. In this case, the overlays specifically protect the upland and riparian areas of Oaks Bottom and the steeply sloped section of the West Property. Development within the River overlays must either satisfy objective standards or obtain approval through a discretionary River review. In order to provide more even more robust protections to the overlay areas than required by the code, this decision includes a condition of approval that prohibits permanent disturbance within the River Overlay Zones on the West Property, Condition F. Therefore, as conditioned, the Council finds that the Amendments are consistent with the Nature in Neighborhoods program and program purposes.

Additionally, the Properties are not within the flood plain. During building permit review, any development will 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 Council finds the Amendments, as conditioned, are consistent with and are equally or more supportive of this title than existing designations.

**Summary:** As discussed above, the requested MD-U and MD-C designations on the Properties will remain consistent with the intent of the relevant titles in the Urban Growth Management Functional Plan, or these titles will 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, the Council finds the Amendments are equally or more supportive of Policy 1.11 than the existing designations.

**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 Council finds the proposal is consistent with all applicable Statewide Planning Goals and equally supports Policy 1.12. The applicant more specifically addressed individual statewide planning goals in the application narrative and the Council herein incorporates those responses by reference. SMILE identified specific Goals that it maintained the Amendments were not consistent with: Goal 5, Goal 7, and Goal 15. For these reasons set forth below, the Council finds that the Amendments are consistent with each of the identified goals.

*GOAL 5: Natural Resources, Scenic and Historic Areas, and Open Spaces  
To protect natural resources and conserve scenic and historic areas and open spaces*

Pursuant to Goal 5, local governments must generally adopt programs that will protect natural resources and conserve, scenic, historic, and open space resources for present and future generations. The Comprehensive Plan includes extensive goals, policies and objectives related to the protection of natural resources and the conservation of scenic, historic, and open space resources. Goal 5 also requires local governments to adopt resource inventories for a variety of natural resources, including wetlands, riparian areas, and wildlife habitat, and encourages local

government to adopt inventories for historic resources, open space and scenic views and sites. The City has adopted the required inventories and has complied with the related planning and implementation provisions. Additionally, the Metro Nature in Neighborhoods program under Metro Title 13 addressed above, implements Statewide Planning Goal 5 pertaining to riparian areas and wildlife habitat in Metro's jurisdiction. Therefore, the River overlays that apply on the western portion of the West Property are consistent with both Metro Title 13 and Statewide Planning Goal 5.

SMILE raised concerns about the impacts of the Amendments, particularly the amendment on the West Property will result in the degradation of Oaks Bottom, and testified that large buildings close to Oaks Bottom creates a threat to the resource area. As discussed above, the River overlay that applies to the west portion of the West Property is consistent with the requirements of Goal 5 related to protection of natural resources and wildlife habitat. To ensure protections of the River overlay area beyond those required by Goal 5, the Council has imposed condition F, which prohibits permanent disturbance within the River overlay areas of the West Property. Through this condition, the Council has established that on the West Property the appropriate location for permanent development is outside of the protected resource area. While this level of protection is not required by Goal 5, it is consistent with Goal 5. Additionally, it requires greater protection of the River overlay resources than would be required of development on the West Property under the current zoning. Without the conditional Amendment future redevelopment of the West Property would be required to comply with the River overlay regulations which could allow permanent disturbance within the River overlay area if consistent with standards or approved through River Review. Any temporary disturbance proposed within the overlay must comply with River overlay regulations that are consistent with Goal 5. SMILE and others also raised concerns about impacts of the Amendments on scenic resources related to Goal 5. However, in compliance with Goal 5, the City has adopted a scenic resource inventory. There are no Goal 5 scenic resources identified in Oaks Bottom or near the Properties.

The Council finds that the proposed amendment is consistent with Statewide Planning Goal 5.

*GOAL 7: Areas Subject to Natural Hazards  
To protect people and property from natural hazards.*

Goal 7 requires local governments to adopt comprehensive plans to reduce the risk to people and property from natural hazards, including landslides. The City has complied with Goal 7 requirements by adopting policies, inventories, and implementing measures as part of its Comprehensive Plan that reduce the risk to people and property from natural hazards. As discussed in detail below, the Amendments are equally or more supportive of the applicable Comprehensive Plan Policies adopted by the City related to natural hazards.

SMILE and many other public comments opposed to the Amendments identified concerns about mapped landslide hazards areas located along the western portion of the West Property and provided evidence of historical landslides along Oaks Bottom Bluff. In addition to providing general descriptions of past landslides in the area, some comments identified a relatively recent landslide in Oregon City's Newell Creek Canyon that impacted a housing development. There was no testimony submitted by a certified geologist or other geohazard expert to support the claims that the proposed Amendments would increase landslide hazards on the West Property.

In response to public testimony on landslide hazard issues and concerns, the applicant submitted a Shallow Landslide Susceptibility Map prepared by DOGAMI into the record that shows that areas of high and moderate shallow landslide susceptibility are limited to the western, steeply sloped portions of the West Property, and that the portion of the West Property at the top of the slope that is currently developed is primarily mapped as low susceptibility to shallow landslide. The applicant's geotechnical expert also submitted a letter based upon site specific analysis. The letter explained why conditions at the West Property are different than conditions at Newell Creek Canyon. The letter also confirmed development at the West Property can be safely accomplished by

providing engineered solutions to mitigate potential slope instability including a setback from the top of the bluff, appropriate stormwater management, specialized foundation systems for building near the top of the bluff, and ground improvements that reinforce the soil.

The Council has imposed conditions that will help support safe development under the first two mitigation options identified by the applicant's geotechnical expert. The Council has imposed Condition F, which prohibits permanent disturbance within the River Overlay area on the steeply sloped portions of the West Property. As depicted on the DOGAMI Map and pointed out by the applicant during testimony, the area of high shallow landslide susceptibility is entirely within the River overlay. Therefore, under the condition, permanent disturbance cannot occur within the area of high susceptibility. There is not complete alignment between the boundary of the River overlay and the edge of the moderate susceptibility, but the majority of the moderate susceptibility area is within River overlay area as well. Therefore, Condition F will ensure that the building footprint is concentrated at the top of the bluff. Development specific geotechnical evaluation will dictate if additional setbacks from the River overlay zone boundary are needed. The Council has also imposed Conditions A and B, which require a future developer to demonstrate that a proposed private stormwater management system can be designed to meet the requirements of the City's Stormwater Management Manual and require detailed stormwater management reports and infiltration testing results. The applicant's geotechnical expert testified that updated stormwater management on the West Property consistent with the current stormwater requirements will help reduce the flow of water to the steep slopes below current conditions and thereby reduce landslide risks. In addition to the conditions, the record demonstrates that a detailed geologic study and slope stability evaluation will be required at the time development is proposed on the West Property so that the evaluation and development of appropriate additional mitigation is tailored to the proposed structure. Any future development will be subject to land use regulations and building code requirements consistent with Goal 7. City's geotechnical experts in the BDS Site Development Section that implement many of the regulations raised no objections to the Amendments.

The Council finds that the applicant provided expert testimony based upon site specific evaluation that adequately demonstrated that development on the site can be safely accomplished and that risks created by potential slope instability can be minimized. Additionally, future development must comply with the plans and regulations adopted by the City to protect people and property from natural hazards. For these reasons, the Council finds the requested amendment is consistent with Statewide Planning Goal 7.

*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 Greenway.*

Goal 15 requires local governments to establish boundaries within which special Greenway considerations shall be taken into account and to manage uses on lands within and near the Greenway to maintain the qualities of the Greenway. In compliance with Goal 15, the City adopted the River overlay zones which promote the protection, conservation, restoration, enhancement and maintenance of the economic, natural, scenic, historical, and recreational qualities of lands along the Central and South reaches of the Willamette River. There are three different River overlay zones, River General (g\*), River Environmental (e), and River Recreational (r\*). The West Property is not located within the 50-foot River setback and is separated from the Willamette River by the River setback, the established Greenway Trail and the Oaks Bottom. However, because of the proximity to the river and the Oaks Bottom refuge, the western portion of the West Property is included in both the e and g\* overlays and there are sections through the middle of the Property that include either the g\* or the e overlay.

The applicant did not propose any changes to the overlay boundaries, and therefore future development on the West Property must comply with the River overlay use regulations and development standards. Furthermore, the Council has imposed Condition F which will preclude



permanent disturbance area within the River overlay zone on the West Property. Any proposed temporary disturbance within the River overlay area must comply with objective standards or receive approval through a River Review process consistent with Goal 15. Based upon the presence of the River Overlay and the more stringent permanent disturbance prohibitions of Condition F, future development on the West Property must be consolidated on the upland areas to avoid and/or minimize impacts to the Willamette River resources and qualities consistent with Goal 15. Therefore, the Council finds the Amendments, as conditioned, are consistent with Goal 15.

***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 wellcoordinated 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, changing 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 West Property; and MD-C – Multi-Dwelling – Corridor on the East Property will not affect requirements that any uses or development on the sites remain consistent with applicable state and federal regulations. As such, the Council finds the Amendments are equally supportive of this policy as the existing designations.

***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 includethose provided by the City, neighboring jurisdictions, and partners within Portland’surban services boundaries, as established by Policies 8.2 and 8.6.*

The Multi-Dwelling – Urban Center and Multi-Dwelling – Corridor designations correspond to the RM4 and RM2 multi-dwelling residential zones, respectively. As detailed below, the Council finds the public services approval criterion in Zoning Code Section 33.855.050.B for the Zoning Map Amendment to RM4 and RM2 is met. Therefore, the decision 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 the approval criterion in Zoning Code Section 33.855.050.B.2.b, Council finds the approval criterion in Zoning Code Section 33.855.050.B is met with conditions related to 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 but they did not provide comments.

For these reasons, and with the BES’ conditions of approval, Council finds the Amendments are equally supportive of Policy 1.14 as the existing designations.

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

Allowing an increase in allowable residential density, the Amendments will 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 will be borne by the property owner rather than by public service providers. In addition, system development charges (SDCs) will apply at the time of development to contribute to long-term impacts to services related to the development.

In addition, the Amendments increase the allowable residential density on a site that is within a quarter mile of four Tri-Met bus lines and within approximately .5 to .7 miles from a MAX light rail

station at the SE 17th Ave and SE Holgate St.<sup>1</sup> Therefore, the Amendments support Tri-Met's efforts to provide efficient transit services.

For these reasons, Council finds the Amendments are equally supportive of Policy 1.15 as the existing designations.

***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, the Council finds the Amendments are consistent with Policies 1.10 – 1.15.

The Multi-Dwelling – Urban Center designation for the West Property is 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. SMILE and others opposed to the Amendments argued that the Multi-Dwelling – Urban Center/RM4 designation is incompatible with the area. However, as noted the designation and zone currently exist both directly north of the West Property and across SE Milwaukie Avenue to the northeast. SMILE further contended that the zoning pattern established by the RM4 designation to the north and the northeast of the West Property was the result of quirks in previous planning processes. However, the Council finds that the Multi-Dwelling – Urban Center/RM4 designation currently exists to the north and northeast of the West Property. The exact circumstances of how or why the zone was applied does not alter the existing zoning or the land use pattern established in the current Comprehensive Plan Map for purposes of evaluating compatibility under Policy 1.18.

The Multi-Dwelling – Corridor designation for the East Property is within a block to a block and a half from much larger Multi-Dwelling – Corridor areas. The East Property 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 17<sup>th</sup> 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

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<sup>1</sup> The applicant and staff provided evidence that the transit station at SE 17<sup>th</sup> is approximately .5 miles from the West Property. SMILE provided evidence that the pedestrian walking distance is .7 miles. In either case the Council finds that the transit station is less than  $\frac{3}{4}$  of a mile and within a 15 minute walk radius based upon maps provided by the applicant.

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 Comprehensive Plan amendment will 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 along SE Milwaukie Avenue.

SMILE argued that the Multi-Dwelling Corridor/RM2 designation on the East Property is not compatible with the land use pattern because of the surrounding R2.5 areas. However, as noted above there are existing nodes of RM2 zone within the two surrounding blocks. Therefore, the Council finds that RM2 lots with adjacent R2.5 zoned areas is consistent with the established land use pattern both in the immediate two blocks surrounding the East Property and the established pattern of higher density commercial and multi-dwelling designations on properties fronting the entirety of SE Milwaukie Avenue. SMILE argued that the established land use pattern could only be evaluated from a pedestrian perspective. The Council finds that the established land use pattern is not limited to a single pedestrian viewpoint as seemingly suggested by SMILE. Instead, the overall pattern within the area should be considered, and in this case the East Property is directly adjacent to SE Milwaukie Avenue, and therefore, that area includes the Comprehensive Plan Map pattern established along SE Milwaukie Avenue.

The Council finds the Amendments are also consistent with the Sellwood-Moreland Neighborhood Plan (SMNP) and with Policy 1.19, as discussed below.

For these reasons, Council finds the Amendments are equally or more supportive of Policy 1.18 than the existing designations.

***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 Comprehensive Plan Amendments are consistent with the relevant SMNP policies and objectives. SMILE pointed out in its testimony that certain circumstances have changed since the plan was adopted in 1998 and selects certain provisions that they claim support their position while discounting others as obsolete. While specific arguments are addressed below, overall, the Council finds that the 1998 version of the SMNP is the plan currently codified and in effect for purposes of the evaluation of Policy 1.19.

*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 (property lines highlighted in green in an image provided in the Staff Report), and to adjacent single-dwelling zoning (property lines highlighted in blue in the Staff Report image). 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, the Council finds 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 Properties, the Council imposes a condition of approval, Condition C, that requires the following step-down heights along the property lines highlighted in yellow in the Staff Report image:

- 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 surrounding community, Council imposes Condition E, which requires that all initial development proposed on the Properties go through discretionary Design Review. This gives neighborhood residents a chance to comment on building design, and will require that the specific context of the development be considered through the design guidelines applicable in the Design Review process.

With these conditions, the Council finds the Amendments are equally supportive of SMNP Policy I

as the existing designations.

*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 seemingly refer 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 Properties. More residents will lead to higher usage of the existing public transit options in the immediate neighborhood.

For these reasons, Council finds that, with the two conditions referenced, the Amendments are equally supportive of Policy II as the existing designations.

*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, a core commercial area that existed in 1998 when the SMNP was adopted. The Comprehensive Plan Amendments will allow multi-dwelling development that will contribute to the vitality of the core commercial area to the south and contribute to the pedestrian-oriented feel of SE Milwaukie Ave as a Neighborhood Corridor that extends beyond the commercial area 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 Council further finds that 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 collective reasons, Council finds that the Comprehensive Plan Amendments are more supportive of both Policy IV and Policy VII than the existing designations.

*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 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 will 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.

SMILE points out that in 1998 a transit station was anticipated just north of McLoughlin Boulevard. Even if that is case, the Council disagrees that the change renders the North End vision statement cited by SMILE obsolete. First, as noted above, the 1998 SMNP remains the effective neighborhood plan. Moreover, the vision references development and amenities other than a new transit station that support the vision and Policy X. Finally, as detailed in these findings, multi-modal transportation options are currently accessible in the North End via established bus service and the transit station that is less than 3/4 of a mile to the northeast at SE 17th.

For these reasons, Council finds the Amendments are 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 approved Comprehensive Plan and Zoning Amendments will facilitate potentially larger multi-dwelling developments that will trigger the Inclusionary Housing requirements of the Zoning Code. The amendments will enable the subject site owner to build at a higher density than currently allowed. Accommodating people of all income levels throughout the city is consistent with this subarea policy as well as other relevant Comprehensive Plan policies addressed below. The Council finds that the Comprehensive Plan and Zoning Amendments create opportunity for additional affordable units required under the existing IH program for any project with more 19 dwelling units, and therefore, are 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 Council further finds that 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, Council finds the Amendments are consistent with and more supportive of Policy XI than the existing designations.

Because the Council finds Comprehensive Plan and Zoning Amendments support each of the relevant policies of the Sellwood-Moreland Neighborhood Plan discussed above with identified conditions, Council finds that with the conditions of approval, the Comprehensive Plan amendments are more supportive of Policy 1.19 of the Comprehensive Plan than the existing designations.

For the collective reasons set forth above, the Council finds that the Amendments are equally or more supportive of the relevant goals and policies of Comprehensive Plan Chapter 1 than the existing designations.

## **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). Notice for the June 1, 2022 Council hearing was mailed on May 3, 2022.

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 was posted with signs advertising the public hearing. A summary of the proposal and a phone number to obtain further information were included on the signs.

Notice of the application and the public hearings were 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.

The applicant also held a non-required meeting with neighbors on January 20, 2022, to discuss

the application (Exhibit F.2).

Finally, the Council notes that at both the Hearings Officer hearing and the City Council hearing, participants were provided clear directions on the close of the record.

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

For the above reasons, Council finds the Amendments are equally supportive of the relevant Comprehensive Plan Chapter 2 goals and policies as the existing designations.

### **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 3.1 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.*

The Urban Design Framework (UDF) figures designate centers, districts, corridors, greenways, habitat corridors, and pattern areas city-wide. Under the Urban Design Framework maps, the Properties are not located in a designated center but are located in an inner neighborhood and are in, or are close to the edge of, the Inner Ring surrounding the Central City center. SE Milwaukie Avenue is a designated Neighborhood Corridor. The West Property is adjacent to Oaks Bottom, which is designated Open Space, identified as urban Habitat Corridor, and includes a mapped trail. For the reasons set forth in these findings, the Council finds the requested amendments will facilitate productive redevelopment and increased residential densities on the Properties that is generally consistent with, and supportive of, the applicable UDF designations for the Properties.

SMILE cited Policy 3.1 to support its contention that the RM2 zone on the East Property creates a checkerboard zoning pattern. However, the Council finds the UDF does not support retention of single-dwelling zoning along SE Milwaukie Avenue as suggested. Instead, the higher density RM2 zone is generally consistent with the corridor designation of SE Milwaukie Avenue and scale of communities within inner neighborhoods.

For these reasons, the Council finds that the Amendments are equally or more supportive of this policy than the current Comprehensive Plan and zoning designations.

**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.*

The Properties both have frontage along SE Milwaukie Avenue, a designated Neighborhood Corridor. The Comprehensive Plan includes the following description of Neighborhood Corridors:

Neighborhood Corridors are narrower main streets that connect neighborhoods with each other and to other parts of the city. They have transportation, land use, and design functions that are important at a neighborhood or district level. They support neighborhood business districts and provide housing opportunities close to local services, amenities, and transit lines. They are streets that include a mix of commercial and higher-density housing development.

The Amendments will allow higher density multi-dwelling housing development along SE

Milwaukie Avenue than currently allowed under the existing zoning designations. The Council finds that those increased residential densities are consistent with the description of the Neighborhood Corridor. Encouraging higher density residential development along this critical inner neighborhood corridor contributes to a vibrant urban neighborhood where residents are close to the designated city centers both north and south of the Properties and have access nearby bus service and are within  $\frac{3}{4}$  of a mile of the designated transit station area at SE 17th and SE Holgate. However, the Council further finds that because Neighborhood Corridors generally, and SE Milwaukie Avenue specifically, is narrower than other corridors, it is appropriate to apply an overall height limit of 65 feet to the West Property, which is the height permitted on properties zoned RM3, and apply additional step-down heights to areas of the West Property across SE Milwaukie Avenue from single-dwelling-zoned properties.

Therefore, the Council finds the Amendments are more supportive of this policy than the current designations.

***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 Amendments will not cause displacement of existing residents; the only development on the West Property is an office building and the East Property is a surface parking area. Therefore, the Council finds that this planning decision will not contribute to displacement of residents.

Furthermore, the proposal will allow multi-dwelling development at the Properties that will likely trigger the Inclusionary Housing (IH) requirements now in the Zoning Code. The IH 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.

Residential development that would trigger IH is unlikely under the existing zoning designations. In contrast, the Amendments will facilitate development that will include more than 20 units and therefore will be subject to IH. Because there is not a development proposed at this time, the number of units is not known. However, the Council finds that facilitating and encouraging development that provides the benefits of the IH program is more supportive of Policy 3.9 than the current zoning.

SMILE cites Policy 3.9 in support of its position that the MD-C/RM2 designation on the East Property is not compatible with the zoning pattern. However, SMILE does not explain how the existing single-dwelling designation on the East Property is more compatible with Policy 3.9 than the new designation.

For these collective reasons, the Council finds the Amendments are more supportive of this policy than the current designations.

### **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 Council finds that the Comprehensive Plan and Zoning Amendments support energy efficiency, environmental quality, and efficient use of urban land use by increasing housing opportunities within walking and biking 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 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. Development proposed within the River environmental overlay areas is 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. In this case, the Council has imposed a condition of approval that prohibits permanent disturbance within the River overlay zones on the West Property. Condition F further strengthens the protections of the natural resources and functional values within the Willamette River Greenway areas located on the West Property. 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 as enhanced by the condition of approval prohibiting permanent disturbance within the overlay. Therefore, the Council finds that as conditioned, the Amendments are more supportive of policy 3.82 than the current designations that are subject to the general River overlay regulations.

### **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 Erapattern 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 Goals 3.C and 3.D and Policies 3.2, 3.6, and 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 Comprehensive Plan and Zoning Amendments 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 approved multi-dwelling designations and zoning will allow productive redevelopment of the Properties with needed housing, in a prime location along a designated neighborhood corridor with access to transit along the corridor and commercial services nearby.

For the reasons stated above, the Council finds the Amendments equally or better support the relevant goals and policies of Chapter 3 of the Comprehensive Plan than the existing designations.

## **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.*

The Comprehensive Plan and Zoning Amendments will facilitate new development on the Properties consistent with this goal. The Properties are located along SE Milwaukie Avenue, an important Neighborhood Corridor that links the Central City to the Sellwood-Moreland Center. The requested MD-U Comprehensive Plan designation and corresponding RM4 zone for the West Property is consistent with the RM4 zoning on the property to the north and will contribute to a coherent design and streetscape for that stretch west of SE Milwaukie Avenue. The approved higher density multi-dwelling residential designation is consistent with the physical, historic, and cultural qualities of its location west of SE Milwaukie Avenue, at the north end of SE Milwaukie Avenue within the Sellwood-Moreland Neighborhood, and adjacent to existing RM4 zoning. The amendments on the West Property will also facilitate needed growth and change for the area by allowing coordinated development with the property to the north under a consistent RM4 zone. The conditions of approval 1) limiting the maximum height of buildings on the West Property to 65 feet, 2) requiring further step-down heights on portions a building on the West Property across SE Milwaukie from single-dwelling zoning; 3) requiring discretionary design review; 4) prohibiting

permanent disturbance within the River overlay zone, and 5) requiring bird-safe glazing on the western façade of buildings on the West Property will collectively ensure new development on the West Property provides context-sensitive design and development that is responsive to the location.

The requested MD-C Comprehensive Plan designation and corresponding RM2 zone on the East Property is consistent with the nodes of RM2 zoning east of SE Milwaukie Avenue and will both respond to and enhance the mix of residential uses on the east side of the corridor. The requested amendment for the East Property will also help accommodate appropriate growth and change by making a large lot that has been underdeveloped with a surface parking lot comply with the higher density zoning designations appropriate for the Neighborhood Corridor area. The conditions of approval requiring 1) a step-down height along the north property line; and 2) requiring discretionary design review will collectively ensure that future development on the East Property provides context-sensitive design and development that is responsive to the surrounding residential neighborhood.

Finally, new development on the Properties will be subject to the RM4 and RM2 development standards that are intended to result in structures that are compatible with the scale and characteristics of adjacent single-dwelling residential areas. The requirement for initial development on both the East Property and the West Property to obtain discretionary design review approval will require an evaluation of the proposed buildings compliance with applicable design guidelines and will provide the surrounding neighborhood an opportunity to comment on the compliance of the proposed building with the applicable guidelines related to context.

For these reasons, the Council finds that the Amendments are equally or more supportive of this goal than the existing designations, and are further supportive of this goal as implemented through the design and development policies identified below.

**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 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.*

Any new development on the site will be required to comply with the existing building code and the BES Stormwater Management Manual to provide long term resilience for the buildings. Allowing higher density residential uses on the Properties, development will have the necessary flexibility and resilience to adjust the changing demographics and needs of the neighborhood and the City. The requested amendments are supportive of this goal as implemented through the design and development policies identified below.

SMILE cited these goals in support of the argument that Amendments fail to provide safe or resilient because of landslide hazard areas on the West Property. However, as detailed in the findings for Statewide Planning Goal 7 above, the DOGAMI Shallow Landslide Susceptibility Map prepared by DOGAMI shows that areas of high and moderate shallow landslide susceptibility are limited to the western, steeply sloped portions of the West Property, and that the portion of the West Property at the top of the slope that is currently developed is primarily mapped as low susceptibility to shallow landslide. The applicant's geotechnical expert also submitted a letter based upon site specific analysis that confirmed development at the West Property can be safely accomplished by providing engineered solutions to mitigate potential slope instability including a setback from the top of the bluff, appropriate stormwater management, specialized foundation

systems for building near the top of the bluff, and ground improvements that reinforce the soil. The Council has imposed conditions that will help support safe development under the first two mitigation options identified by the applicant's geotechnical expert. One of the conditions requires compliance with the current SWMP which takes into consideration existing and projected precipitation events. In addition to the conditions, the record demonstrates that a detailed geologic study and slope stability evaluation will be required at the time development is proposed on the West Property so that the evaluation and development of appropriate additional mitigation is tailored to the proposed structure. Any future development will be subject to land use regulations and building code requirements generally consistent with the human health elements and urban resistance elements of Goals 4.C and 4.D and their implementing policies addressed below.

As conditioned, the Amendments also integrate nature and the built environment and limits negative impacts on water, natural resources and wildlife habitat by allowing development on the upland portion of the West Property, but retaining the River overlay and limiting permanent disturbance to the areas of the West Property located outside of the River overlay. As discussed in greater detail in the findings below, wildlife is further protected by Condition G, which requires new development to satisfy Bird-Safe Glazing standards on the exterior of the west facing façade.

For these reasons, and the reasons provided in the implementing policies below, the Council finds that the Amendments are equally or more supportive of these goals than the existing designations, and are further supportive of these goals as implemented through the policies identified below.

***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.*

Once again, this policy requires the City to encourage the identified development rather than require a specific development or a specific footprint. In any case, the design of future development on the Properties will be guided by the development standards of the RM4 and RM2 zones, including height limitations, minimum setbacks, site coverage and landscaping, and pedestrian oriented development. In this case, the Council has applied additional height and step-down conditions addressed above to limit massing on and ensure that future development responds to the neighborhood site context as well as natural features. Additionally, development on both Properties will be subject to Design Review which applies multiple guidelines related to site, context and the public realm.

SMILE cited Policy 4.3 to support its opposition to the RM2 zoning on the East Property. Other public comments in opposition to the Amendments also generally claim that the proposed zones are inconsistent with the context of the surrounding neighborhood. However, for the reasons set forth above, and with the conditions limiting massing and requiring Design Review, the Council finds that the Amendments strike an appropriate balance between the benefits of increased housing density in this area and limiting impacts on the surrounding neighborhood and area.

Therefore, the Council finds the Amendments are equally or more supportive of this policy than the existing designations.

***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.*

The Comprehensive Plan and Zoning Amendments apply multi-dwelling residential zones to the Properties. For the East Property, the Multi-Dwelling – Corridor designation is appropriate for SE Milwaukie Ave, which is a neighborhood corridor. As depicted on zoning maps included in the record, the area comprised of 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 includes single-dwelling zoning adjacent to Milwaukie Ave. Furthermore, the Comprehensive Plan Amendments and corresponding zoning designations are 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 Comprehensive Plan and Zoning Amendments on the East Property facilitate redevelopment of a surface parking lot with multi-dwelling housing that is far more consistent with the streetscape in this area than the single-dwelling development allowed under the existing zone, 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.

Policies 4.11 and 4.12 are generally implemented through the development standards of each zone regulating height and massing. The conditions of approval that limit height on the West Property to 65 feet and require additional step-down height limits along identified lot boundaries on the both the West Property and the East Property will further limit height and massing and provide additional protections for neighboring single-dwelling residential lots and are consistent with Policies 4.11 and 4.12.

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.

For the reasons set forth above, the Council finds that as conditioned, the Amendments are equally or more supportive of Policies 4.5, 4.6, 4.11, 4.12 than the existing designations.

**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 Comprehensive Plan Amendments will 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 approved 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 approved 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 will 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. The height and additional step-down conditions will further minimize impacts on 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.

SMILE testified that there is new multi-dwelling development and approved multi-dwelling development in the neighborhood and that the additional opportunity for housing is comparatively small compared with those units and the available zoned capacity. The Council does not dispute the fact that additional multi-dwelling housing is being developed in the area. However, that does not diminish the value of the Amendments to create additional opportunity for multi-dwelling housing that must comply with IH along the SE Milwaukie Avenue corridor at the northeastern edge of the neighborhood. Therefore, the Council finds that even if the housing opportunities in this inner neighborhood have and continue to provide additional density, the Amendments in this case still support this policy for residential continuity and adaptability and other policies related to housing options across income levels as discussed in these findings.

For these reasons, the Council finds that as conditioned, the Amendments are more supportive of Policy 4.15 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 Amendments will facilitate future redevelopment at the Properties that must 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, the Council imposes the following 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 65 feet; and
- There are additional step-down height requirements for both Properties in the context of the R2.5 lots along SE Milwaukie Ave.

As a result, prior to development, the building and site proposal will be given more scrutiny to ensure it builds on context 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 complements the scale of surrounding residential areas. Finally, the Properties will 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.

Without providing much discussion specific to the policy, SMILE cited Policy 4.16 to support its position that the RM2 zone on the East Property is not compatible with the zoning pattern and the Council should consider pedestrian scale for determining the scope of the zoning pattern. The policy, however, relates to the scale and design of structures and architectural features of the structures rather than zoning patterns. The findings above address why the Council finds the Amendments, as conditioned, are supportive of this design-related policy.

For the reasons set forth above, the Council finds that as conditioned, the Amendments are more supportive of this policy than the existing designations.

***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 Properties are not located within a designated center. However, the Properties are located along a critical Neighborhood Corridor that connects two Centers, and residents will 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 Council finds that the Comprehensive Plan Amendments are equally or more supportive of policy 4.20 than the existing designations.

SMILE argued that the Comprehensive Plan Amendments do not satisfy Policy 4.20 because the Properties are located 900 feet from the northern boundary of the Sellwood-Moreland neighborhood center. First, the Council finds that it is not necessary to “satisfy” each policy in order to find that the requested Comprehensive Plan Amendment meets PCC 33.810.050.A.1. Second, Policy 4.20 does not limit higher-density housing to centers, but encourages higher-density housing in those areas.

***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 will 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 an active 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 Council finds the 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. Under existing development standards for the RM4 zone, the maximum building height on the West Property would be 100 feet since the site is within 500 feet of a transit street currently mapped as meeting the threshold for 20-minute peak hour service (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 near the edge of the surrounding neighborhood. To make the Amendments more supportive of this policy, the Council has imposed two conditions that better reflect the narrower street width, and the single-dwelling zoning across the street:

- Limit height for the West Property with the RM4 zoning to 65 feet; and
- Require additional step-down height for both Properties in relation to 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.

SMILE claimed that expanding the MD-U designation and corresponding RM4 zoning along SE Milwaukie Avenue would violate policy 4.22. Additional public testimony in opposition to the Amendments and the height permitted by the RM4 zoning on the West Property argued more generally that the resulting building would be too tall for the width of the street and too tall for the neighborhood. As noted above, it is not necessary to demonstrate that specific policies are met through the Amendments. In any case, this policy encourages development that is responsive to street width but does not dictate specific heights or specific zones based upon street width. The 65-foot height limit imposed by the Council on the West Property ensures that the future building height on the West Property will be responsive to the narrower street width of the neighborhood corridor in support of this policy.

For the reasons set forth above, the Council finds that as conditioned, the Amendments equally or better meet this policy than existing designations.

***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 will apply to any redevelopment of the Properties. For these reasons, the Council finds the Amendments are equally or more supportive of this policy than the existing designations.

***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.

The proposed amendment for the West Property will help protect the natural features within the River overlay and the wildlife refuge directly west of the property by allowing development at needed densities to be clustered on the upland portion of the West Property. Condition F which prohibits permanent disturbance within the River overlay, further ensures the protection of the natural features within the overlay area. There are no designated landmarks or historic or cultural resources within the vicinity of the Properties.

In its testimony, SMILE generally argued that large buildings on the bluffs overlooking the Oaks Bottom Wildlife Refuge would be at odds with this policy. As noted, however, Oaks Bottom is not a designated landmark and there are no protected view corridors either from or to Oaks Bottom. Additionally, development cannot occur directly adjacent to Oaks Bottom. As the applicant demonstrated in its testimony and exhibits, the River overlay effectively creates a buffer between the edge of overlay and the eastern edge of the Oaks Bottom property that varies in width from approximately 101 feet to 118 feet. The Council finds the River overlay protections, as enhanced

by Condition F, will protect the natural features within Oaks Bottom.

Council has added Condition G which requires all new development to meet the Bird-Safe Glazing standards of 33.475.235 on the exterior of west-facing façades. The condition will work to improve conditions for migratory birds in Oaks Bottom, enhancing the natural features over existing development. As discussed above, new development will also result in new stormwater management infrastructure as conditioned which will improve outcomes for the slope. The Council finds these conditions will enhance the natural features within and adjacent to Oaks Bottom.

Therefore, the Council finds the Amendments as conditioned, 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 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 the maximum height is limited to 65 feet by Condition D. Therefore, development on the West Property will provide a transition in building scale from the maximum height of 100-feet on the RM4 property to the north and the CM1 zoned property to the south along SE Milwaukie. As conditioned, the Amendments also require 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 to the north and CM1 zoning to the south, 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 will further protect the privacy of neighbors to the west and southwest because the change in grade will largely prevent views into those homes. Therefore, the requested amendments are equally or more supportive of this policy than the existing designations.

***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.*

Policies 4.41 and Policy 4.44 are implemented through the designation and protection of significant scenic resources in the City. There are no designated scenic resources or protected view corridors on or near the Properties. Therefore, the Council finds that these policies are not relevant to the Amendments.

The SMILE testimony cited both policies and seemingly argued that either Oaks Bottom is a designated scenic resource or views from Oaks Bottom represent a scenic resource. Other testimony in opposition to the Amendments also generally objected to the visual impact of a tall

structure on the West Property on Oaks Bottom. However, neither the SMILE testimony nor other testimony cited any resource that suggested that the views either to or from Oaks Bottom are protected or designated scenic resources under the Comprehensive Plan for purposes of Policy 4.44. Furthermore, Policy 4.41 only references views of natural areas or elements, not views from those areas. To the limited extent these policies are relevant to the Amendments, the Council finds the Amendment as conditioned, are equally supportive of Policy 4.41 and 4.44 as existing designations.

**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*

The Council finds that these policies are not directly relevant because development is not proposed with this application. Instead, the policies are implemented through development standards, overlay zoning, and other City regulations intended to protect watershed health and ecosystem services.

However, SMILE cited the policies and argued that allowing large buildings to be built next to Oaks Bottom would degrade watershed health and ecosystems. However, in this case, the River overlay located on the western portion of the West Property creates a buffer that varies in width from 101 feet to 118 feet between the area available for development on the West Property and Oaks Bottom. Consistent with the Policy the River overlay both encourages and requires building design and site development practices that avoid or minimize impacts on resources in the overlay and in Oaks Bottom. Condition F precludes all permanent disturbance within the River overlay and therefore, avoids permanent impacts within the overlay. Watershed health is further protected by stormwater management regulations. Finally tree and vegetation removal is regulated by the River overlay regulations and by the City's tree code at Title 11.

For these reasons, the Council finds that to the limited extent these policies are relevant to this decision, the Amendments as conditioned, 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.*

As discussed at length earlier in these findings, the steeply sloped areas on the western portion of the West Property are mapped as high and moderate shallow landslide susceptibility areas. The portion of the West Property at the top of the slope that is currently developed is primarily mapped as low susceptibility to shallow landslide.

As discussed and addressed in the findings under Statewide Planning goal 7, many public comments raised general concerns about slope stability and referenced historic landslides both along the adjacent bluff and in Oregon City. As discussed in the findings under Goal 7, and

incorporated herein, the applicant's geotechnical expert submitted a letter based upon site-specific analysis that identified distinctions between the West Property and historic landslides identified in comments. The letter also confirmed development at the West Property can be safely accomplished by providing engineered solutions to mitigate potential slope instability including a setback from the top of the bluff, appropriate stormwater management, specialized foundation systems for building near the top of the bluff, and ground improvements that reinforce the soil. As explained above, the engineering solutions identified must be evaluated prior to development on the West Property and are further supported by Conditions A, B and F of this decision. Therefore, the Council finds that the Amendments as conditioned, effectively encourage development and site-management approaches that reduce the risks and impacts of a potential landslide on or near the West Property in support of Policy 4.81.

In its testimony SMILE specifically argues that Policy 4.79 has a higher standard for risk management than that imposed by the landslide hazard mapping. The Policy does call for the City to limit development in or near areas prone to natural hazards, which would include landslide hazards. However, the policy does not prohibit development in or near areas prone to hazards. Instead, this policy is implemented through the adoption of the land use code and building code provisions that require site specific evaluation consistent with Policy 4.80 that effectively limits development in hazard areas. As addressed above, the evaluation that will occur at the time a building is proposed must comply with the regulations and code requirements adopted by the City to implement Policy 4.79. Furthermore, proposed redevelopment on the West Property under the existing CM1 zone would be subject to the same regulations and code provisions. However, development under the existing CM1 designation would not be subject to the Condition F that precludes permanent disturbance within the River overlay that covers all of the high susceptibility area and the majority of the moderate susceptibility area. Therefore, then comparing the Amendment on the West Property, as conditioned, to the existing zoning, the Council finds the Amendment more strictly limits development in hazard prone areas in support of Policy than the existing designation that is not subject to a River overlay condition.

As noted above, the Council also received testimony suggesting that the Amendments would result in additional trash or other debris being deposited on the steep slopes of the West Property which would result in slope instability. However, even if illegal dumping is an issue in the area generally, the comments offer no evidence to support the speculation that the Amendments would result in an increase in dumping on the West Property.

The Council finds that the applicant provided expert testimony based upon site-specific evaluation that adequately demonstrated that development on the site can be safely accomplished and that risks created by potential slope instability can be minimized. Additionally, future development must comply with the codes and regulations adopted by the City to protect people and property from natural hazards. Those codes and regulations support and implement Policies 4.79, 4.80, and 4.81.

For the reasons set forth above and in the Statewide Planning Goal 7 findings, the Council finds that the Amendments as conditioned, are equally or more supportive of Policies 4.79, 4.80, and 4.81 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 Amendments will facilitate development of medium-density multi-dwelling housing on the East Property and higher-density multi-dwelling housing on the West Property. The Amendments will 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 Amendments allow a needed housing type at densities consistent with the size and location of each property.

While no development was proposed with the application, the Council finds the Amendments will facilitate multi-dwelling housing that will result in additional affordable residential units through the IH requirements of Zoning Code Chapter 33.245. As discussed above, under the current regulations there are various on-site and off-site options for meeting the IH regulations. The on-site options generally result in either 10 percent of the units affordable to people and families making 60 percent of the area median family income or 20 percent of the units affordable to people and families making 80 percent of the area median family income. The total number of affordable units that will be developed is unknowable and will be affected by the conditions limiting height and massing. However, the Council finds that the increased density available in the Properties as a result of the Amendments will result in a positive contribution to the number of affordable units available in the community and that that increase will help remove disparities in housing and add to the supply of housing available to all residents vulnerable to increasing housing costs.

SMILE testified that the development following the Amendments would be minor compared to the available zoned capacity in the neighborhood. However, the record shows SMILE significantly underestimated the number of total units and affordable units that would be allowed on the Properties. More importantly, the Council finds that any increase in the supply of overall multi-dwelling housing and affordable housing in this neighborhood supports the above-referenced housing goals and implementing policies. As noted above, multi-dwelling housing is also 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, the Council finds the Amendments are 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 will 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 less than  $\frac{3}{4}$  of a mile

to the north of the Properties. For these reasons, the request is supportive of this goal as implemented through the policies addressed below.

SMILE cited Goal 5.C in the concerns it raised about landslide hazards and claimed that the housing provided will not be safe. SMILE also identified Goal 5.B above arguing that housing available on the Properties would be less equitable for people of color because of safety concerns. As discussed in detail in the findings related to natural hazards above which are incorporated herein by reference, based upon the expert testimony from the applicant's geotechnical consultant and after review of the information regarding landslide hazards in the record, the Council finds that the applicant has demonstrated that it is feasible to provide safe housing on the Properties and that the safety of specific development proposed in the future will be evaluated to ensure that it satisfies regulations and building codes adopted to protect resident health and safety.

The Council finds the Amendments are more supportive of this goal as implemented through the policies addressed below than the existing designations.

***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 Amendments shift the focus of future development to multi-dwelling development opportunities. The increased capacity will 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, the Amendments create an opportunity to provide needed higher-density housing without demolishing existing housing supply. Therefore, the Council finds the 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 and approved projects. 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 Council finds the 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 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. The densities allowed under the Amendments increases the possibility of additional affordable residential units available to protected classes through the IH regulations in an inner neighborhood that historically been dominated by single-dwelling units. For these reasons, the Council finds the 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 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. Development of higher density housing that triggers the IH program will result in additional affordable residential units that create more opportunities for lower-income Portlanders to find safe and affordable housing in an opportunity area. The site is not currently developed with any housing, so the Amendments and any resulting development will not cause immediate displacement. For these reasons, the Council finds the Amendments are 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 several blocks 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 will create an opportunity for a cohesive development under a common set of standards. Additionally, the West Property and the existing RM4 property to the north 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 will have reduced impacts on the surrounding neighborhood. The Council finds that the condition limiting height on the West Property to 65 feet strikes an appropriate balance between allowing increased density to support

the City's overall housing and affordable housing policies and limiting the impacts on the surrounding established neighborhood to support compatibility policies.

Finally, the applicant's request indicated that the RM4 designation would allow a density similar to what would be spread across the West Property under the existing zones if not for the presence of the River overlay and steep slope to the west. Once again, the overall density allowed is reduced by the height condition. Nonetheless, the amendment to the West Property will 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 Council finds the Amendments are more supportive of this policy than the existing designations.

SMILE argued that the Comprehensive Plan Amendments do not satisfy Policy 5.23 because the Properties are located 900 feet from the northern boundary of the Sellwood-Moreland neighborhood center. First, as noted above, the Council finds that it is not necessary to "satisfy" each policy in order to find that the requested Comprehensive Plan Amendment meets PCC 33.810.050.A.1. Second, Policy 5.23 does not limit higher-density housing to centers, but encourages higher-density housing in and around those areas. The Council finds that the Properties are sufficiently close to be around the identified center.

***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 decision.

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

There are currently no single-dwelling homes located on the Properties and therefore, the Amendments will not impact single-dwelling home preservation. While single-dwelling homes will be permitted uses in both the RM4 zone on the West Property and the RM2 zone on East Property, the Amendments are unlikely to result in future single-dwelling home development because of the size of the lots, minimum density requirements, and the expanded residential uses allowed in the multi-dwelling zones. As a result, the Amendments are less supportive of this Policy than the existing single-dwelling designation on the East Property. However, because of the abundance of single-dwelling homes in the area and the strong support for other policies, on balance, the Council finds that the Amendments are still equally or more supportive of the Comprehensive Plan as a whole than the existing designations.

***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.

There is not a specific development plan for the Properties at this time. However, the Amendments will facilitate additional multi-dwelling housing in an area that has multiple opportunities for healthy lifestyles and active living. The Properties are located in an area that is well suited to pedestrian and bicycle activities. Residents of future developments will also be in close proximity to the Oaks Bottom trailhead which connects to the Springwater Corridor and the larger network of pedestrian paths and bikeways connected to the corridor.

SMILE cited this standard to support its position that the Amendments fail to provide safe housing. As noted above, many others who testified in opposition to the Amendments raised concerns about resident safety due to landslide hazards. As discussed in detail in the findings

related to natural hazards above which are incorporated herein by reference, based upon the expert testimony from the applicant's geotechnical consultant and after review of the information regarding landslide hazards in the record, the Council finds that the applicant has demonstrated that it is feasible to provide multi-dwelling housing on the Properties that protects the health and safety of residents and that the safety provided by specific development proposed in the future will be evaluated to ensure that it satisfies regulations and building codes adopted to protect resident health and safety.

For these reasons, The Council finds the Amendments are equally or more supportive of this policy as than the existing designations.

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

There is not a specific development plan for the Properties at this time. However, any new housing development on the Properties will be subject to current building code requirements and will be developed with new building materials that are required to be free of lead and asbestos pursuant to current laws and building requirements. In contrast, while not housing, the current building on the West Property was built when there were fewer restrictions on building materials. SMILE cites this policy to support their arguments related to landslide hazard safety. This policy specifically refers to health and safety of residents from building materials as opposed to natural hazards. Nonetheless, for the reasons set forth above, the Council also finds that the Amendments are generally protective of resident healthy and safety in both contexts.

Therefore, the Council finds the Amendments are equally or more supportive of this policy as than the existing designations.

***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 multifamilyhousing.*

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 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 record shows that from the west edge of the Western Property, the width of the River overlay varies from approximately 101 feet to 118 feet. The River overlay regulations will push development away from the slope and away from Oaks Bottom. Under the River overlay regulations development within the overlay area generally must either satisfy objective standards or be approved through a discretionary River Review process. To further ensure that impacts are limited within the River overlay area, the Council has imposed condition F which prohibits permanent disturbance within the River overlay. This condition effectively creates a buffer of over 100 feet between the edge of the Oaks Bottom area and any building footprint or permanent development footprint. It also protects the steeper slopes on the West Property that are currently undeveloped from permanent development. The condition retains an opportunity for a residential project concentrated on the upland portions of the West Property that are already impacted and developed and avoids and/or substantially minimizes impacts on the resources in the River overlay areas and the sensitive wildlife and river resources west of the property boundary.

As addressed in the implementing regulations below, the Council has also included a condition of approval that requires new development on the West Property to comply with the River overlay's Bird-Safe Glazing standards on the exterior of west-facing facades to provide additional protections to avian wildlife in and near Oaks Bottom. As conditioned, the Council finds the Amendments are 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.

SMILE, other organizations, and many members of the public who commented in opposition to the Amendments raised both general and specific concerns about the impacts of development on the West Property on natural resources and wildlife both on the steep slopes of the West Property and in the Oaks Bottom area. For the reasons set forth above, the Council finds that the Amendments, as conditioned, are supportive of the general environment and watershed health goals identified above and the relevant implementing policies. Specific arguments and concerns are discussed in greater detail below under specific implementing policies.

The Council finds Amendments 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 will 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.

SMILE generally cited this policy as part of its arguments related to impacts on Oaks Bottom. However, in addition to compliance with the codified regulations, the Council has imposed two specific conditions that directly support the City's efforts to protect air, water, and soil quality: 1) Condition F, which prohibits permanent disturbance within the River overlay of the West Property, and 2) Condition G, which requires new development on the West Property to comply with Bird-Safe Glazing regulations on the western façade. Neither of these conditions would apply to new development on the West Property under the existing CM1 zone. The decision also includes specific stormwater management conditions, Condition A, that address site specific issues and will help ensure compliance with the City's adopted SWMM. Collectively with the codified regulations adopted to implement Policy 7.1, the identified conditions support efforts to protect air, water, and soil quality, and the associated benefits.

For these reasons, the Council finds the Amendments are equally or more supportive of this policy than existing designations.

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

The Council finds that this policy is not directly applicable to these Amendments. However, it was cited by SMILE to support their arguments related to the potential degradation of Oaks Bottom as a result of the Amendments. SMILE did not specify how considering the benefit of healthy ecosystems is relevant to the Amendments, but it seemingly relates to concerns about impacts on the health of the unique ecosystem in Oaks Bottom. As discussed above, the health of ecosystems generally was considered by the City in the implementation of the River overlay zone boundaries and the adoption of the River overlay regulations, and the other citywide regulations identified above, including the stormwater regulations and the tree preservation requirements of Title 11. The Council more specifically considered the Oaks Bottom ecosystem in applying condition F to further limit development in the River overlay beyond general regulations and limitations imposed by the overlay. As noted above, the Condition effectively creates a buffer more than 100 feet in width between new development on the West Property under the RM4 zone and the Oaks Bottom boundary.

For these reasons, to the extent that Policy 7.3 is relevant, the Council finds that the Amendments as conditioned, 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 will be subject to the River overlay requirements which will result in the avoidance or minimization on impacts to the designated corridor area. Condition F provides further protections of the identified habitat corridor by prohibiting permanent disturbance within the River overlay area that could impede habitat movement. The habitat corridor area on the Property is also connected to the Oaks Bottom habitat area further west. In response to concern about bird movement within and around Oaks Bottom and the corridor, the Council has imposed Condition G, which requires new development to comply with the existing Bird-Safe Glazing standards to reduce the risk of bird injury and fatality due to bird strikes. The Council finds that both existing regulations adopted to implement this policy and the site-specific habitat related conditions imposed support this policy and efforts to improve habitat connectivity.

For these reasons, the Council finds the 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.

The Friends of Oaks Bottom specifically identified concerns about tree removal on the West Property as a result of the Amendments. SMILE and other public comments raised general concerns about tree and vegetation removal. Comments related both to resource and habitat impacts and to landslide hazard concerns. As the applicant noted in testimony, the upland portion of the West Property located outside of the River overlay is currently developed with a two story office building and surface parking. Therefore, tree removal within the areas of the West Property available for development under the River overlay regulations and specific conditions of these Amendments will be limited. Any proposed tree removal related to future development of the West Property, under either the existing CM1 zone or the approved RM4 zone, would be subject to the Title 11 and River overlay tree preservation regulations identified above. Under the proposed amendments the potential for tree removal within the currently undeveloped River overlay area is further limited by Condition F. The Council finds that these regulatory and site-specific protections support efforts to improve the quantity and quality of trees in the most sensitive area of the West Property and the site-specific conditions imposed through these Amendments will improve those efforts within the River overlay area of the West Property.

For these reasons, the Council finds the amendments are equally or more supportive of this policy and sub-policies 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 natural hazards conditions of the West Property and evaluation and mitigation of those hazards through the Amendments is addressed in detail under Statewide Planning goal 7 and the Chapter 4 and Chapter 5 policies related to natural hazards and housing safety. Those findings are incorporated herein by reference. However, generally, the western portion of the West Property is located on steep slopes and is within areas identified as high and moderate susceptibility to shallow landslides. 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.

The applicant provided expert testimony that indicated that it is feasible to safely develop the upland area of the West Property through engineered solutions to mitigate potential slope instability. One of the identified mitigation measures is future development compliance with the Stormwater Management Manual for landslide hazard areas to confirm that the stormwater management approach is appropriate for the site. The current building on the West Property was constructed prior to implementation of current stormwater control regulations. Therefore, 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. The applicant's expert testified that compliance with current stormwater management regulations will reduce landslide hazard risks on the steeply sloped areas.

For these reasons and other reasons identified in the findings above related to landslide hazards, the Council finds the Amendments as conditioned, are equally or more supportive of this policy than existing designations.

***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.*

This policy is implemented on the West Property through the River overlay areas on the western and central portions of the property. Those overlays include regulations designed to protect the quantity, quality and function of the significant habitat and riparian corridor areas identified on the West Property, as well as providing a buffer and additional protections for the riparian, wildlife habitat, and vegetation areas on the open space and river areas west of the West Property boundary. As detailed in the findings above and incorporated herein by reference, any future development on the West Property must comply with the River overlay regulations within the overlay areas of the property. The Council has further enhanced the protections of the River overlay through the imposition of Condition F, which prohibits permanent disturbance area within the River overlay area located on the West Property. There are no inventoried resource areas located on the East Property. Therefore, the Council finds the Amendments, as conditioned are equally or more supportive of this policy than existing designations.

SMILE cited this policy related to Oak Bottom and several public comments raised general concerns about the impacts to wildlife habitat. For the reasons set forth above and in findings for other, related Chapter 7 policies, the Council finds that the Amendments support wildlife and habitat protection policies through a combination of compliance with adopted habitat related regulations, including the River overlay regulations, and the site-specific conditions that will avoid permanent disturbance in sensitive habitat areas on-site. The Friends of Oaks Bottom submitted a comment that specifically stated that many amphibians, including the Threatened red-legged frog use the uplands in the dry season, and provided a graphic that indicated that red-legged frogs are one of the species that call Oaks Bottom home. Friends of Oaks Bottom did not provide evidence that red-legged frogs or any other threatened species use the West Property uplands for habitat. Additionally, the majority of the upland area on the West Property that would be developed in the future under these Amendments as a result of the River overlay and Condition F is currently developed with structure and parking areas that provide little habitat. Friend of Oaks Bottom and others also raised concerns about impacts on bird species from potential bird strikes with a building at the top of the bluff. Because of these concerns and the proximity of the West Property to Oaks Bottom, the Council has imposed Condition G, which requires that all new development on the West Property comply with the City's Bird-Safe Glazing standards on the exterior of the west facades. While this condition is unlikely to eliminate bird strikes, it provides additional protections not otherwise required for buildings in this area by the code on the side of the building closest to Oaks Bottom.

For these collective reasons, the Council finds the Amendments as conditioned, are equally or more supportive of this policy than existing designations.

***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.*

This regulatory hierarchy is applied in the River overlay regulations that will apply to any development proposed within the River overlay area of the West Property. It is also applied through other regulations that will apply at the time of development, including tree preservation regulations. In this case, the Council has provided additional assurances that permanent development will satisfy the highest priority in the hierarchy within the River overlay because Condition F effectively requires that all permanent development avoid the River overlay area of the



West Property. That level of avoidance would not be required if the West Property were developed under the existing zoning designation. Therefore, the Council finds that the Amendments as conditioned, are equally or more supportive of this policy than the 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 Multi-Dwelling- Corridor and Multi-Dwelling – Urban Center designations correspond to the RM2 and RM4 multi-dwelling residential zones, respectively. To the extent 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 in the findings below, Council finds the approval criterion in Zoning Code Section 33.855.050.B are met for each of the factors mentioned in Goal 8.9 and the goals and policies above. Therefore, Council finds the Amendments are equally supportive these goals and policies as the existing designations.

**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, Council finds the 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 Comprehensive Plan Amendments will 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, Council finds the 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 new designations will 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 Council finds that the 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 landuses.*

**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 will 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, Council finds the Amendments are equally supportive of Policies 8.87, 8.104, and 8.106 as the existing designations.

**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.

Several project opponents raised general concerns about increased traffic and traffic safety in the area as a result of the Amendments. However, none of the traffic related comments acknowledged the applicant's transportation impact study or PBOT's conclusion, or identified specific Comprehensive Plan policies that the Amendments were less supportive of than existing designations. Therefore, the general concerns related to increased traffic and traffic safety do not alter the Council's conclusion below.

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

#### **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, the Council 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 Properties are located 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 stormwater management; step-down heights for future development; overall height limit of 65 feet on the RM4 parcels; and the requirement of discretionary Design Review; on balance, the proposed designations will effectively and efficiently advance the goals and policies of the Comprehensive Plan. Council finds the proposal equally supports Goal 10.A and Policy 10.1.

SMILE argues that the MD-U Comprehensive Plan designation cannot be applied to the West Property because it does not strictly comply with the designation description above. The Council disagrees. First, the Council finds that neither the description in policy provided above nor the general characteristic statement for the corresponding RM4 zone in the Portland Zoning Code are approval criteria for this application. Instead, they provide general descriptions and characteristics statements for properties typically included in the zone. As provided in the Staff Report, the RM4 zoning designation is applied in multiple areas of the City that are not strictly consistent with the description and characteristic statement. 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 in Gateway. More importantly for this decision, the RM4 zone is already applied along SW Milwaukie Avenue directly north of the West Property and on the east side of the street to the northwest of the West Property. SMILE offered explanations about why they believe the zone was applied or remains. However, even if accurate, they do not alter the fact that those properties are currently zoned RM4. The City made decisions deemed to be consistent with the Comprehensive Plan in applying and maintaining the zone in this area.

Second, the Council finds that the West Property is consistent with the majority of the elements of the MD-U designation description and the RM4 characteristic statement. It is located at the edge of the Inner Ring of the Central City to the north and within a 5-10-minute walk of the Sellwood-Moreland Town Center boundary to the south. It is also located along a designated bikeway, is a block from multiple bus stops in an area currently mapped by PBOT for frequent service, and less than a 15-minute walk to a high-capacity transit station to northeast. The fact that the Properties

are also close to other urban center further reinforces that a higher-density residential corridor that helps connect the two centers is appropriate.

Finally, 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 will 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 will 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 mapped 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 Council finds the 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 West Property is within the City's Urban Services Boundary. The applicant proposed 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 proposed a quasi-judicial Zoning Map Amendment to apply the RM4 base zone to the West Property. 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. However, this approval includes a condition of approval that limits height on the West Property to 65 feet, the maximum height allowed in the RM3 zone. The conditions also require additional step-down height limits along parts of SW Milwaukie Avenue. Therefore, while the RM4 is the most appropriate zone, the conditions will effectively reduce mass and intensity of development in recognition of other nearby zoning designations.

No changes to the River overlay zoning were requested. The applicant proposed removal of 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 proposed adding the “d” Design overlay on any parcels that do not have it yet, because RM4 is always applied with the Design overlay. Several opponents testified that the geohazard protections of the Constrained Sites overlay zone should not be removed from the West Property. However, as noted, pursuant to the Zoning Code, the Constrained Sites overlay zone only applies to single-dwelling zones and therefore cannot be maintained on the west Property once the RM4 designation is applied. Furthermore, the condition prohibiting permanent disturbance in the River overlay areas that largely coincide with the high and moderate shallow landslide areas and the requirement for project specific evaluation and mitigation at the time of building permit provides the same or higher level of protection against geohazard for future development on the West Property than the Constrained Sites overlay.

#### *East Property*

The East Property is within the City’s Urban Services Boundary. The applicant proposed a Comprehensive Plan Map Amendment on the East Property to the Multi-Dwelling – Corridor designation. Concurrently with this Comprehensive Plan Map Amendment, the applicant proposed 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 proposed addition of the “d” Design overlay to the East Property. Not all properties with this zoning designation have the Design overlay, but all in the surrounding 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 were proposed.

For both properties, the approval criteria for the Zoning Map Amendment request are in Zoning Code Section 33.855.050, and as addressed below, Council 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, Council finds these approval criteria can be met.

For these reasons, Council finds the Amendments are equally supportive of Policies 10.2 and 10.3 as the existing designation.

**Summary for Zoning Code Section 33.810.050.A.1:** As demonstrated in the above findings, the Council has evaluated the requested Comprehensive Plan designations for both the West Property and the East Property against relevant Comprehensive Plan policies and on balance finds that, with the conditions of approval described above and presented below, the requested designations are more supportive of the Comprehensive Plan as a whole than the old designations. As noted under each relevant policy above, the Council finds the proposed Comprehensive Plan Map designations for the Properties are equally or more supportive of the majority of relevant policies of the Comprehensive Plan than the current designations. For the reasons set forth above, the Council 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 Council finds the Amendments are consistent with Statewide Land Use Planning Goals. Therefore, the Council finds 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 PlanMap 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 Amendments are not changing 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 will 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 17<sup>th</sup> 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 Council finds that the proposed RM4 zone is the most appropriate zone for the West Property. The Council further finds that the conditions of approval that limit the height on the West Property to 65 feet, which is consistent with the maximum height in the RM3 zone, and require step-downs from single-dwelling residentially-zoned areas appropriately take into consideration the zoning of the surrounding area and further supports that the application of the RM4 zone on the West Property, as conditioned, is the most appropriate zone.

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, the Council finds this criterion is met for the East Property.

For these reasons, the Council finds the Amendments 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, the Council 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 0.25cfs 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 overtime)...*

*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, Council 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:** The applicant submitted a transportation study prepared by Kittelson & Associates with

the original application that addressed transportation capacity impacts, transit availability and impacts, bicycle system availability and impacts, pedestrian system availability and impacts, and consistency with the Portland Transportation System Plan projects. PBOT reviewed the application materials 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**

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

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, 10<sup>th</sup> 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 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.<sup>1</sup> 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, 82<sup>nd</sup>, Woodstock, Bybee, Milwaukie, Powell, 5<sup>th</sup>/6<sup>th</sup>, 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 (12<sup>th</sup>/NE 33<sup>rd</sup> Ave) connects “the Sunderland neighborhood, SE Portland, Sellwood and Milwaukie, via 33<sup>rd</sup>, Columbia, Broadway, 21<sup>st</sup>, Multnomah, 11<sup>th</sup>/12<sup>th</sup> and 17<sup>th</sup>.” 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 17<sup>th</sup> 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 17<sup>th</sup> 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 17<sup>th</sup> 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 17<sup>th</sup> 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 14<sup>th</sup>/SE 15<sup>th</sup> 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 worst case scenarios under the existing and proposed zoning for both properties, the estimated vehicular trip increase associated with the proposed rezoning 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 rezoning would not generate additional transit trips. However, given the minor increase in daily trips associated with the "reasonable worst 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 17<sup>th</sup> 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 17<sup>th</sup> 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 14<sup>th</sup>/SE 15<sup>th</sup> 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.*

Several public comments were submitted into the record that raised general concerns about increased traffic on the surrounding street system. However, none of the comments specifically identified or addressed the applicable evaluation required by the TPR for significant impacts on the surrounding transportation system. As PBOT explained, the evaluation required for a zone change is not whether development under the new zone will result in additional trips on the system. Instead, the evaluation requires a comparison of the reasonable worst case development scenario under the existing zoning and the reasonable worst case development scenario under the proposed zoning.

As explained in PBOT’s response above based upon the evaluation provided by the applicant’s expert traffic consultant, PBOT concluded that the Amendments would not significantly affect the transportation system. The Council agrees with that conclusion. Council recognizes that the size assumptions in the applicant’s West Property and East Property comparison charts were provided with the application, and therefore do not account for the West Property height limit or other conditions that limit massing on the Properties. However, to the extent those conditions alter the information provided in the comparison charts, they reduce the number of units that can be built under a reasonable worst-case scenario for the new zoning designations and thus further reduce the delta between the reasonable worst-case scenario under the existing zoning and the new zoning, which in turn further supports the conclusion that the Amendments will not significantly affect the transportation system as required by the TPR. For these collective reasons, the Council finds this criterion is 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. The Council finds 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:** The applicant proposed changes to two overlay zones for the site overall: application of the Design overlay where it is not applied currently, and removal of the Constrained Sites overlay from the single-dwelling R5 parcels on the west side of the West Property.

#### *Design Overlay*

The lots zoned CM1 on the West Property had the "d" Design overlay at the time of the application, but the R5 and R2.5 lots did not. RM4 is always applied with the Design overlay; therefore, it was proposed on all lots to be rezoned to RM4 that didn't already have it. The Design overlay was 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 RM2 properties in the surrounding 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 is consistent with the zoning pattern and avoids 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 had the “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 was proposed to be removed from the lots with the base zone change away from those single-dwelling designations.

Some public comments objected to the concept of removing the z overlay. However, as noted, it is an overlay that exclusively applies to single-dwelling zoning designations and therefore, retaining the overlay with the RM4 designation would conflict with the code. Additionally, the lots with the z overlay are also located within the River overlay areas that remain on the West Property. Therefore, the condition of approval that prohibits permanent development within the River overlay areas of the West Property provides even more robust protection of the area against development than the z overlay. Finally, staff testified at the Council hearing that this designation was to be removed from these lots regardless as part of another legislative project.

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. Condition F provides additional assurances that permanent disturbance will not occur within the River overlay areas of the West Property.

For these reasons the Council finds that the changes to the zoning overlays are not arbitrary but are guided by the base zones and the local context. Council 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. In addition to approving the addition of the Design overlay, this decision includes a condition that requires the discretionary Design Review process for initial redevelopment of the Properties. This condition further ensures that redevelopment of the Properties is consistent with the purpose of the Design overlay.

For these reasons, the Council 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. The remaining River overlays continue to be applied over almost all of the three R5 parcels included in the West Property. Condition F will prohibit any permanent disturbance within the River overlay area of the West Property. Any temporary disturbance proposed within the River overlay area will either need to meet the objective standards intended to minimize impacts or receive approval through a discretionary River Review process.

The Council finds that the Constrained Sites overlay must be removed, because it can only be applied with one of the three single-dwelling base zones listed above and retaining the overlay would directly conflict with the purpose statement. The Council further finds that as conditioned, development within the area previously subject to the overlay will not include permanent disturbance which is consistent with the overall purpose of limiting development within the area. For these reasons, Council finds that the removal of the Constrained Sites overlay from the West Property is consistent with its purpose.

For the reasons stated above, Council 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 the identified conditions of approval imposed through this decision, the Council finds that on balance the requested designations are more supportive of the Comprehensive Plan as a whole than the old designations. More specifically and as described above, the Council finds that the Amendments are on balance 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 conditions of approval to ensure the combined sewer system could accommodate the new designations. With the application of the conditions of approval, the Council finds that all applicable approval criteria are met and the requested Amendments are approved.

## **CITY COUNCIL FINAL DECISION**

**It is the decision of the City Council to approve** 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 65 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. Development on the West Property shall not include permanent disturbance area within the River Overlay Zone located on the West Property at the time of this decision.
- G. All new development on the West Property is subject to Bird-Safe Glazing standards of Zoning Code Section 33.475.235 on the exterior of west-facing facades.

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**About this Decision.** This land use decision is **not a permit** for development. Permits may be required prior to any work. Contact the Development Services Center at 503-823-7310 for information about permits.

**APPEAL INFORMATION**

### **Appeals to the Land Use Board of Appeals (LUBA)**

This is the City's final decision on this matter. It may be appealed to the Oregon Land Use Board of Appeals (LUBA), within 21 days of the date of the 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 or this land use review. You may call LUBA at 1 (503) 373-1265 for further information on filing an appeal.

### **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. Hearings Office Exhibits
  - 1. Zoom Participant Instructions
  - 2. Hearing Notice
  - 3. BDS Staff Report
  - 4. Engelsbe Email



5. Revised Staff Report
6. SMILE Testimony
7. Nelson Email
8. Schwartz Email
9. Guptill Email
10. Lanspa Email
11. Scollan Email
12. Colbert Email
13. Fitzpatrick Email
14. Kennedy Email
15. McNamara Email
16. Hansen Email
17. Sweeney Email
18. Carbonneau Email
19. Magee Email
20. Devendorf Email
21. Williams Email
22. Wessell Email
23. Niman Email
24. Houck Letter
25. Ross Email
26. Rogers Email
27. Stein Email
28. Simon Email
29. Barone Email
30. Harris Email
31. Van Dusen Email
32. Godfrey & Link Email
33. Kolstad Email
34. Harvey Email
35. Pizzi Email
36. Lynelle Hansen Email
37. Long Email
38. Audubon Society Email
39. Mosser Email
40. Linda Email
41. Scott Email
42. Davenport Email
43. Ashman Email
44. Forbes Email
45. Forbes Corrected Email
46. Collazo Email
47. Applicants' Maps
48. *(number not used)*
49. MacMillan Testimony
50. Hayes Email
51. Pucik Email
52. Dan Davenport Email
53. Gilevich Letter
54. Welsh & Gilevich Letter
55. Scott Letter
56. Cropsey Email
57. Atwood Email
58. Record Closing Information
59. Schiller Email – submitted after record closed
60. Ritchie Email – submitted after record closed

61. Closing Argument to Hearings Officer

62. Staff Presentation

I. Other Documents