

## City of Portland, Oregon

### **Bureau of Development Services**

#### **Land Use Services**

FROM CONCEPT TO CONSTRUCTION

Dan Saltzman, Commissioner Paul L. Scarlett, Director Phone: (503) 823-7300 Fax: (503) 823-5630 TTY: (503) 823-6868 www.portlandoregon.gov/bds

Date: December 6, 2012

To: Interested Person

**From:** Douglas Hardy, Land Use Services

503-823-7816 / Douglas.Hardy@portlandoregon.gov

# NOTICE OF A TYPE II DECISION ON A LAND USE REVIEW IN YOUR NEIGHBORHOOD

The Bureau of Development Services has **approved** a requested land use review in your neighborhood. The reasons for the decision are included in the version located on the BDS website <a href="http://www.portlandonline.com/bds/index.cfm?c=46429">http://www.portlandonline.com/bds/index.cfm?c=46429</a>. Click on the District Coalition then scroll to the relevant Neighborhood, and case number. If you disagree with the decision, you can appeal. Information on how to do so is included at the end of this decision.

CASE FILE NUMBER: LU 12-194521 ZE

#### **GENERAL INFORMATION**

**Applicant:** City of Portland / Bureau of Development Services / Land Use Services

1900 SW 4th Avenue, Suite 5000 / Portland, OR 97201

**Property-Owner:** Karamanos Holdings Inc.

801 NE 21st Avenue / Portland, OR 97232

**Owner's** Peter Fry / Peter Finley Fry

**Representative:** 2153 SW Main Street, Suite 105 / Portland, OR 97205

**Site Address:** 801 NE 21st Avenue

**Legal Description:** Sullivans Add, Block 34, Lot 1-8, Land & Imp, See R646167

(R806102451) For Mach & Equip

Tax Account No.: R278439

**State ID No.:** 1N1E35AD 2400

Quarter Section: 2932

**Neighborhood:** Kerns, contact Steve Russell at 503-784-8785

**District Coalition:** Southeast Uplift, contact Bob Kellett at 503-232-0010 **Existing Zoning:** EXd Central Employment with a Design overlay zone

RH High Density Residential

Case Type: Zoning Map Error Correction (ZE)

**Procedure:** Type II, Administrative decision with appeal to the Hearings Officer

#### **PROPOSAL**

The Bureau of Development Services is initiating a Zoning Map Error Correction to change the zoning on the southern one-half of this site from RH (High Density Residential) to EXd (Central Employment with a Design overlay zone). Prior to 1981, the entire 40,000 square foot lot was located in a General Manufacturing (M2) zone, with the northern one-half of the block also mapped with a Signboard Control (S) Zone. At that time (and currently), the site was under single ownership, with the entire site being developed with buildings used for light manufacturing.

The 1981 Zoning Map identified the northern one-half of the site as being mapped with the Light Manufacturing (M3) zone, and southern one-half of the site as being mapped with the High Density Residential (RH) zone. However, evidence has been provided showing that the 1979 Proposed Comprehensive Plan Map submitted by the Bureau of Planning to the Planning Commission, the 1980 Recommended Comprehensive Plan Map submitted by the Planning Commission to the City Council, and the City Council Adopted Comprehensive Plan Maps from 1980 and 1982 all identify the *entire* site as being in an M3 zone. A later map update process changed the M3 zoning on the northern one-half of the block to Central Employment with a Design overlay zone (EXd), consistent with remapping criteria for that project.

Zoning Code Section 33.855.070.A.2 states that corrections may be made to the Zoning Map when there is discrepancy between maps and on balance there is sufficient evidence of legislative intent for where the line should be located. The Bureau of Planning and Sustainability has reviewed the material in the record and finds that based on the legislative maps, and based on the adopted zoning line bisecting the site and placing a zone on the southern one-half of the site that does not match the historic use of the building that a Zoning Map Error occurred, and that the site in its entirety should be mapped with the EXd designation.

#### RELEVANT APPROVAL CRITERIA

In order to be approved, this proposal must comply with the approval criteria of Zoning Code Section 33.855.070.A, which allows a mapping correction when there is a proven error in the location of the zoning line or a discrepancy between the map designation and the legislative intent for placing the designation.

#### **ANALYSIS**

**Site and Vicinity:** The 40,000 square foot site is a full block bounded by NE Pacific Street to the north, NE Oregon Street to the south, NE 20<sup>th</sup> Avenue to the west and NE 21<sup>st</sup> Avenue to the east. The site is developed in its entirety (lot line to lot line) with interconnected buildings ranging from one to two stories in height and occupied by Sunshine Dairy, a Manufacturing and Production use. The applicant indicates these buildings have existed on the site for more than sixty years.

The surrounding area is developed with a variety of uses ranging from a multi-story office development immediately west of the subject site, a radio frequency transmission facility to the north of the subject site, a one-story light industrial/commercial building directly east, and a mixture of lower-density multi-dwelling and single-dwelling development to the south of the site.

**Zoning:** The subject site presently is split between Central Employment (EX) with a Design ("d") overlay zone on the northern one-half of the site, and High Density Residential (RH) on the southern one-half of the site.

The Central Employment zone implements the Central Employment map designation of the Comprehensive Plan. The zone allows mixed-uses and is intended for areas in the center of the City that have predominantly industrial type development. The intent of the zone is to allow industrial and commercial uses which need a central location. Residential uses are allowed, but are not intended to predominate or set development standards for other uses in the area. The development standards are intended to allow new development which is similar in character to existing development. Sunshine Dairy, operating a Manufacturing and Production use at this site, is allowed outright in the Central Employment zone.

The Design overlay zone promotes the conservation, enhancement, and continued vitality of areas of the City with special scenic, architectural, or cultural value. The Design overlay zone also promotes quality high-density development adjacent to transit facilities. This is achieved through the creation of design districts and applying the Design overlay zone as part of

community planning projects, development of design guidelines for each district, and by requiring design review or compliance with the Community Design Standards for new development and most alterations to existing development. In addition, design review or compliance with the Community Design Standards ensures that certain types of infill development will be compatible with the neighborhood and enhance the area.

The High Density Residential zone is a high density multi-dwelling zone. Density is regulated by placing a limit on the maximum amount of floor area that buildings may have, and through other site development standards such as maximum building coverage and height. Generally, the allowed density will range from 80 to 125 dwelling units per acre. Allowed housing is characterized by buildings of a medium to high height with a relatively high percentage of site coverage. The major types of new housing development will be low, medium, and high-rise apartments and condominiums. Generally, RH zones will be well served by transit facilities or be near areas with supportive commercial services. The existing Manufacturing and Production use on this portion of the site is prohibited in the RH zone.

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

**Agency Review:** A Notice of Proposal was mailed November 2, 2012. The following City bureaus have responded with no issues or concerns:

- Bureau of Environmental Services;
- Bureau of Transportation Engineering;
- Water Bureau:
- Bureau of Development Services Site Development Section;
- Bureau of Development Services Life Safety Section; and
- Portland Parks & Recreation Urban Forestry Division

**Neighborhood Review:** A Notice of Proposal was mailed on November 2, 2012. A total of two written responses have been received in opposition to the proposal: one from a neighbor located just south of the subject site; and the second from the Kerns Neighborhood Association.

The concern identified in the letter from the nearby neighborhood focused primarily on noise impacts associated with the ongoing operation of Sunshine Dairy at this site. With the change of zone from RH to EX, the neighbor fears that the noise issues will increase as the EX zoning allows outright an industrial use, and there will be fewer noise restrictions on the use.

[BDS Comment: The change in zone will in no way impact the amount of noise that any use, allowed or otherwise, would be allowed to generate at this site. The Off-Site Impact standards included in Zoning Code Chapter 33.262 are intended to protect all uses in Residential zones (as well as in Commercial and Open Space zones) from objectionable off-site impacts associated with non-residential uses. The objectionable impacts regulated by this chapter include noise. Any nonresidential use operating at this site, regardless of its zoning, would be required to conform to City Title 18 Noise Control provisions.]

The letter from the Kerns Neighborhood Association finds the zone change from RH to EXd on the southern one-half of the site to be inappropriate given its proximity to residential properties. The Neighborhood Association finds that the existing RH zone provides a better transition between commercial and residential uses, and that the southern one-half of the site was intentionally zoned RH to achieve this purpose.

[BDS Comment: The purpose for this review is not to determine whether an EXd or RH zone is suitable for the southern portion of the site given the surrounding uses and zones. Instead, this land use review is limited to determining whether there was a zoning map error based on the legislative record that placed RH zoning on the southern one-half of the site. The findings below address the legislative intent of the zoning.]

#### ZONING CODE APPROVAL CRITERIA

#### 33.855.070 Corrections to the Official Zoning Maps

The Director of BDS may initiate and approve a review following the Type II procedure for the types of discretionary corrections to the Official Zoning Maps listed below. Nondiscretionary corrections to the Official Zoning Maps may be initiated by the Director of Planning as described in Section 1.01.037 of the Portland City Code.

- **A. Mapping errors.** The correction may be made for mapping errors such as:
  - 1. A map line that was intended to follow a topographical feature does not do so. Topographical features include the tops and bottoms of hillsides, the banks of water bodies, and center lines of creeks or drainage ditches; or

**Findings:** The request for the zoning map error correction is not based on topographical features. Therefore, this criterion does not apply.

2. There is a discrepancy between maps and on balance there is sufficient evidence of legislative intent for where the line should be located.

**Findings:** The Official Zoning Map shows that prior to December 31, 1980, the subject site in its entirety was located in an M2 zone (General Manufacturing), with an "S" or Signboard Control zone mapped on the northern one-half of the property (Exhibit A.2). Following a legislative project that changed zones citywide in 1981, the Official Zoning Map from 1981 shows the northern one-half of the site mapped with the M3 (Light Manufacturing) zone, with the southern one-half of the site being mapped with the RH (High Density Residential) zone (Exhibit A.3). Based on information in the record and as identified below, there is sufficient evidence of legislative intent to demonstrate that the site in its entirety was intended to be mapped as a single nonresidential zone.

A Proposed Comprehensive Map (dated September 1979) that was submitted by the Portland Planning Bureau to the Portland Planning Commission identifies M3 zoning for the subject site in its entirety (Exhibit A.4). This same zoning is identified for the entire site in a Recommended Comprehensive Plan Map (dated January 1980) that was submitted by the Planning Commission to the Portland City Council. The record also includes a Comprehensive Plan Map dated October 1980 that was adopted by the Portland City Council which again shows the site in its entirety being mapped with the M3 zone (Exhibit A.6). Finally, a Comprehensive Plan Map adopted by the Portland City Council in June 1982 as part of a follow-up legislative project identifies the site in its entirety being located in an M3 zone (Exhibit A.7). These maps together document that the site in its entirety was originally intended to be mapped with the M3 zone.

The applicant's representative has also provided a Bureau of Planning document from January 1980 that details how the Portland Planning Commission responded in the fall of 1979 to requests from the public to modify the above-mentioned Recommended Comprehensive Plan Map (Exhibit A.8). This document lists each requested modification that the Planning Commission did not support. The subject site is not included in this list, which indicates that there was no request from the public to change the M3 designation on the entirety of the subject site as identified on the Bureau of Planning's Proposed Comprehensive Map. Furthermore, following the period of time that the Planning Commission considered requests from the public on possible modifications to the map, the Planning Commission retained the proposed M3 zoning on the entire site as evidenced on the January 1980 Recommended Comprehensive Plan Map that was submitted to City Council.

In 1991, the zoning on the northern one-half of the subject site was changed from M3 to EXd (Exhibit A.9) as part of a citywide legislative project. The findings of this legislative project were included in the *Proposed Commercial and Manufacturing Zone Remapping Report* (Exhibit A.10). The purpose of this study was to convert existing commercial and industrial zones to equivalent new zones that were being established as part of the 1990 Zoning Code rewrite. The project included specific criterion that were used when converting zones. The criterion used to convert existing M3 zones to the new EX zone stated such conversions would occur in "Inner-city mixed use area containing industrial or industrially-related uses", and "For areas with housing or strong housing development potential as well as relatively intense commercial and/or industrial activity" (page 16, Table 4). Because the southern one-half of the site was intended to have been previously mapped with the M3 designation, and given the industrial development and use on this portion of the site, the EXd zone should have been mapped on this portion of the site as well in 1991.

Finally, the Portland Bureau of Planning and Sustainability, which is the City bureau responsible for initiating legislative zone changes and maintaining the Official Zoning Map, has evaluated the information in the record for this land use review and submitted a memo concluding that a map error exists and that the site in its entirety should be mapped with the EXd designation (Exhibit G.2). Specifically, the Bureau of Planning and Sustainability concludes, "Documentation has been provided showing a discrepancy between adopted zoning and Comprehensive Plan maps distributed throughout the Comprehensive Plan process. As the adopted zoning bisects an existing industrial building and applied a zone to the southern half of the site that doesn't match the historic use of the building, the Bureau of Planning and Sustainability has determined a zoning map error occurred with the 1980 Comprehensive Plan project and the zoning for the entire site should revert to Central Employment (EX) with a Design Overlay Zone ("d")."

Based on these findings, sufficient evidence of legislative intent exists that the correct zoning for the site in its entirety is EXd, and this criterion is met.

**B. Movement of the reference item for the map line.** The correction may be made when it can be clearly shown that a map line is based on the location of a reference item that has since been moved. Reference items are rights-of-way, tentative rights-of-way, utility easements and similar type items. Map line changes in these cases must not be more than a trivial change to the map pattern and must not result in any significant impacts to abutting lots.

**Findings:** In this specific instance, the Zoning Map error is not the result of the original zone line being based on a reference point that has since been moved. Therefore, this criterion is not applicable.

**C.** Land within the Urban Growth Boundary. The correction may be made when it involves the removal of the Future Urban overlay zone from properties that are now within the Urban Growth Boundary.

**Findings:** As this situation does not involve the removal of the Future Urban overlay zone, 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**

Information in the record demonstrates that there was a Zoning Map error in placing the RH zone on the southern one-half of the subject site. Documents from the citywide zoning project that took effect in 1981, and the subsequent citywide legislative project from 1982, provide sufficient legislative intent that the property in its entirety was intended to be in a nonresidential zone.

#### ADMINISTRATIVE DECISION

**Approval** of a Zoning Map Error Correction (33.855.070) to change the zoning from RH (High Density Residential) to EXd (Central Employment with a Design overlay zone) for the southern one-half of the subject site, as identified in Exhibit B.2.

Staff Planner: Douglas Hardy

Decision rendered by: on December 3, 2012.

By authority of the Director of the Bureau of Development Services

Decision mailed: December 6, 2012

**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.

**Procedural Information.** The application for this land use review was submitted on October 16, 2012, and was determined to be complete on **November 2, 2012.** 

Zoning Code Section 33.700.080 states that Land Use Review applications are reviewed under the regulations in effect at the time the application was submitted, provided that the application is complete at the time of submittal, or complete within 180 days. Therefore this application was reviewed against the Zoning Code in effect on October 16, 2012.

ORS 227.178 states the City must issue a final decision on Land Use Review applications within 120-days of the application being deemed complete. The 120-day review period may be waived or extended at the request of the applicant. In this case, the applicant did not waive or extend the 120-day review period. Unless further extended by the applicant, **the 120 days will expire on March 2, 2013.** 

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

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

These conditions of approval run with the land, unless modified by future land use reviews. As used in the conditions, the term "applicant" includes the applicant for this land use review,

any person undertaking development pursuant to this land use review, the proprietor of the use or development approved by this land use review, and the current owner and future owners of the property subject to this land use review.

**Appealing this decision.** This decision may be appealed to the Hearings Officer, which will hold a public hearing. Appeals must be filed **by 4:30 PM on December 20, 2012** at 1900 SW Fourth Ave. Appeals can be filed Tuesday through Friday on the first floor of the Development Services Center until 3 p.m. After 3 p.m. and Mondays, appeals must be submitted to the receptionist at the front desk on the fifth floor. **An appeal fee of \$250 will be charged**. The appeal fee will be refunded if the appellant prevails. There is no fee for ONI recognized organizations appealing a land use decision for property within the organization's boundaries. The vote to appeal must be in accordance with the organization's bylaws. Assistance in filing the appeal and information on fee waivers is available from BDS in the Development Services Center. Please see the appeal form for additional information.

The file and all evidence on this case are available for your review by appointment only. Please call the Request Line at our office, 1900 SW Fourth Avenue, Suite 5000, phone 503-823-7617, to schedule an appointment. I can provide some information over the phone. Copies of all information in the file can be obtained for a fee equal to the cost of services. Additional information about the City of Portland, city bureaus, and a digital copy of the Portland Zoning Code is available on the internet at www.portlandonline.com.

**Attending the hearing.** If this decision is appealed, a hearing will be scheduled, and you will be notified of the date and time of the hearing. The decision of the Hearings Officer is final; any further appeal must be made to the Oregon Land Use Board of Appeals (LUBA) within 21 days of the date of mailing the decision, pursuant to ORS 197.620 and 197.830. Contact LUBA at 550 Capitol St. NE, Suite 235, Salem, Oregon 97301, or phone 1-503-373-1265 for further information.

Failure to raise an issue by the close of the record at or following the final hearing on this case, in person or by letter, may preclude an appeal to the Land Use Board of Appeals (LUBA) on that issue. Also, if you do not raise an issue with enough specificity to give the Hearings Officer an opportunity to respond to it, that also may preclude an appeal to LUBA on that issue.

#### 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.

- Unless appealed, the final decision may be recorded on or after **December 21, 2012.**
- 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.** 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:

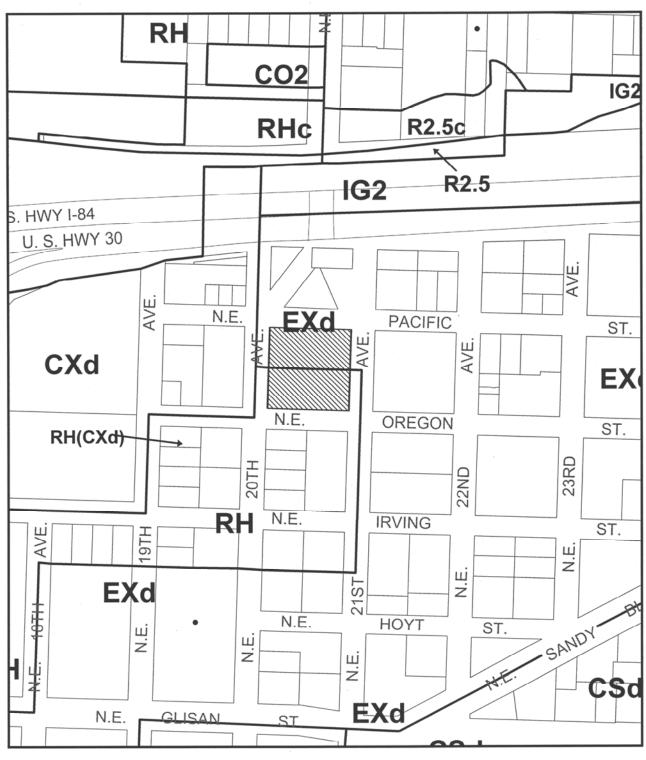
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

#### **EXHIBITS**

#### NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
  - 1. Written narrative from property-owner's representative
  - 2. Official Zoning Map, dated December 31, 1980
  - 3. Official Zoning Map, dated 1981
  - 4. Proposed Comprehensive Map, dated September 1979
  - 5. Recommended Comprehensive Plan map, dated January 1980
  - 6. Adopted Comprehensive Plan Map, dated October 1980
  - 7. Adopted Comprehensive Map, dated June 1982
  - 8. Map Development: Recommended Plan Support Document, dated January 1980
  - 9. Official Zoning Map, dated January 1991
  - 10. Excerpt from 1989 Proposed Commercial and Manufacturing Zone Remapping Report
- B. Zoning Map
  - 1. Existing Zoning Map (attached)
  - 2. Proposed Zoning Map (attached)
- C. Plans/Drawings:
  - 1. Site Plan
- D. Notification information:
  - 1. Mailing list
  - 2. Mailed notice
- E. Agency Responses:
  - 1. Bureau of Environmental Services
  - 2. Bureau of Transportation Engineering and Development Review
  - 3. Water Bureau
  - 4. Bureau of Development Services Site Development Section
  - 5. Bureau of Development Services Life Safety Section
  - 6. Portland Parks & Recreation Urban Forestry Division
- F. Correspondence:
  - 1. Kerns Neighborhood Association, letter dated November 23, 2012, in opposition
  - 2. Kate Daly, letter dated November 26, 2012, in opposition
- G. Other:
  - 1. Original LU Application
  - 2. Memo from Bureau of Planning and Sustainability, dated October 12, 2012

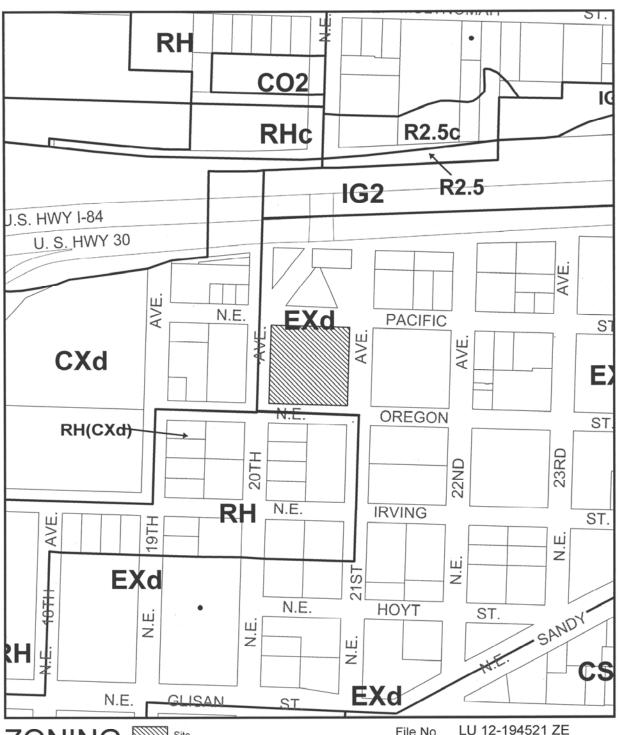
The Bureau of Development Services is committed to providing equal access to information and hearings. Please notify us no less than five business days prior to the event if you need special accommodations. Call 503-823-7300 (TTY 503-823-6868).



# ZONING Site EXISTING



File No	LU 12-194521 ZE
1/4 Section_	2932
	1 inch = 200 feet
	1N1E35AD 2400
Exhibit_	B (Oct 16,2012)



ZONING Site PROPOSED

NORTH

File No. LU 12-194521 ZE

1/4 Section 2932

Scale 1 inch = 200 feet

State\_Id 1N1E35AD 2400

Exhibit B (Oct 16,2012)