



CITY OF
PORTLAND, OREGON
HEARINGS OFFICE

1900 S.W. 4th Avenue, Room 3100
Portland, Oregon 97201
Telephone: (503) 823-7307
FAX: (503) 823-4347
TDD (503) 823-6868

DECISION OF THE HEARINGS OFFICER

I. GENERAL INFORMATION

File No.: LU 08-111091 ZC (HO 4080012)

Applicant: Genevieve White, Planning Consultant
337 N Baldwin Street
Portland, OR 97217

Owners: Joseph and Hallie Bradford
785 San Bruno Ave.
San Francisco, Ca 94107

Scott C. Clark
15739 SE Flavel Dr.
Portland, OR 97236

Timothy H. and Sandra L Mc Nees
15739 SE Flavel Dr.
Portland, OR 97236

David E. and Cheryl L. Pelto
8238 SE 23rd Ave.
Portland, OR 97202-6812

Hearings Officer: Gregory J. Frank

Bureau of Development Services (BDS) Staff Representative: Sheila Frugoli

Site Address: 8118, 8208, 8228, and 8238 SE 23RD AVE

Legal Description: TL 3000 0.28 ACRES, SECTION 23 1S 1E; TL 3200 0.15 ACRES,
SECTION 23 1S 1E; TL 3100 0.15 ACRES, SECTION 23 1S 1E; TL 1600
0.20 ACRES, SECTION 23 1S 1E

Tax Account No.: R991230200, R991230270, R991230280, R991230430

State ID No.: 1S1E23DD 03000, 1S1E23DD 03200, 1S1E23DD 03100, 1S1E23DD
01600

Quarter Section: 3832

Neighborhood: Sellwood-Moreland

Business District: None

District Neighborhood Coalition: Southeast Uplift

Plan District: None

Zoning: R2, Multi-Dwelling Residential 2,000 zone with the “a”, Alternative Design Density and “d”, Design Review Overlay zones. The site has a Comprehensive Plan Map designation of R1, Multi-Dwelling Residential 1,000 with the d, Design Review Overlay zone.

Land Use Review: Type III, ZC, Zoning Map Amendment

BDS Staff Recommendation to Hearings Officer: Approval

Public Hearing: The hearing was opened at 9:00 a.m. on May 5, 2008, in the 3rd floor hearing room, 1900 SW 4th Avenue, Portland, OR, and was closed at 9:27 a.m. The record was closed at that time.

Testified at the Hearing:

Sheila Frugoli, BDS Staff Representative

Genevieve White, 337 N Baldwin, Portland, OR 97217

Mike Ard, Lancaster Engineering, 321 SW 4th Suite 400, Portland, OR 97204

Mildred White, 731 NE 69th, Portland, OR 97213

Michelle Dewey, Office of Transportation, 1120 SW 5th, Suite 800, Portland, OR 97204

Proposal: The applicant is requesting a Zoning Map Amendment from R2ad, Multi-Dwelling Residential 2,000 zone to R1d, Multi-Dwelling Residential 1,000 zone, with the “d” Design Review Overlay zone. The requested R1d zoning is consistent with the City’s Comprehensive Plan Map designation. The site, which consists of 4 separate lots, is 33,977 square feet and is currently developed with 4 single-dwelling residences. The requested R1 zone would allow up to a maximum of 34 multi-dwelling units. The current R2 zoning would allow up to 17 units on this site.

The applicant states that upon approval, the houses will be removed and the site will be developed with a multi-dwelling residential project. No specific development plan/design is proposed at this time.

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:

- 33.855.050A.-B, Zoning Map Amendment - Approval Criteria for Base Zone Changes

II. ANALYSIS

Site and Vicinity: The site is comprised of 4 lots each developed with single-dwelling homes. The homes reflect the architecture, compact floor plans, and ample yards of the period they were constructed—in the late 1800s and early 1900s. The homes front SE 23rd Avenue. This street is a one-way street (with traffic directed south off SE Tacoma Street). SE 23rd has sidewalks and curbs on both sides of the one-lane roadway. A portion of the site fronts SE Tacoma. SE Tacoma is a 4-lane street with no parking near the SE 23rd Avenue intersection. Approximately, 500 feet to the east of the intersection, is the Tacoma Street overpass and access ramp to SE McLoughlin Blvd.

Immediately south and east of the site is a large multi-dwelling residential development—Tenino Terrace Apartments. The apartment site is zoned R1. Directly west, across SE 23rd Avenue, most of the lots are developed with either duplexes or single-dwelling residences. The properties are zoned R2ad. Large warehouse buildings with industrial/employment uses are located on the east side of SE 23rd Avenue, south of SE Umatilla Avenue.

Current Zoning: R2ad, Multi-Dwelling Residential 2,000 zone with the “a” Alternative Design Density and “d” Design Review Overlay zones.

Proposed Zoning: R1d, Multi-Dwelling Residential 1,000 zone, with the “d” Design Review Overlay zone. The Comprehensive Plan designation includes the Design Review Overlay zone.

Land Use History: City records indicate there are no prior land use reviews for this site.

Agency Review: A “Request for Response” was mailed **March 21, 2008**. The following Bureaus have responded with no issues or concerns (Exhibit E.1):

- Water Bureau
- Fire Bureau
- Bureau of Parks-Forestry Division

The **Bureau of Environmental Services (BES)** responded with the following comment: BES assessed the sewer system available to serve the site and have determined that with appropriate detention (stormwater) requirements, the system has adequate capacity to serve the R1 zone development on the site. Development of the property will be subject to the BES standards and requirements during the building plan review process.

Specifically, there are two public combination pipes adjacent to the site in SE 23rd Avenue, both of which are available to meet the sanitary needs of future development. There is no public storm-

only sewer in the vicinity of the site. Because BDS Site Development finds that on-site stormwater infiltration is not feasible (see below), BES will allow stormwater runoff to be disposed to the combination sewer in SE 23rd Avenue. However, the following must be done to address capacity issues. On-site detention facilities must be used to the maximum extent practicable and the 25-year post-development peak flow must be controlled to the pre-development 10-year peak flow rate. And, BES prefers stormwater to be disposed into the combination main that has its terminus near the northernmost boundary of the site (pipe # ACY792-ACY755). Lastly, for required street improvements, public drainage improvements will be required. BES has no objections to this request and recommends no conditions of approval. (Exhibit E.2)

The **Portland Office of Transportation (PDOT), Bureau of Transportation Engineering** responded with the following comment: Portland Transportation staff reviewed the applicant's submitted trip generation estimates and directional distribution analysis to evaluate potential impacts on the surrounding transportation network. PDOT has determined that the increase in vehicle trips from the zone change will result in minimal increases in traffic on the local street system and at intersections in the area of the zone change. Further, the site is well served by transit service and there are existing sidewalks that provide pedestrian connections to the nearby bus stops. The increase in vehicle trips expected to result from the zone change is small enough that Portland Transportation does not expect the proposal to have significant impacts on the transportation system and therefore concludes that the transportation facilities and capacity are capable of supporting the proposed R1 zone.

When building permits are submitted, PDOT will require the construction of street improvements—the reconstruction of the curb, sidewalk and planter strip, street trees and street lighting along the SE Tacoma and SE 23rd frontages. The work must be completed under a separate street job permit. Lastly, because the SE 23rd Avenue is relatively narrow, at the time the site is developed, PDOT will require the street be posted to restrict parking on the street. On-site parking, at one space per dwelling unit, will be required. (Exhibit E.3)

The **Police Bureau** responded with the following comment: The Police Bureau supports the proposal. (E.4).

The **Site Development Section of BDS** responded with the following comments: Site Development finds that on-site filtration of stormwater is not acceptable at this location due to high groundwater conditions noted in the Geotechnical Engineering Report submitted by the applicant. Stormwater management requirements of BES will apply during the building plan review process. Permits are required for demolition of existing structures and erosion control requirements will apply to requirements for demolition and erosion control requirements will apply to both demolition and new development. (Exhibit E.5).

The **Life Safety Plans Examiner of BDS** responded with the following comments: For buildings located in areas prone to flooding as established by the local jurisdictions, the walls enclosing the under-floor space shall be provided with flood openings in accordance with Section R327.2.2.

(Exhibit E.6) **Staff Note:** *The site is located within the Metro designated potential flood hazard area. However, it is **not** located within the 100-Year Floodplain. Prior to redevelopment, the applicant should contact Life Safety Plans Examiner staff to identify applicable building code requirements.*

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on April 14, 2008. No written responses were received from either the Neighborhood Association or notified property owners in response to the proposal prior to the issuance of the BDS staff report. One letter was received by a concerned neighbor immediately prior to the hearing (Exhibit H.3). The neighbor expressed concerns related to on-street parking, traffic and Johnson Creek flooding. These issues will be addressed in the relevant approval criteria below.

ZONING CODE APPROVAL CRITERIA

33.855.010 Purpose

This chapter states the procedures and approval criteria necessary to process an amendment to the base zones, overlay zones, plan districts, and other map symbols of the Official Zoning Maps. The chapter differentiates between amendments which are processed in a quasi-judicial manner and those processed in a legislative manner. A discussion of quasi-judicial and legislative is found in 33.700.070.

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.

1. 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 of each zone and the zoning pattern of surrounding land.

Findings: The Comprehensive Plan Map designation for Medium Density Multi-Dwelling has one implementing zone, R1, Multi-Dwelling Residential 1,000. Because there is only one zone for this designation, this criterion is not applicable.

2. Where R zoned lands have a C, E, or I designation with a Buffer overlay, the zone change will only be approved if it is for the expansion of a use from abutting nonresidential land. Zone changes for new uses that are not expansions are prohibited.

Findings: The site does not have a commercial, employment or industrial designation and is not zoned with the “b” Buffer Overlay zone. Therefore, this criterion does not apply.

3. When the zone change request is from a higher-density residential zone to a lower-density residential zone, or from the CM zone to the CS zone, then the approval criterion in 33.810.050 A.2 must be met.

Findings: The request does not involve a change from a higher-density residential zone to a lower density residential zone. Nor is the change from the CM to the CS zone. Therefore, this criterion does not apply.

B. Adequate public services. Public services for water supply, transportation system facilities 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, and proposed sanitary waste disposal and stormwater disposal systems are or will be made acceptable to the Bureau of Environmental Services.

1. Adequacy of services applies only to the specific zone change site.
2. Adequacy of services is based on the projected service demands of the site and the ability of the public services to accommodate those demands. Service demands may be determined based on a specific use or development proposal, if submitted. If a specific proposal is not submitted, determination is based on City service bureau demand projections for that zone or area which are then applied to the size of the site. Adequacy of services is determined by the service bureaus, who apply the demand numbers to the actual and proposed services to the site and surrounding area.

Findings: The notified agencies and service bureaus have responded to this request. The full text of each of those responses can be found in the case file under the “E” Exhibits. As identified earlier in this decision, the responses from agencies or bureaus are as follows:

- The PDOT, Bureau of Transportation Engineering reviewed the submitted trip generation and distribution analysis, prepared by Lancaster Engineering. PDOT concurred with the findings of the applicant’s traffic report, which states that the surrounding transportation facilities will continue to operate at acceptable levels. Further, all streets fronting the site—SE 23rd Avenue and SE Tacoma Street are wide enough and will only need reconstruction of the curb and sidewalk components, at time the site is redeveloped. (Exhibit E.3)
- The Bureau of Environmental Services (BES) noted that there are two 8-inch CSP public combination sewer pipes located along the frontage of the site that have capacity to serve the site. On-site stormwater retention facilities will be required before the stormwater may be directed to the combined sewer. (Exhibit E.2)

- The Bureau of Development Services, Site Development responded that the requirements of BES Stormwater Management Manual will apply during building permit review. (Exhibit E.5).
- The Water Bureau responded with no objections or concerns (Exhibit E.1).
- The Fire Bureau responded with no objections or concerns. (Exhibit E.1).
- The Police Bureau responded with no concerns or objections. (Exhibit E.4).

Ms. Muir, a neighbor who submitted a letter immediately prior to the hearing, expressed concerns about on-street parking, traffic, and flooding potential from Johnson Creek. (Exhibit H.3) Ms. Muir stated “at times there is hardly a place to park on the street.” This is a very general comment and not sufficient for the Hearings Officer to find that on street parking in the vicinity of the subject property is not adequate. At the hearing Mr. Ard, traffic engineer for the applicant, testified that his observation of the vicinity indicated adequate on-street parking is available and further that any proposed development at the subject property would include one parking space for each unit.

Ms. Muir (Exhibit H.3) stated that “traffic through this neighborhood is awful. People going west cut-off Tacoma at 23rd, when it backs up and speed up Tenino and Umatilla Streets.” Mr. Ard, applicant’s traffic engineer, testified that “cut-through” traffic can be addressed by traffic calming measures. Ms. Dewey, Portland Transportation, testified that her review of the applicant’s traffic study indicated that there were no intersections or roadways performing below standards. Ms. Dewey testified that there are no transportation facilities operating over capacity and that the addition of the density created by this zone change application would add only minimal increases in traffic on the local street system and at the relevant intersections.

Ms. Genevieve White testified that the subject property is not within the 100-year flood plain.

The Hearings Officer finds, despite Ms. Muir’s comments, that adequate public services are available and this approval criterion is met.

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 request does not include rezoning to the IR zone. This criterion does not apply.

- 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: As explained above, this criterion is not applicable.

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

Findings: The site is located within the City's boundary. This criterion is satisfied.

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.

III. CONCLUSIONS

The applicant is requesting a zoning map amendment to change the existing zoning of R2, Multi-Dwelling Residential 2,000 to R1, Multi-Dwelling Residential 1,000. The proposed zoning is in conformance with the City's Comprehensive Plan designation for this area. City service bureaus have reviewed the application and have confirmed that services are available to serve residential development allowed in the R1 zone. This request meets all of the applicable approval criteria and therefore should be approved.

IV. DECISION

Approval of a Zoning Map Amendment to change the existing zoning of R2ad, Multi-Dwelling Residential 2,000 zone, a, Alternative Design Density Overlay zone and d, Design Review Overlay zone to R1d, Multi-Dwelling Residential 1,000 zone with the d, Design Review Overlay zone, legally described as TL 3000 0.28 ACRES, SECTION 23 1S 1E; TL 3200 0.15 ACRES, SECTION 23 1S 1E; TL 3100 0.15 ACRES, SECTION 23 1S 1E, and TL 1600 0.20 ACRES, SECTION 23 1S 1E and shown on Exhibit B.1.

Gregory J. Frank, Hearings Officer

	<hr/> Date
Application Determined Complete:	March 14, 2008
Report to Hearings Officer:	April 25, 2008
Decision Mailed:	May 6, 2008
Last Date to Appeal:	4:30 p.m., May 20, 2008
Effective Date (if no appeal):	May 21, 2008 Decision may be recorded on this date.

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

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

Appeal of the decision. ANY APPEAL OF THE HEARINGS OFFICER’S DECISION MUST BE FILED AT 1900 SW 4TH AVENUE, PORTLAND, OR 97201 (823-7526). Until 3:00 p.m., Monday through Friday, file the appeal at the Development Services Center on the first floor. Between 3:00 p.m. and 4:30 p.m., file the appeal at the Reception Desk on the 5th Floor. **An appeal fee of \$3,400.50 will be charged (one-half of the application fee for this case).** Information and assistance in filing an appeal can be obtained from the Bureau of Development Services at the Development Services Center.

Who can appeal: You may appeal the decision only if you wrote a letter which is received before the close of the record on hearing or if you testified at the hearing, or if you are the property owner or applicant. If you or anyone else appeals the decision of the Hearings Officer, only evidence previously presented to the Hearings Officer will be considered by the City Council.

Appeal Fee Waivers: Neighborhood associations recognized by the Office of Neighborhood Involvement may qualify for a waiver of the appeal fee provided that the association has standing to appeal. The appeal must contain the signature of the Chair person or other person authorized by the association, confirming the vote to appeal was done in accordance with the organization’s bylaws.

Neighborhood associations, who wish to qualify for a fee waiver, must complete the Type III Appeal Fee Waiver Request for Organizations Form and submit it prior to the appeal deadline. The

Type III Appeal Fee Waiver Request for Organizations Form contains instructions on how to apply for a fee waiver, including the required vote to appeal.

BDS may also grant fee waivers to low income applicants appealing a land use decision on their primary residence that they own in whole or in part. In addition, an appeal fee may be waived for a low income individual if the individual resides within the required notification area for the review, and the individual has resided at that address for at least 60 days. Individuals requesting fee waivers must submit documentation certifying their annual gross income and household size (copies of tax returns or documentation of public assistance is acceptable). Fee waivers for low-income individuals must be approved prior to filing your appeal; please allow three working days for fee waiver approval.

Recording the final decision.

If this Land Use Review is approved the final decision must be recorded with the Multnomah County Recorder. A few days prior to the last day to appeal, the City will mail instructions to the applicant for recording the documents associated with their final land use decision.

- A building or zoning permit will be issued only after the final decision is recorded.

The applicant, builder, or a representative may record the final decision as follows:

- **By Mail:** Send the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to:
Multnomah County Recorder, P.O. Box 5007, Portland OR 97208. The recording fee is identified on the recording sheet. Please include a self-addressed, stamped envelope.
- **In Person:** Bring the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to the County Recorder's office located at 501 SE Hawthorne Boulevard, #158, Portland OR 97214. The recording fee is identified on the recording sheet.

For further information on recording, please call the County Recorder at 503-988-3034
For further information on your recording documents please call the Bureau of Development Services Land Use Services Division at 503-823-0625.

Expiration of this approval. An approval expires three years from the date the final decision is rendered unless a building permit has been issued, or the approved activity has begun.

Where a site has received approval for multiple developments, and a building permit is not issued for all of the approved development within three years of the date of the final decision, a new land use review will be required before a permit will be issued for the remaining development, subject to the Zoning Code in effect at that time.

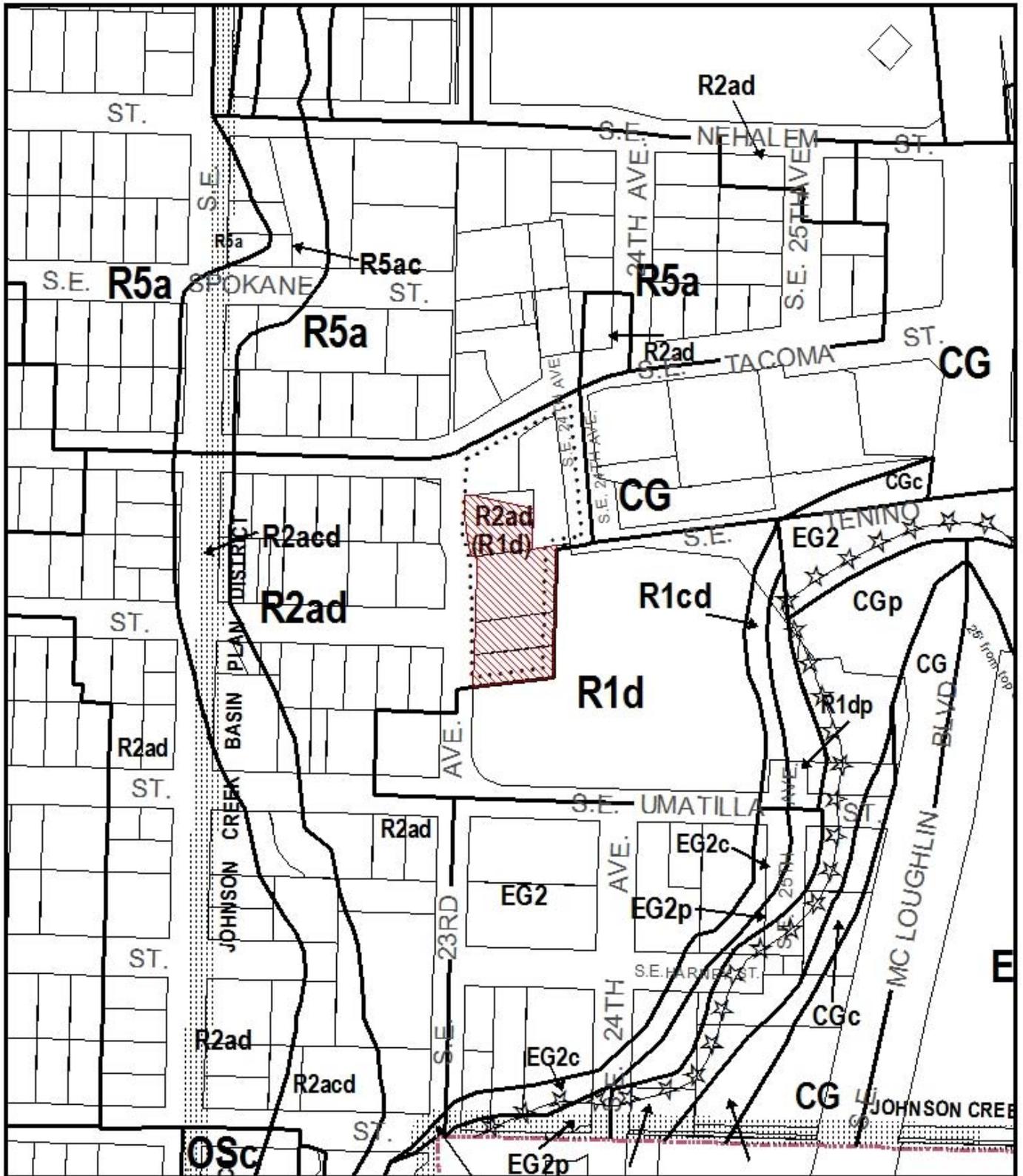
Zone Change and Comprehensive Plan Map Amendment approvals do not expire.

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

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

EXHIBITS
NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
 - 1. Response to Approval Criteria
 - 2. Stormwater Destination/Disposal
 - 3. Geotechnical Engineering Report, from Geotech Solutions
 - 4. Traffic Impact Analysis, from Lancaster Engineering
 - 5. 120-Day Waiver
- B. Zoning Maps
 - 1. Existing Zoning (**attached**)
 - 2. Proposed Zoning (**attached**)
- C. Plans & Drawings
 - 1. Site Plan (**attached 8 ½ x 11**)
- D. Notification information
 - 1. Request for response
 - 2. Posting letter sent to applicant
 - 3. Notice to be posted
 - 4. Applicant's statement certifying posting list
 - 5. Mailed notice
- E. Agency Responses
 - 1. Water Bureau, Fire Bureau, Bureau of Parks, Forestry Division – TRACS Response
 - 2. Bureau of Environmental Services
 - 3. Bureau of Transportation Engineering and Development Review
 - 4. Police Bureau
 - 5. Site Development Review Section of Bureau of Development Services
 - 6. Life Safety Plans Examiner Section of Bureau of Development Services
- F. Letters: None
- G. Other
 - 1. Original LUR Application
 - 2. Site History Research
- H. Received in the Hearings Office
 - 1. Hearing notice, Frugoli, Sheila
 - 2. Staff report, Frugoli, Sheila
 - 3. 5/2/08 Memo, Muir, Andrea



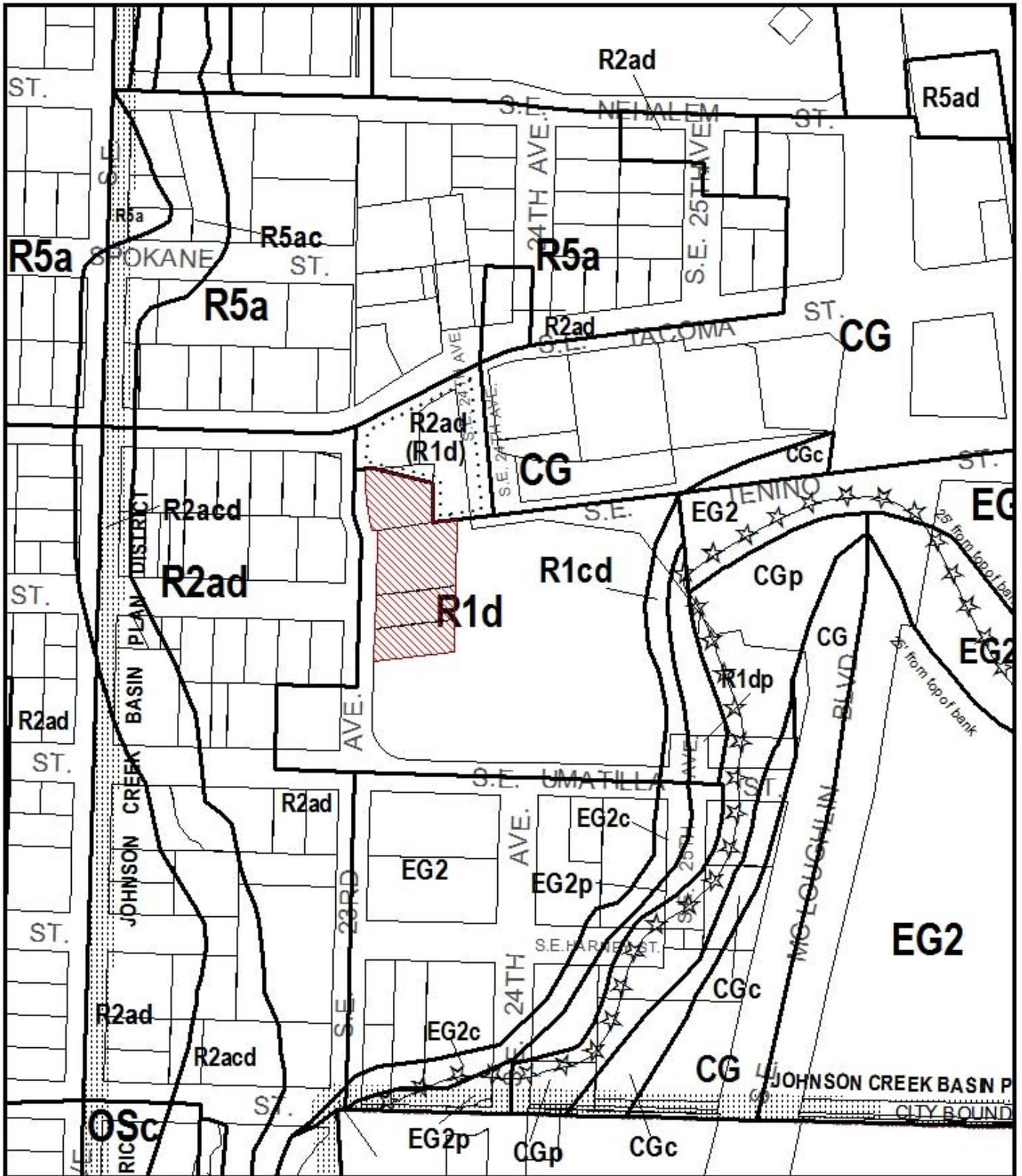
ZONING

Site



This site lies within the:
JOHNSON CREEK BASIN PLAN DISTRICT

File No.	LU 08-111091 ZC
1/4 Section	3832
Scale	1 inch = 200 feet
State_Id	1S1E23DD 3000
Exhibit	B (Feb 26, 2008)



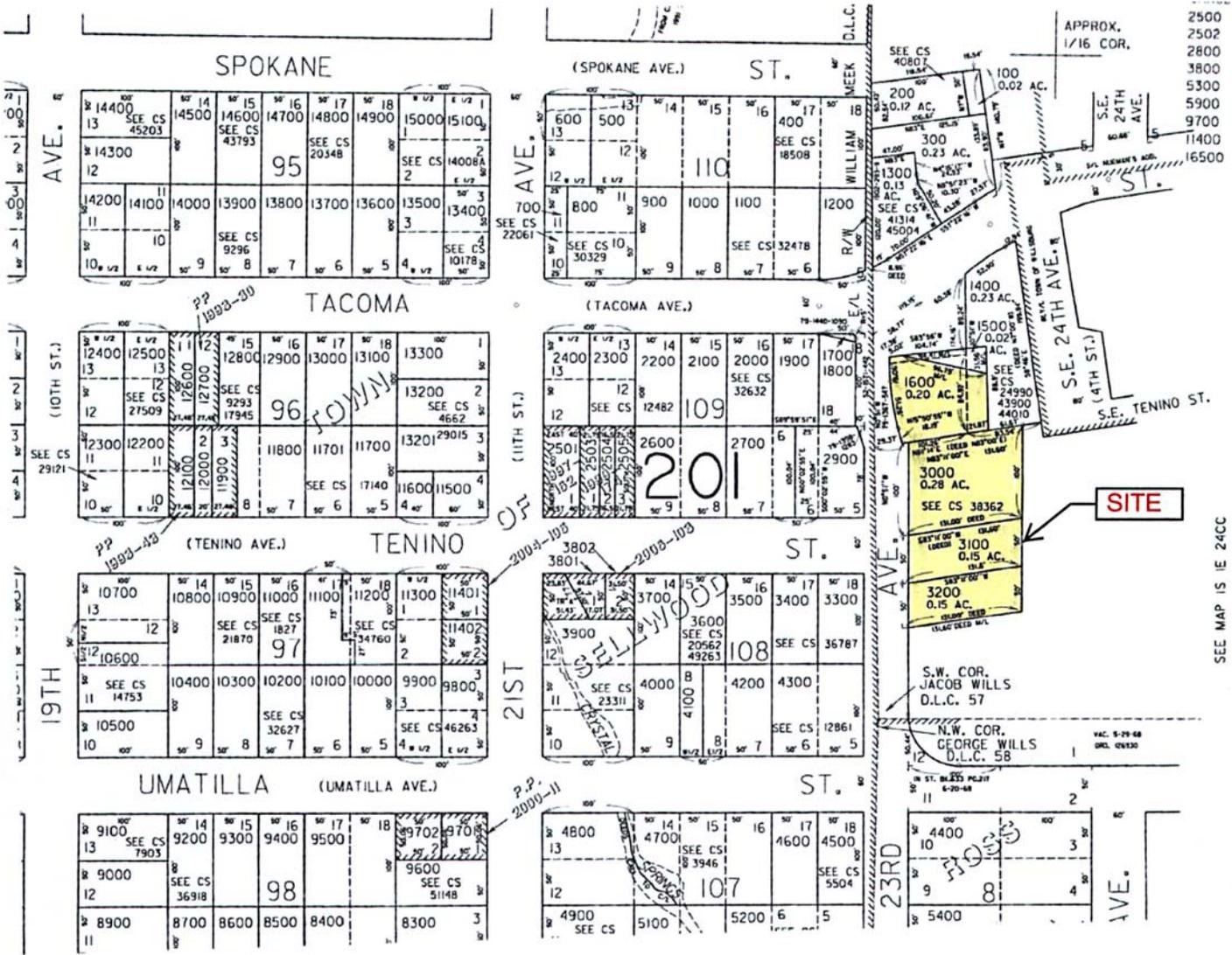
ZONING PROPOSED

 Site



This site lies within the:
JOHNSON CREEK BASIN PLAN DISTRICT

File No.	LU 08-111091 ZC
1/4 Section	3832
Scale	1 inch = 200 feet
State_Id	1S1E23DD 3000
Exhibit	B.1 (Feb 26, 2008)



NORTH



PROPERTY INFORMATION
 TOTAL SITE AREA: 33,977 SF
 IMPERVIOUS AREA: 27,182 SF (80% OF SITE)
 LANDSCAPE/PERVIOUS AREA: 6,795 SF

LU 08-1110912C
 Exhibit C.1