



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

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Portland, Oregon 97201  
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Fax 503-823-5630  
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[www.portlandonline.com/bds](http://www.portlandonline.com/bds)

**Date:** June 5, 2009  
**To:** Interested Person  
**From:** Sylvia Cate, Land Use Services  
503-823-7771 / [scate@ci.portland.or.us](mailto:scate@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 09-123382 AD**

#### **GENERAL INFORMATION**

**Applicant:** Serena Walsh, Main Contact  
Pardee Partners LLC, Listed Property Owner  
PO Box 12129  
Portland, OR 97212-0129  
503 284 2603

**Representative:** Christe White, Attorney  
1308 NW Everett  
Portland, OR 97209

**Site Address:** 12120 SE PARDEE ST

**Legal Description:** TL 3400 0.38 ACRES, SECTION 15 1S 2E  
**Tax Account No.:** R992150950  
**State ID No.:** 1S2E15AA 03400  
**Quarter Section:** 3542

**Neighborhood:** Powellhurst-Gilbert, contact John McDonald at 503-753-4226.  
**Business District:** Midway, contact Bill Dayton at 503-252-2017.  
**District Coalition:** East Portland Neighborhood Office, contact Richard Bixby at 503-823-4550.

**Plan District:** Johnson Creek Basin  
**Other Designations:** None

**Zoning:** R1a, Multi-Dwelling Residential 1,000 with Alternative Design Density 'a' Overlay

**Case Type:** AD, Adjustment  
**Procedure:** Type II, an administrative decision with appeal to the Adjustment Committee.

**Proposal:**

The applicant is in the process of constructing an affordable home-ownership [condominium] project consisting of ten units [five cottages and five townhouses], a shared courtyard, and designed to be energy-efficient and sustainable. The applicant intends to meet all of the goals embodied in Portland Development Commission's *Greening Portland's Affordable Housing Policy*, as well as obtaining *Earth Advantage Platinum Certification* and Oregon Department of Energy's landmark *High Performance Homes Certification*. This project is the result of collaboration between the applicant, PDC and the Portland Community Land Trust. The overall goal of the project is to provide housing that will be permanently affordable, and provide some of the benefits of home ownership to the purchaser, while the homes remain in co-ownership with PCLT.

Other partners in this project include Fannie Mae, which will warrant the project and associated mortgages. However, Fannie Mae operates under guidelines that prevent one of the proposed townhouses to include a separate studio unit, because the guidelines will allow only one unit per condo, and will not allow any condos that include multiple dwelling units.

The applicant initially proposed one townhome to include a studio unit, but because of the Fannie Mae guidelines, is now requesting *an Adjustment to reduce minimum density requirement for this site from eleven units to a total of ten units.* The townhouse is proposed to contain additional living area, with an auxiliary kitchen, but configured in such a way that this studio area is not a separate unit, nor counted as a separate unit. Therefore, the applicant requests an Adjustment to 33.120.205 C, Minimum Density, in order to fully comply with the requirements for Fannie Mae financing.

**Relevant Approval Criteria:**

Adjustment requests will be approved if the review body finds that the applicant has shown that approval criteria A. through F. of Section 33.805.040, Adjustment Approval Criteria have been met.

**ANALYSIS**

**Site and Vicinity:** The site is a rectangular parcel comprising 16,442 square feet located at the southwest corner of the intersection of SE Pardee and SE 122<sup>nd</sup> Avenue. The site is relatively flat and is currently under construction. Immediately surrounding lots and parcels are zoned R1a and are developed with Multi Dwelling residential structures and uses. SE 122<sup>nd</sup> Avenue is a Major City Traffic and Transit Street.

**Zoning:** The site is zoned Multi-Dwelling Residential 1,000 with Alternative Design Density overlay. The R1 zone is a medium density multi-dwelling zone. It allows approximately 43 units per acre. Density may be as high as 65 units per acre if amenity bonus provisions are used. Allowed housing is characterized by one to four story buildings and a higher percentage of building coverage than in the R2 zone. The major type of new housing development will be multi-dwelling structures (condominiums and apartments), duplexes, townhouses, and rowhouses. Generally, R1 zoning will be applied near Neighborhood Collector and District Collector streets, and local streets adjacent to commercial areas and transit streets.

The purpose of the Alternative Design Density Overlay Zone is to focus development on vacant sites, preserve existing housing and encourage new development that is compatible with and supportive of the positive qualities of residential neighborhoods. The concept for the zone is to allow increased density for development that meets additional design compatibility requirements.

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

Case file LUR 97-00880 SU was a request for a 9-lot subdivision that was ultimately withdrawn.

**Agency Review:** A “Notice of Proposal in Your Neighborhood” was mailed **May 8, 2009**. The following Bureaus have responded with no issues or concerns:

- Water Bureau
- Fire Bureau
- Site Development Section of BDS
- Bureau of Parks-Forestry Division
- Bureau of Environmental Services
- Portland Transportation

**Neighborhood Review:** A Notice of Proposal in Your Neighborhood was mailed on May 8, 2009. No written responses have been received from either the Neighborhood Association or notified property owners in response to the proposal.

## ZONING CODE APPROVAL CRITERIA

### 33.805.010 Purpose (Adjustments)

The regulations of the zoning code are designed to implement the goals and policies of the Comprehensive Plan. These regulations apply city-wide, but because of the city's diversity, some sites are difficult to develop in compliance with the regulations. The adjustment review process provides a mechanism by which the regulations in the zoning code may be modified if the proposed development continues to meet the intended purpose of those regulations. Adjustments may also be used when strict application of the zoning code's regulations would preclude all use of a site. Adjustment reviews provide flexibility for unusual situations and allow for alternative ways to meet the purposes of the code, while allowing the zoning code to continue providing certainty and rapid processing for land use applications.

### 33.805.040 Approval Criteria

Adjustment requests will be approved if the review body finds that the applicant has shown that approval criteria A. through F. below have been met.

- A.** Granting the adjustment will equally or better meet the purpose of the regulation to be modified; and

**Findings:** The applicant requests an Adjustment to reduce the maximum density on the site from 11 to ten units. The purpose of the regulation to be adjusted is found at 33.120.205 A, which states:

*The number of dwellings per unit of land, the density, is controlled so that housing can match the availability of public services and the availability of support commercial areas. The standards also allow the housing density to be matched with the carrying capacity of the land. In addition, the density standards are used as one type of control of overall building bulk. In areas with the highest level of public services, the minimum density standards ensure that the service capacity is not wasted and that the City's housing goals are met.*

In this instance, the request will equally meet the purpose of the regulation, as the proposed condo with an amenity bonus living area is equivalent to a unit, but with some limitations. The applicant intends to sell this condo with the additional living area to one owner, not two different owners. As a result the ‘bonus’ living area will provide nearly separate living quarters for a family member, household member, or close relative, and thus will function akin to the stereotypical ‘mother-in-law’ unit. Given the demographic trends for families to include living quarters for extended

family or household members, the proposal will provide a living area that functions quite similarly to a separate unit, but in fact will remain a bonus living area amenity for the condo and thus will not meet all of the qualifications for a totally separate dwelling unit, i.e., no separate address, separate owner, etc. For these reasons, this criterion is met.

- B.** If in a residential zone, the proposal will not significantly detract from the livability or appearance of the residential area, or if in an OS, C, E, or I zone, the proposal will be consistent with the classifications of the adjacent streets and the desired character of the area; and

**Findings:** The bonus living area is completely internal to the condo and thus there is no change in appearance. The bonus living area will provide additional space and living quarters for a resident which will have no impact on the livability of the residential area. This criterion is met.

- C.** If more than one adjustment is being requested, the cumulative effect of the adjustments results in a project which is still consistent with the overall purpose of the zone; and

**Findings:** Only one adjustment is requested. This criterion is not applicable.

- D.** City-designated scenic resources and historic resources are preserved; and

**Findings:** City designated resources are shown on the zoning map by the 's' overlay; historic resources are designated by a large dot, and by historic and conservation districts. There are no such resources present on the site. Therefore, this criterion is not applicable.

- E.** Any impacts resulting from the adjustment are mitigated to the extent practical; and

**Findings:** The townhouse is proposed to contain additional living area, with an auxiliary kitchen, but configured in such a way that this studio area is not a separate unit, nor counted as a separate unit. This will require a revision to the building permit plans that removes a solid wall and provides a door or similar so that this additional living area is not completely physically separated from the rest of the unit. In order to ensure that this bonus 'studio' remains additional living area and not a separate unit, the applicant will be required, as a condition of approval, to enter into a customized 'second sink' agreement with the Bureau of Development Services. With such a condition, this criterion can be met.

- F.** If in an environmental zone, the proposal has as few significant detrimental environmental impacts on the resource and resource values as is practicable;

**Findings:** The site is not within an environmental 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

The applicant is in the process of constructing an affordable home-ownership [condominium] project consisting of ten units [five cottages and five townhouses], a shared courtyard, and designed to be energy-efficient and sustainable. This project is the result of collaboration between the applicant, PDC and the Portland Community Land Trust. The overall goal of the project is to provide housing that will be permanently affordable, and provide some of the benefits of home ownership to the purchaser, while the homes remain in co-ownership with PCLT.


Other partners in this project include Fannie Mae, which will warrant the project and associated mortgages. However, Fannie Mae operates under guidelines that prevent one of the proposed townhouses to include a separate studio unit, because the guidelines will allow only one unit per condo, and will not allow any condos that include multiple dwelling units. The applicant initially proposed one townhome to include a studio unit, but because of the Fannie Mae guidelines, is now requesting an Adjustment to reduce minimum density requirement for this site from eleven units to a total of ten units. The townhouse is proposed to contain additional living area, with an auxiliary kitchen, but configured in such a way that this studio area is not a separate unit, nor counted as a separate unit. The requested Adjustment meets all of the applicable approval criteria with a condition of approval, and therefore should be approved.

## ADMINISTRATIVE DECISION

Approval of:

- An Adjustment to 33.120.205 C, Minimum Density, for the site from 11 to 10 units, per the approved site plan, Exhibit C-1, signed and dated June 3, 2009, subject to the following conditions:
  - A. As part of the building permit application submittal, the following development-related conditions (B) must be noted on each of the 4 required site plans or included as a sheet in the numbered set of plans. The sheet on which this information appears must be labeled "ZONING COMPLIANCE PAGE - Case File LU 09-123382 AD." All requirements must be graphically represented on the site plan, landscape, or other required plan and must be labeled "REQUIRED."
  - B. In order to ensure that the bonus 'studio' remains additional living area and not a separate unit, the applicant will be required to record a 'second kitchen sink' covenant. This recorded covenant will allow the Bureau of Development Services to approve the necessary revisions to 08-117550 CO to add an interior doorway and any other associated physical changes that result in this condo being one unit.

**Staff Planner: Sylvia Cate**

**Decision rendered by:**  **on June 3, 2009**  
By authority of the Director of the Bureau of Development Services

**Decision mailed: June 5, 2009**

**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 April 22, 2009, and was determined to be complete on May 5, 2009.

*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 April 22, 2009.

*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: September 2, 2009.**

**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 Adjustment Committee, which will hold a public hearing. Appeals must be filed **by 4:30 PM on June 19, 2009** 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 Adjustment Committee 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 Adjustment Committee 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 **June 22, 2009 – (the first business 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.

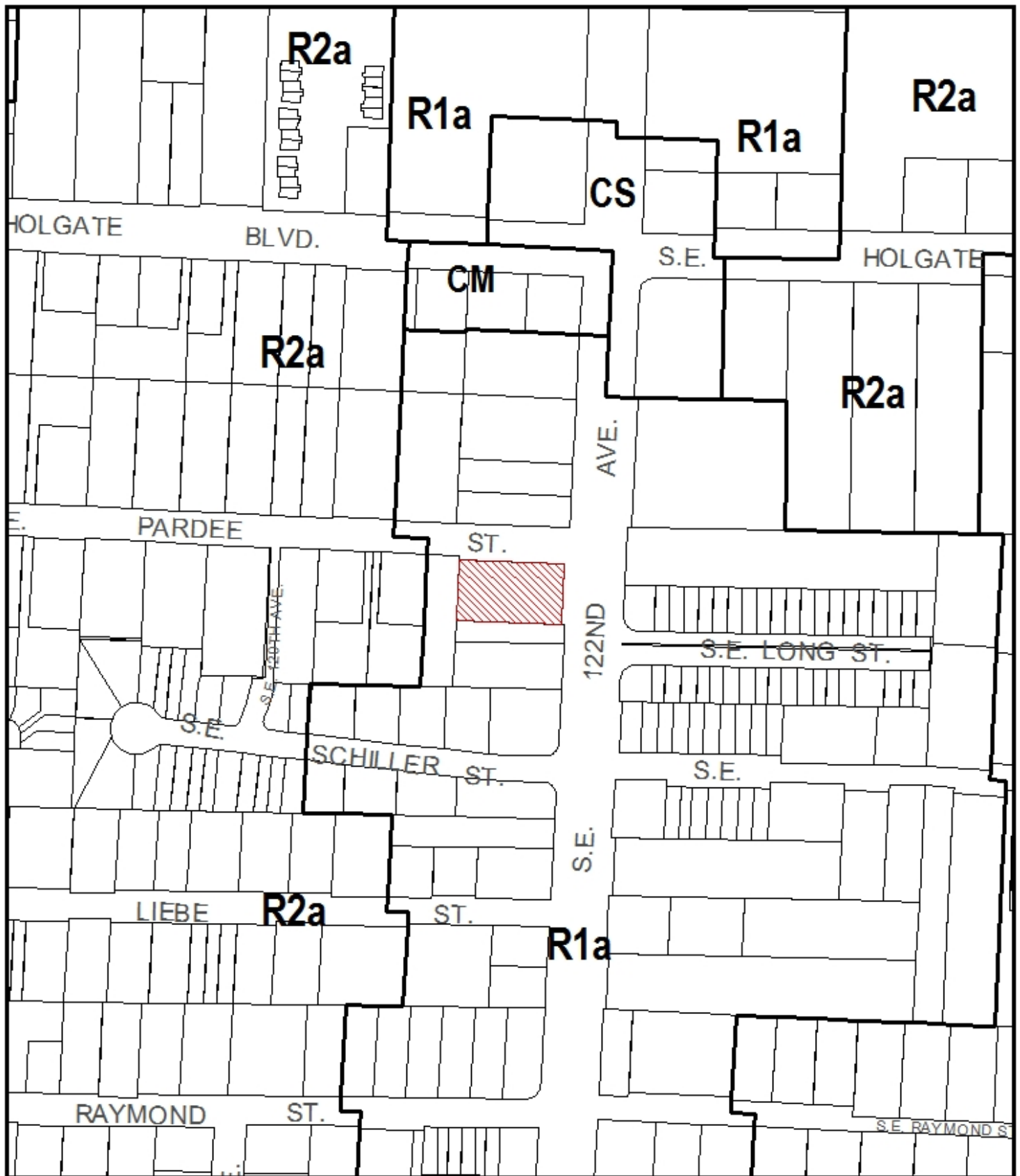
**EXHIBITS**

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. Bureau of Environmental Services
  - 2. Bureau of Transportation Engineering and Development Review
  - 3. Water Bureau
  - 4. Fire Bureau
  - 5. Site Development Review Section of BDS
  - 6. Bureau of Parks, Forestry Division
- F. Correspondence: None received
- 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 503-823-7300 (TTY 503-823-6868).**





# ZONING



File No. LU 09-123382 AD

1/4 Section 3542

Scale 1 inch = 200 feet

State Id 1S2E15AA 3400

Exhibit B (Apr 28,2009)



This site lies within the:  
JOHNSON CREEK BASIN PLAN DISTRICT

Applicant assumes no  
 responsibility for  
 repair or replacement  
 of any existing  
 utility or other  
 damage, or for any  
 delay caused by the  
 applicant.

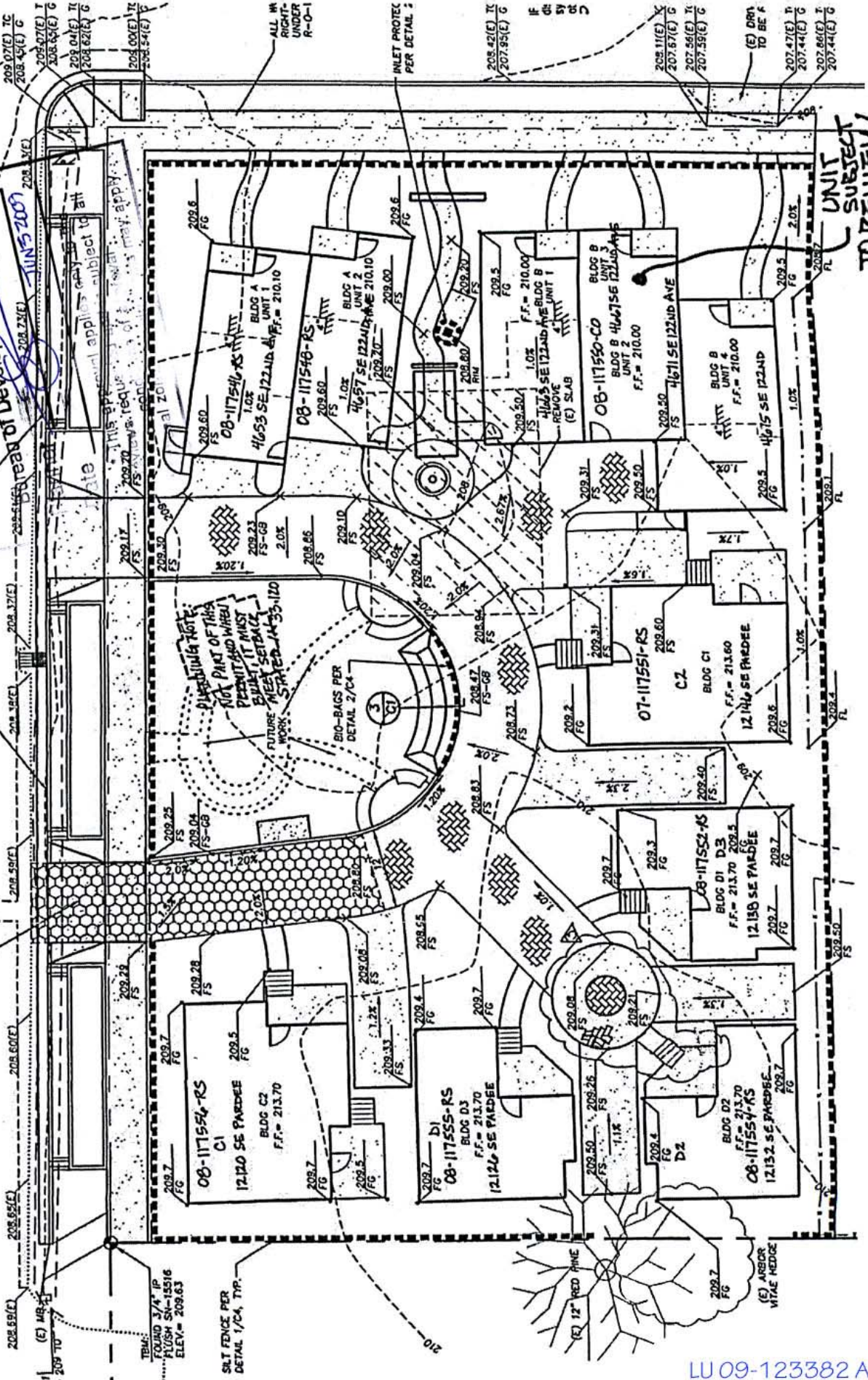
NO WORK IN  
 UNDER THE  
 SEE ST. 300

Existing site plan

SE PARDEE ST  
 \*Approved\*  
 City of Portland  
 Bureau of Development Services

ALL WORK IN RIGHT-OF-WAY  
 UNDER SEPARATE R-O-W PERMIT

CONSTRUCTION ENTRANCE PER DETAIL 3/04



PLEASE UNDERSTAND  
 NOT PART OF THIS  
 PERMIT AND WHEN  
 EXCAVATING MUST  
 BE AWARE OF  
 FUTURE  
 WORK  
 SHOWN IN 3-110

TERM:  
 FOUND 3/4" IP  
 FLUSH SN-15516  
 ELEV. = 209.63

SILT FENCE PER  
 DETAIL 1/04, TYP.

(E) 12" RED PINE

(E) ARBOR  
 VITAE HEDGE

UNIT  
 SUBJECT  
 TO REVIEW