



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

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Portland, Oregon 97201  
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[www.portlandonline.com/bds](http://www.portlandonline.com/bds)

**Date:** November 3, 2008  
**To:** Interested Person  
**From:** Kathy Harnden, Land Use Services  
503-823-7834

**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 08-163313 ZE**

**GENERAL INFORMATION**

**Applicant:** Bureau of Development Services – Land Use Services Division  
ATTN: Kathy Harnden  
1900 SW Fourth Avenue, Suite 4500  
Portland, OR 97201

**Owners:** Timothy F. and Alice M. Maginnis  
1931 SW Highland Rd  
Portland, OR 97221-2733

**Representative:** Lacey Maginnis Myhre  
1931 SW Highland Rd  
Portland, OR 97221-2733

**Interested Party:** Bureau of Planning  
ATTN: Christine Scarzello  
1900 SW 4th Ave Ste 7000  
Portland, OR 97201

**Site Address:** 1931 SW HIGHLAND RD

**Legal Description:** TL 3100 LOT 1-3&A BLOCK 2, THE HIGHLANDS PLAT 1 & 2  
**Tax Account No.:** R828200350  
**State ID No.:** 1S1E05CB 03100  
**Quarter Section:** 3225

**Neighborhood:** Sylvan-Highlands, contact Dave Malcolm at 503-221-7903. Southwest Hills Residential League, contact Nancy Seton at 503-224-3840.

**Business District:** None  
**District Coalition:** Neighbors West/Northwest, contact Mark Sieber at 503-823-4212. Southwest Neighborhoods Inc., contact Leonard Gard at 503-823-4592.

**Plan District:** Northwest Hills - Skyline

**Other Designations:** Unincorporated Multnomah County

**Zoning:** R10c –Residential 10,000 (R10) with the Environmental Conservation (c) overlay

**Case Type:** ZE – Zone Map Error Correction

**Procedure:** Type II, an administrative decision with appeal to the Hearings Officer.

**Proposal:**

The requested zone map error correction is to relocate the Environmental Conservation overlay zone from an area without forest vegetation to the edge of the area on the site with forest vegetation, and include a 25-foot wide transition area. The property owners state that the forest resource that had existed on the site during the resource inventory was actually removed from the site prior to adoption of the *Multnomah County-Portland Unincorporated Urban Areas Functional Plan Compliance Project* on January 1, 2002. At the time of official adoption of the resource protection plan that was based on the inventory data, most of the forest resource to be protected no longer existed on the site.

The Bureau of Planning (BOP) researched the inventory documents and verified that the trees in the west center of the site were removed prior to adoption of the protection plan. The BOP concurs that the Environmental Conservation overlay zone is incorrectly depicted on the zone map and submitted findings in support of the zone map error correction request. The zone error correction will result in a relatively small re-drawing of the environmental zone boundary, moving it toward the south end of the property, while retaining enough area to continue protecting the remnant forest resource along the southern portion of the site (see Exhibits B, Proposed Zone Boundary, and B1, Existing Zone Boundary).

To relocate an Environmental Conservation overlay zone boundary, the City must initiate and approve a Type II land use review.

**Relevant Approval Criteria:**

To be approved, this proposal must comply with the approval criteria of Title 33. The relevant criteria are:

**33.855.070 Corrections to the Official Zoning Maps**

**ANALYSIS**

**Site and Vicinity:** The site is located just north of U.S. Highway 26 (Southwest Canyon Road) at the intersection of SW Canyon CT and SW Highland Rd. This 1.6-acre (71,600-sq. ft.) property contains a 3,700-sq. ft. home surrounded by tall conifers and a large open area west of the house. Surrounding properties are similarly sized. The Oregon Zoo is located just east of the site.

**Zoning:** The R10 zone is intended to foster the development of single-dwelling residences on lots having a minimum area of 6,000 square feet. Newly created lots must have a minimum density of 1 lot per 10,000 square feet of site area. The provisions of this zone allow this use; these provisions are not specifically addressed through this Environmental Review.

Environmental overlay zones protect environmental resources and functional values that have been identified by the City as providing benefits to the public. The environmental regulations encourage flexibility and innovation in site planning and provide for development that is carefully designed to preserve the site's protected resources. They protect the most important environmental features and resources while allowing environmentally sensitive urban development where resources are less significant.

The Northwest Hills Plan District protects sites with sensitive and highly valued resources and functional values. This site lies within the Skyline Subdistrict. Because the applicant has not requested a transfer of development rights (33.563.030) nor a Zoning Map Amendment, Land

Division or Planned Development, the regulations of this Plan District do not apply to this review.

**Environmental Resources:** The application of the environmental overlay zones is based on detailed studies that have been carried out within ten separate areas of the City. Environmental resources and functional values present in environmental zones are described in environmental inventory reports for these study areas.

The project site is mapped within the Southwest Hills Resource Protection Plan as Site #111. The dominant resource in this area is the conifer topping hardwood forest. Additional resources and functional values in Site 111 include wildlife habitat, intermittent creeks, storm drainage, wildlife corridors, and cultural, scenic and open space values.

**Land Use History:** City records indicate that there are concurrent Property Line Adjustments to separate the site into its underlying 3 parcels.

**Agency Review:** A “Notice of Proposal in Your Neighborhood” was mailed **October 3, 2008**. The following Bureaus responded with no issues or concerns:

- Bureau of Transportation Engineering
- Water Bureau
- Fire Bureau

The Bureau of Environmental Services responded with support of the proposal (see Exhibit E.1 for additional information).

The Site Development Section of BDS responded with recommendations directed to the concurrent property line adjustments, but which were not relevant to the zone error correction (see Exhibit E.2 for additional information).

**Neighborhood Review:** A Notice of Proposal in Your Neighborhood was mailed on October 3, 2008. No written responses have been received from either the Neighborhood Association or notified property owners in response to the proposal.

## 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.**

**Findings:** Following a request by the property owner, the Bureau of Planning (BOP) investigated a proposed zone map error and determined that a mapping error had occurred on the subject property. BOP provided a copy of its report to the Bureau of Development Services (BDS). Subsequently, the Director of BDS initiated this review to correct the error in the official zone map by more accurately portraying the location of upland forest resources on the subject property.

#### **33.855.070.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.**

**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 natural resource inventory for the *Southwest Hills Resource Protection Plan* (SWHRPP) identified forest habitat on the property, and the plan ultimately recommended application of the environmental conservation zone to overlay the forested area that included this property. The SWHRPP describes forests as providing erosion control and “a range of habitats for a diverse population of indigenous wildlife.” However, the property did not receive environmental conservation zoning as a result of the SWHRPP as it was not located within the City of Portland’s jurisdiction at the time the SWHRPP was adopted by Portland City Council.

The property was again inventoried as part of the *Multnomah County-Portland Unincorporated Urban Areas Functional Plan Compliance Project*, referred to as the Multnomah County Project. The property was again identified as having significant natural resources due to the forest vegetation and was again recommended for the conservation zone overlay. The current environmental zoning on Mr. Maginnis’s property is a result of the Multnomah County Project. The recommendations were based on aerial photography and field reconnaissance. The edge of the forest vegetation was determined based on 1996 aerial photographs. The zoning for this pocket project, which included the conservation zoning on this property, went into effect on January 1, 2002.

Prior to the effective date of the proposed zoning, the property owner, Timothy Maginnis, removed a large portion of the forested area of his property in September 2001. As proof that the forest resource was removed prior to adoption of the Multnomah County Project in January 2002, the owner submitted a copy of his Oregon Department of Forestry (ODF) notification of operation and harvest activities on the subject property. This notification confirmed that trees were harvested on the site between September 1 and September 30, 2001. The site was not replanted and ODF did not take enforcement action on the replanting requirement. ODF staff have indicated willingness to enforce this requirement at this time unless a “change of land use” application is submitted to the City of Portland and is approved. The applicant’s family has shown interest in creating a land division on the subject property and are in the middle of an application for a Property Line Adjustment (PLA). A land division application is considered a change of land use.

BOP staff recommends that a map error correction be processed and approved based on the facts that:

1. The legislative record clearly indicates that forest vegetation was the precipitating factor for the conservation overlay mapping;
2. Mr. Maginnis removed some of the forest prior to adoption of the Multnomah County Project; and therefore
3. The removal of forest vegetation occurred prior to adoption and implementation of the environmental conservation overlay zone on the property.

BOP staff further recommends that as a condition of approval of the proposed zone map error correction, a 25-foot wide transition area be included adjacent to the forest resource. Therefore, with a condition to include a 25-foot wide transition area between the forest resource and non-environmentally zoned land on this site, *this criterion will be 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.


The site lies within the Skyline Subdistrict of the Northwest Hills Plan District. The Northwest Hills Plan District contains standards for the transfer of development rights. The Skyline Subdistrict contains standards for zoning map amendments, not corrections, and for land divisions and planned developments. Therefore, the proposed zoning map error correction is not subject to the standards of Chapter 33.563.

## CONCLUSIONS

The Bureau of Planning (BOP) recommends that a zoning map error correction be approved on property where the resource was removed prior to adoption of the Conservation overlay zone by Multnomah County and the Portland City Council. Based on the findings provided by BOP that provide a historic timeline of the events surrounding the adoption of the environmental zone that includes this property, this proposal should be approved.

## ADMINISTRATIVE DECISION

**Approval of a zoning map error correction in conformance with Exhibit B.2, which includes a 25-foot wide environmental transition area between the forest resource area and the remainder of the subject site.**

Decision rendered by:  on October 30, 2008  
By authority of the Director of the Bureau of Development Services

**Decision mailed: November 3, 2008**

**Staff Planner: Kathy Harnden**

**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 September 17, 2008, and was determined to be complete on September 30, 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 September 17, 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.

**The Bureau of Planning provided some of the information contained in this report.**

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 November 17, 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](http://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 **November 18, 2008 – (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**

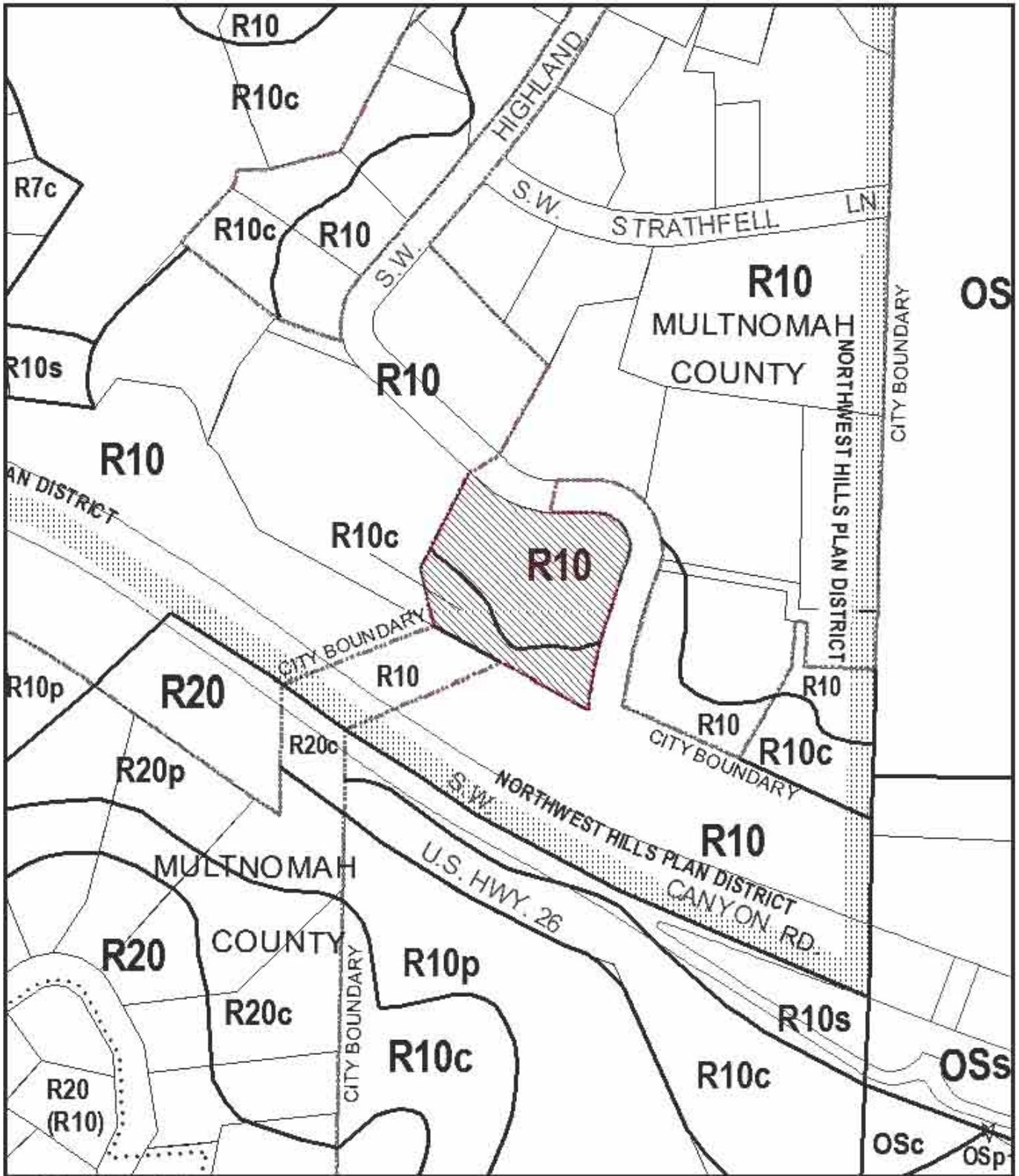
NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
- B. Proposed Zoning Map (attached)
  - 1. Existing Zoning Map (attached)
- C. Plans/Drawings (None)
- D. Notification information:
  - 1. Mailing list
  - 2. Mailed notice
- E. Agency Responses:
  - 1. Bureau of Environmental Services
  - 2. Site Development Review Section of BDS
- F. Correspondence (None)
- G. Other:
  - 1. Original LU Application
  - 2. Applicant's Copy of Mailed Notice

**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).**





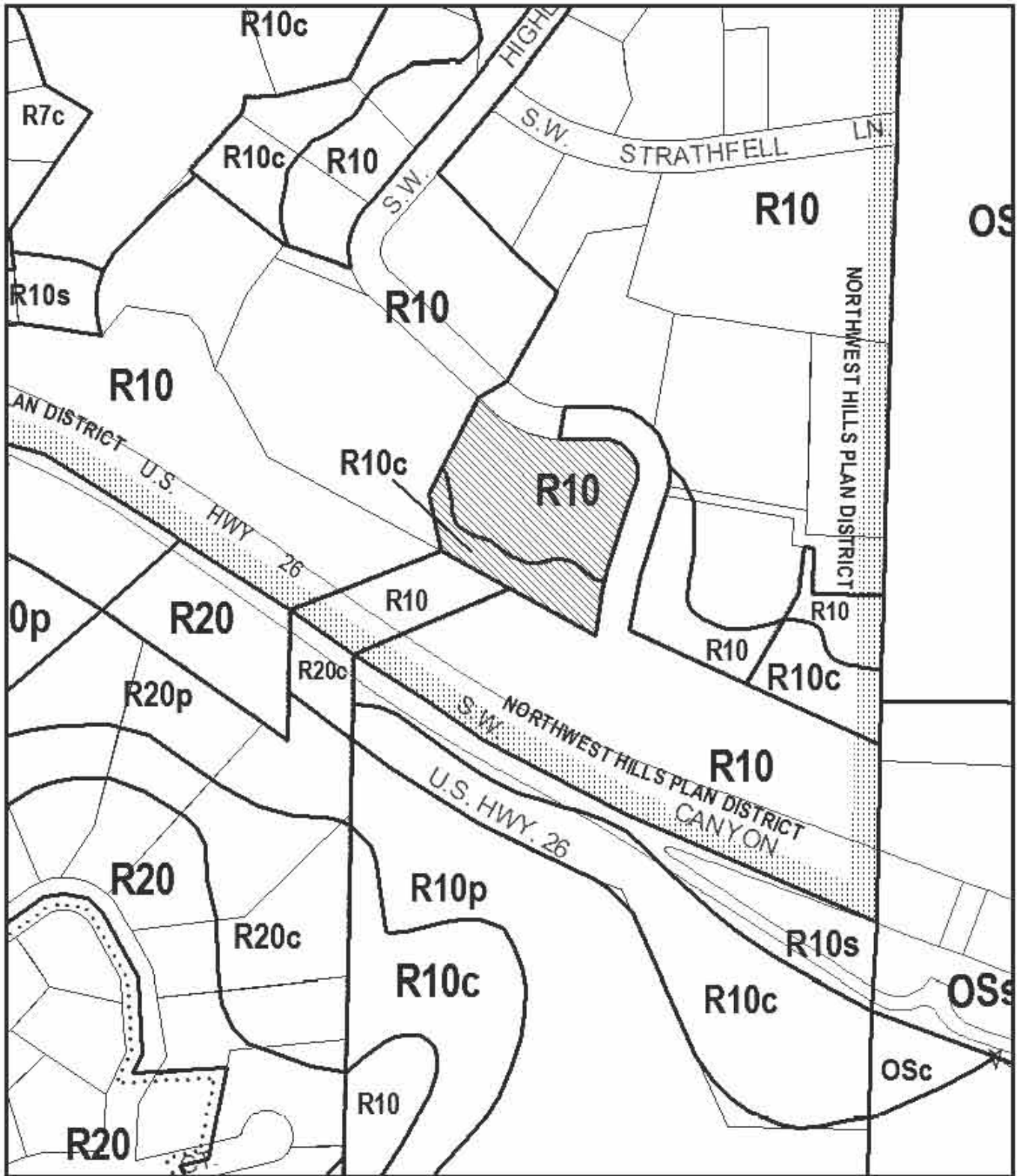
**ZONING  
EXISTING**

 Site



This site lies within the:  
NORTHWEST HILLS PLAN DISTRICT

File No.	LU 08-163313 ZE
1/4 Section	3225
Scale	1 inch = 200 feet
State Id	1S1E05CB 3100
Exhibit	B1 (Sep 18, 2008)



# ZONING PROPOSED

 Site



This site lies within the:  
NORTHWEST HILLS PLAN DISTRICT

File No.	<u>LU 08-163313 ZE</u>
1/4 Section	<u>3225</u>
Scale	<u>1 inch = 200 feet</u>
State_Id	<u>1S1E05CB 3100</u>
Exhibit	<u>B (Sep 30, 2008)</u>