



City of Portland, Oregon
Bureau of Development Services
Land Use Services

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Date: December 17, 2008
To: Interested Person
From: Abigail Fowle, Land Use Services
503-823-0624 / FowleA@ci.portland.or.us

**NOTICE OF A TYPE II DECISION ON A PROPOSAL IN
YOUR NEIGHBORHOOD**

The Bureau of Development Services has approved a proposal in your neighborhood. The reasons for the decision are included in this notice. If you disagree with the decision, you can appeal it and request a public hearing. Information on how to appeal this decision is listed at the end of this notice.

CASE FILE NUMBER: LU 08-175456 MS
CENTRAL CITY MASTER PLAN AMENDMENT FOR PEDESTRIAN
TRACT E OF HOYT STREET YARDS

GENERAL INFORMATION

Applicant: Hoyt Street Properties LLC, Listed Owner
Attn: Doug Shapiro
1022 NW Marshall Street, Suite 270
Portland, OR 97209-2989

Representative: Keith Jones, Contact 503-221-1131
Harper Houf Peterson Righellis Inc.
205 SE Spokane Street, Suite 200
Portland, OR 97202

Site Address: Ped Tract E at NW Overton St & NW 10th Ave

Legal Description: LOT E, HOYT STREET YARDS NO.2
Tax Account No.: R405840780
State ID No.: 1N1E34BB 02628
Quarter Section: 2929
Neighborhood: Pearl District, contact Patricia Gardner at 503-228-3273.
Business District: Pearl District Business Association, contact Adele Nofield at 503-223-0070.
District Coalition: Neighbors West/Northwest, contact Mark Sieber at 503-823-4212.
Plan District: Central City - River District
Zoning: EXd: Central Employment w/ Design Overlay
Case Type: MS: Master Plan Amendment
Procedure: Type II, an administrative decision with appeal to the Hearings Officer.

Proposal: The applicant requests approval of a Central City Master Plan Amendment to amend Condition of Approval G.3, regarding Pedestrian Tract E, of land use review LUR 99-00542 SU MS. The previous case included a 43-lot subdivision and amendments to Hoyt Street Yards

Master Plan. This decision resulted in conditions of approval for the subdivision and amended conditions from the earlier Central City Master Plan approved under LUR 92-00798 (previously amended by LUR 95-00241). Exhibit G.5 of LUR 99-00542 SU MS included a revised condition “G” (see Exhibit G.5 of LUR 99-00542 for complete language). Pedestrian Tract E, which is the subject of this review, was created under the LU 99-00542 SU MS approval. The Condition of Approval G.3 within Exhibit G.5 states that for the implementation of Pedestrian Tract E, the developer must obtain Design Review approval at the time of the development of the first adjacent property. Improvement of the southern portion of the tract for a fire lane was approved as part of the Encore Building proposal (LU 05-181234 DZM AD), but no design review has occurred for the remainder of the tract. Recently, the applicant received preliminary approval to divide Tract E of Hoyt Street Yards No.2 Subdivision Replat into two tracts (LU 08-139993 LDP, October 2, 2008) – the already developed southern portion and the undeveloped northern portion. A condition of approval was placed on the preliminary land division decision (LU 08-139993 LDP) stating that the original Master Plan Condition of Approval G.3 must be met or amended through the Type II process prior to final plat approval.

Therefore, the applicant is requesting to amend Condition of Approval G.3 of the Master Plan, as required by the land division decision. This amendment would allow for the division of the tract so the northern undeveloped portion can eventually be conveyed to the City for a future park and the southern end conveyed to the neighboring homeowner’s association.

Amendments to an approved Central City Master Plan are processed through a Type II procedure.

Relevant Approval Criteria:

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

- 33.510.255.E Central City Master Plan Approval Criteria

ANALYSIS

Site and Vicinity: The site is an existing pedestrian tract (Tract E) that runs in the north-south direction in the alignment of SW 10th Avenue in the River District. The Encore Condominiums is under construction on an adjacent property east of the pedestrian tract and the southern portion of the tract is being developed with the Encore Building including a pedestrian and emergency fire access. The remainder of the surrounding properties are vacant. Two of those properties located along the western border of Tract E are owned by Portland Parks and Recreation and are intended for the site of a public park in the future.

Zoning: The site is zoned EX (Central Employment) and is within a Design “d” Overlay Zone.

The Central Employment (EX) 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 design (d) overlay zone promotes the conservation, enhancement, and continued vitality of areas of the City with special scenic, architectural, or cultural value. 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. In addition, design review ensures that certain types of infill development will be compatible with the neighborhood and enhance the area.

Land Use History: City records indicate that prior land use reviews include the following:

- DZ 91-89/7948: Glacier Park proposal for a Central City Master Plan approved in November 1989, which included a Zone Change in compliance with the Comprehensive Plan. At the time, an applicant was required to execute an acceptance of the decision and to record it, but the applicant did not do so within the allotted time period, therefore a Late Acceptance review was required.
- **LUR 92-00798 MS LA: Approval of Late Acceptance and Central City Master Plan for Hoyt Street Yards.**
- LUR 95-00241 SU MS: Amendment to Hoyt Street Yards Master Plan (condition "G") and Subdivision for 20 lots south of Lovejoy.
- LUR 99-00541 MS: withdrawn on 7/8/99 & combined with LUR 99-00542 SU.
- **LUR 99-00542 SU MS: Approval with conditions of 43-lot subdivision and amendments to Hoyt Street Yards Master Plan. Tract E, which is the subject of this review was created under this approval. See additional discussion below.**
- LUR 00-00021 DZM MS: Design Review approval of Street Car Lofts and Master Plan Amendment to change pedestrian tracts A-C to public street (Marshall Street).
- LU 05-181234 DZM AD: The Encore - approval of 16-story mixed-use development that includes 177 residential units, 10,945 square feet of retail and 3 levels of residential parking, providing 210 parking spaces.
- LU 06-103275 DA: design advice for a master plan of the development of Hoyt Street Properties' 8.5 acres in the northern portion of the River District. The plan includes initial concepts for building programming, massing, height, parking and access, pedestrian spaces and community.
- 08-110777 DZ: Review of fire lane serving the Encore to be constructed within the southern portion of Tract E.
- 08-139993 LDP: Approval of a Preliminary Plan for a partition, that will result in two contiguous pedestrian connection tracts

Background: As noted above, LUR 99-00542 SU MS was the land use case that approved the lot configuration that resulted in the Tract E, which is proposed for division under this review. That decision resulted in conditions of approval for the subdivision and amended conditions from the earlier Central City Maser Plan approved under LUR 92-00798 (previously amended by LUR 95-00241). Exhibit G.5 of LUR 99-00542 included a revised condition "G" of which the relevant portions are listed below (see Exhibit G.5 of LUR 99-00542 for complete language).

G. *For the private pedestrian and vehicle tracts aligning with the NW Irving, Kearney, Marshall and Pettygrove Street rights-of-way, and for any other pedestrian/ bicycle tracts or easements approved through subdivision and platting, the following requirements must be met in the implementation of these features:*

- 3.** *For the pedestrian tracts, A, B, C, E and H, as well as pedestrian easements included in Phase V, the developer will obtain design review approval at the time of development of the first adjacent property. The tracts must be developed according to the approved design, and be completed prior to final occupancy of the first adjacent development. However, the developer may seek design review approval for an interim plan that provided for, at least, pedestrian access and fire/life safety requirements. An interim plan may only be approved if it is secured with a bond or other compliance measure meeting the approval of the City Attorney.*

After LUR 99-00542 SU MS was issued, the Master Plan was further amended by LUR 00-00021, which changed the private tracts proposed in the NW Marshall Street alignment (noted as Tracts A, B and C in the above condition) to public right-of-way. This area was platted as right-of-way in the final plat for Phases 1 and 2, which resulted in a reordering of the privately-owned tracts as follows:

- Tracts A, B and C – platted as public right-of-way (Phases 1 and 2)
- Tract D – platted as Tract B (Phases 1 and 2)
- Tract E – no change – platted as Tract E (Phases 3 and 4)
- Tract F – platted as Tract D (Phases 3 and 4)

- Tract G – platted as Tract C (Phases 3 and 4)
- Tract H – platted as Tract B (Phases 3 and 4)

Based on the renaming of tracts that occurred at platting, condition G applies to Tracts B and E (and any other tracts or easements to be platted in Phase V). Based on the information available to staff, the requirement to obtain design review approval for Tract E at the time of development of the first adjacent property and to construct improvement prior to occupancy of that development has not been met. The Encore is currently under construction directly adjacent to the east of Tract E under permit 06-129095 CO. Improvement of a portion of the tract for a fire lane has been approved, but there has been no design review for the remainder of the tract or provision of a performance guarantee as required by Condition G.3. Therefore, to ensure that dividing Tract E does not result in the responsibility for design and improvement of the entire tract to be removed from the development triggering the requirement (the Encore), the applicant is requesting an amendment to Condition of Approval G.3 of the Central City Master Plan for Hoyt Street Yards.

Agency Review: A *Notice of Proposal in Your Neighborhood* was mailed on **November 19, 2008**. The following Bureaus have responded with no issues or concerns:

- Portland Fire & Rescue;
- Portland Water Bureau;
- Urban Forestry Division of Portland Parks & Recreation;
- Bureau of Transportation Engineering & Development Review;
- Site Development Section of the Bureau of Development Services, see Exhibit E.1;
- Life Safety (Building Code) Section of the Bureau of Development Services, see Exhibit E.2.
- Bureau of Environmental Services, see Exhibit E.3.

Neighborhood Review: A *Notice of Proposal in Your Neighborhood* was mailed on **November 19, 2008**. No written comments in response to the proposal have been received from the neighborhood association or notified property owners.

ZONING CODE APPROVAL CRITERIA

Title 33.510.255 Central City Master Plans

The Central City Master Plan adds development potential and flexibility for projects in specified areas. The additional flexibility is possible because the plan is used to demonstrate that the policy objectives of the Central City Plan and the public service needs of the area are addressed. The Central City Master Plan is an option; it is not a requirement. Amendments to an approved master plan are processed through a Type II procedure. An amendment may be approved if the proposed change results in a plan which continues to meet all of the approval criteria in Subsection E. of this chapter.

Findings: This site is within the area of an approved Master Plan, and subject to the final decision for the Master Plan, per cases LUR 92-00798 MS LA and LUR 99-00542 SU MS. The applicant proposes modifications to a condition of approval of the Master Plan, which may be approved through a Type II procedure.

The applicant proposes the following changes to Condition of Approval G.3 (new language is underlined): _

- G. For the private pedestrian and vehicle tracts aligning with the NW Irving, Kearney, Marshall and Pettygrove Street rights-of-way, and for any other pedestrian/bicycle tracts or easements approved through subdivision and platting, the following requirements must be met in the implementation of these features:
 3. For the pedestrian tracts, A, B, C, E and H, as well as pedestrian easements included in Phase V, the developer will obtain design review approval at the time of development of the first adjacent property. However, in the case of Tract E, it may

be divided into two tracts (Parcel 1 and Parcel 2) and the northern portion (Parcel 2) may remain as an undeveloped pedestrian tract. If divided, the northern portion of Tract E (Parcel 2) must receive design review approval prior to the issuance of permits for the first adjacent property. The tracts must be developed according to the approved design, and be completed prior to final occupancy of the first adjacent development. However, the developer may seek design review approval for an interim plan that provided for, at least, pedestrian access and fire/life safety requirements. An interim plan may only be approved if it is secured with a bond or other compliance measure meeting the approval of the City Attorney.

A Central City master plan application will be approved if the review body finds that the application has shown that all of the following approval criteria are met:

Staff has considered all criteria and has addressed only those criteria considered applicable to this proposal.

1. The proposed plan is consistent with the policy objectives of the Central City Plan;

Findings: The proposed plan is consistent with the following policy objectives of the Central City Plan (*Staff has considered all policies and has addressed only those policies considered applicable to this proposal.*):

Policy 2: The Willamette Riverfront. Enhance the Willamette River as the focal point for views, public activities, and development, which knots the city together.

Policy 8: Parks and Open Space. Build a park and open space system of linked facilities that tied the Central districts together and the surrounding community.

Policy 12: Urban Design. Enhance the Central City as a livable, walkable area, which focuses on the river and captures the glitter and excitement of city living.

Response: Tract E of Hoyt Street Yards is not adjacent to the Willamette River. However, pedestrian access to the river is a key objective particularly at this location, where connectivity between the River District and riverfront is needed. Dividing Tract E and not requiring Design Review at this time for the undeveloped northern portion of the Tract will not have an impact on pedestrian access to the riverfront. Since the public easement over Tract E will be maintained, it can still be developed in the future as a pedestrian walkway and potentially connect to a future bridge over Naito Parkway and to the riverfront. Retaining the public easement ensures the continuity of pedestrian pathways in the city, linking different areas, and helping to establish a more walkable and thus livable city.

The owner, Hoyt Street Properties, intends to convey the northern portion of Tract E and adjacent properties to the City for a future park. Therefore, the division of the Tract will enable the northern half to potentially be conveyed to the City and constructed as part of a future park. Without any design in place for the future park, requiring design review and development at this time for the undeveloped portion of the Tract would be premature. Design Review will still be required for the northern portion of Tract E with the future development of the adjacent properties as a park or otherwise, ensuring that the goals and vision for this tract and potential connection to the river are met.

Policy 17: Northwest Triangle. Preserve the district's character and architectural heritage while encouraging both industrial activity and mixed-use development.

Response: Tract E is located at the northern end of the boardwalk element and pedestrian corridor that abuts NW 10th Ave and runs from Jameson Park northward. Therefore, the Tract extends this corridor to the north with a potential future connection

across Naito Parkway and to the riverfront. This walkway is a distinct element within the River District that brings continuity between the various parks in the area and potentially will link the District to the riverfront. The proposed land division and master plan amendment maintains this pedestrian corridor, but simply allows the Design Review for the undeveloped portion of the Tract to occur at a later date with the development of the future park or adjacent properties. Therefore, the proposal will not alter District's character or architectural heritage.

Therefore, this criterion is met.

3. The plan provides for a useful and pleasant circulation system and for adequate open space within the plan boundaries.

Findings: The intent of the land division is to allow for establishment the future park and preserve Tract E as a future pedestrian access. This proposal does not include a design for the undeveloped portion of Tract E, however, it does retain the pedestrian easement, allowing for a future corridor and potential link to the riverfront. The design of the Tract must be approved through the design review process, ensuring a successful circulation system and connection to future open spaces. *Therefore, this criterion is met.*

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

The proposed amendment to the Central City Master Plan Condition of Approval maintains the pedestrian corridor established by the original Plan and allows for a joint development of the corridor with a future park. The proposal meets the policy objectives of the Central City Plan and the relevant criteria, and therefore warrants approval.

ADMINISTRATIVE DECISION

Approval for a Central City Master Plan Amendment to change the Condition of Approval G.3 from LUR 99-00542 SU MS, regarding pedestrian Tract E. The revised language of Condition of Approval G.3, as approved through this Type II review is as follows:

- G. *For the private pedestrian and vehicle tracts aligning with the NW Irving, Kearney, Marshall and Pettygrove Street rights-of-way, and for any other pedestrian/bicycle tracts or easements approved through subdivision and platting, the following requirements must be met in the implementation of these features:*
3. *For the pedestrian tracts, A, B, C, E and H, as well as pedestrian easements included in Phase V, the developer will obtain design review approval at the time of development of the first adjacent property. However, in the case of Tract E, it may be divided into two tracts (Parcel 1 and Parcel 2) and the northern portion (Parcel 2) may remain as an undeveloped pedestrian tract. If divided, the northern portion of Tract E (Parcel 2) must receive design review approval prior to the issuance of permits for the first adjacent property. The tracts must be developed according to the approved design, and be completed prior to final occupancy of the first adjacent development. However, the developer may seek design review approval for an interim plan that provided for, at least, pedestrian access and fire/life safety requirements. An interim plan may only*

be approved if it is secured with a bond or other compliance measure meeting the approval of the City Attorney.

Approval per the approved site plan, Exhibit C.1, signed and dated December 15, 2008, subject to the following conditions:

- A. As part of the building permit application submittal, each of the 4 required site plans and any additional drawings must reflect the information and design approved by this land use review as indicated in Exhibits C.1. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 08-175456 MS. No field changes allowed."

Decision rendered by:  **on December 15, 2008.**

By authority of the Director of the Bureau of Development Services

Decision mailed: December 17, 2008

Staff Planner: Abigail Fowle

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 November 4, 2008, and was determined to be complete on **November 17, 2008**.

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 November 4, 2008.

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.

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 31, 2008** at 1900 SW Fourth Ave. Appeals can be filed on the first floor in the Development Services Center until 3 p.m. After 3 p.m., 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. Low-income individuals appealing a decision for their personal residence that they own in whole or in part may qualify for an appeal fee waiver. 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. Assistance in filing the appeal and information on fee waivers is available from BDS in the Development Services Center. Fee waivers for low-income individuals must be approved prior to filing the appeal; please allow 3 working days for fee waiver approval. 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 contact the receptionist at 503-823-7967 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 **January 2, 2009 – (the day following the last day to appeal).**
- 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:

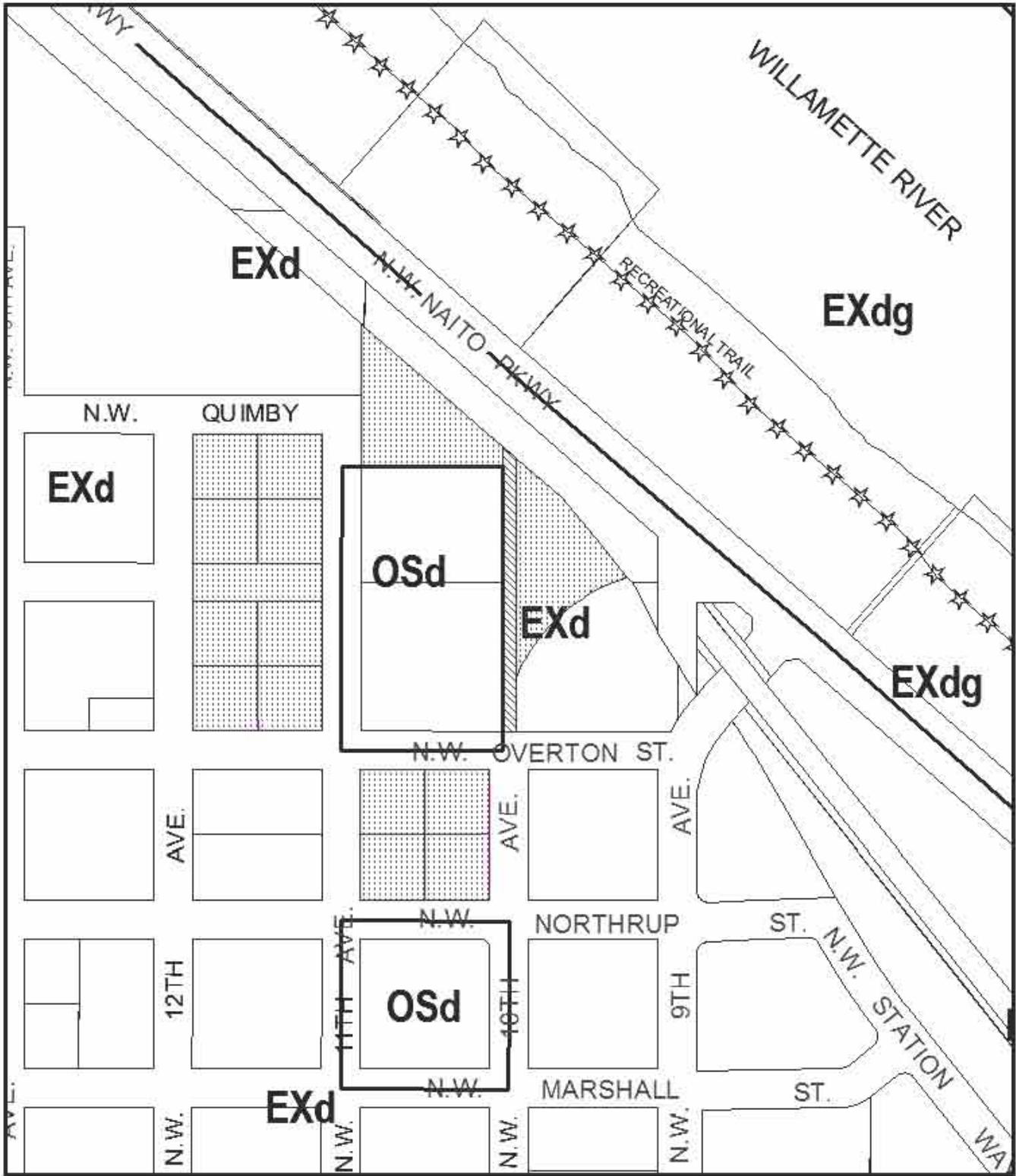
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan (attached)
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Site Development Review Section of BDS
 - 2. Life Safety Section of BDS
 - 3. Bureau of Environmental Services
- F. Correspondence: none
- G. Other:
 - 1. Original LU Application
 - 2. Site History Research

The Bureau of Development Services is committed to providing equal access to information and hearings. If you need special accommodations, please call 503-823-0625 (TTY 503-823-6868).



ZONING

-  Site
-  Also Owned



This site lies within the:
CENTRAL CITY PLAN DISTRICT

File No. LU 08-175456 MS
 1/4 Section 2929
 Scale 1 inch = 200 feet
 State_Id 1N1E34BB 2628
 Exhibit B (Nov 07, 2008)

