

Date: September 20, 2011
To: Interested Person
From: Kim Freeman, Land Use Services
503-823-5663 / Kim.Freeman@portlandoregon.gov

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 11-156071 AD

GENERAL INFORMATION

Applicant/Owner: Northwest Natural Gas Co
One Pacific Square
220 NW 2nd Ave
Portland, OR 97209-3943

Representative: Rachel Martin
Pearl Legal Group Pc
1010 NW Flanders St, Ste 200
Portland, OR 97209

Site Address: 7900 NW ST HELENS RD
Legal Description: TL 900 23.28 ACRES DEPT OF REVENUE, SECTION 12 1N 1W; TL 400 2.31 ACRES, SECTION 12 1N 1W; TL 1000 1.21 ACRES, SECTION 12 1N 1W; TL 1100 2.47 ACRES, SECTION 12 1N 1W; TL 200 2.39 ACRES, SECTION 12 1N 1W; TL 100 0.92 ACRES, SECTION 12 1N 1W; TL 300 1.62 ACRES LAND ONLY SEE R324173 (R961121311) FOR IMPS, SECTION 12 1N 1W; TL 100 0.10 ACRES, SECTION 13 1N 1W; TL 1300 6.47 ACRES LAND & IMPS SEE R502594 (R961130541) FOR IMPS, SECTION 13 1N 1W

Tax Account No.: R961120420, R961121120, R961121130, R961121230, R961121290, R961121300, R961121310, R961130410, R961130540

State ID No.: 1N1W12 00900, 1N1W12CC 00400, 1N1W12 01000, 1N1W12 01100, 1N1W12CC 00200, 1N1W12CC 00100, 1N1W12CC 00300, 1N1W13BB 00100, 1N1W13 01300

Quarter Section: 2221

Neighborhood: Northwest Industrial, contact Pamela Ake at 503-228-2335.
Business District: Northwest Industrial, contact Pamela Ake at 503-228-2335.
District Coalition: Neighbors West/Northwest, contact Mark Sieber at 503-823-4212.
Plan District: Guilds Lake Industrial Sanctuary
Zoning: IHis – Heavy Industrial base zone with River Industrial “i” greenway and Scenic Resource “s” overlay zones

Case Type: AD – Adjustment Review

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

Proposal:

As part of a previous building permit, NW Natural was required to bring certain site-related development standards up to code. As allowed under Section 33.258.070.2.d, the applicant signed a covenant with the City of Portland to complete the required upgrades over a 5-year period. That 5-year period currently ends August 23, 2011. Based upon the uncertainty of the Federal EPA and Oregon DEQ requirements for the Portland Superfund Site Source Control, NW Natural requests an Adjustment to the extend the compliance period for 6-years to August 2017.

The development standard that must be brought up to current code is the riverbank landscaping requirement found in Chapter 33.440.230.A-C, Greenway Overlay Zones. According to the signed covenant, the greenway landscape standard of one tree per twenty feet and one shrub per two feet of river frontage must be met within or riverward of the Greenway setback to comply with the landscaping requirement. Additionally, removal of invasive species, such as blackberry and butterfly bush, will take place within the entire planting area. The plantings are to be installed by the end of the compliance period. Currently there are three phases of remedial activities underway at the site: groundwater source control, an upland risk assessment, and a riverbank and in-water sediment remedy.

There is no request to change the number of plantings or waive the plantings altogether. An Adjustment to Section 33.258.070 is required because the applicant wishes to extend the compliance period beyond the time allotted in the code.

Relevant Approval Criteria:

In order to be approved, this proposal must comply with the approval criteria of Title 33. The relevant criteria are found in **Section 33.805.040.A-F**.

ANALYSIS

Site and Vicinity: The site is currently used as a liquefied natural gas storage facility. Since the early 1900's the site has been used to process and refine oil and by-products. As a result, the site (soils, groundwater, and river sediments) has been identified as contaminated with materials relating to these businesses. As a result, the site is undergoing significant remedial activities.

The site borders the Willamette River to the north east, NW St Helens Road to the west, and Siltronic to the south. Adjacent uses are industrial and manufacturing in nature. NW St Helens Road is classified as a Regional/Major City Traffic Street.

Greenway Resources: The greenway overlay zones protect, conserve, enhance, and maintain the natural, scenic, historical, economic, and recreational qualities of lands along Portland's rivers. The greenway regulations implement the City's Willamette Greenway responsibilities as required by ORS 390.310 to 390.368, as well as the water quality performance standards of Metro's Title 3. The purpose of this land use review is to ensure compliance with the regulations of the greenway overlay zones.

The site's designated resources are identified in the *Lower Willamette River Wildlife Habitat Inventory*, as Rank IV and V sites: Shoreline/Site 15.1a (37/Rank IV), Upland/Site 15.1b (52/Rank V), and Upland/Site 15.1c (0/Rank V). Rank V sites are noted as being highly altered, often with riprapped banks, and as having great potential for enhancement for wildlife and aesthetic functions. The riverbank at *NW Natural* currently includes docks, riprap, and vegetated areas.

Scenic Resources: A view corridor, VB 09-15, exists on the southwest portion of the property, which protects views of the St. Johns Bridge.

Zoning: The IH zone is one of the three zones that implement the Industrial Sanctuary map designation of the Comprehensive Plan. The zone provides areas where all kinds of industries may locate including those not desirable in other zones due to their objectionable impacts or appearance. The “i” overlay is intended to encourage and promote the development of river-dependent and river-related industries which strengthen the economic vitality of Portland as a marine shipping and industrial harbor, while preserving and enhancing the riparian habitat and providing public access where practical. The Guild’s Lake Industrial Sanctuary Plan District fosters the preservation and growth of this premier industrial area by protecting the area from incompatible uses.

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

- LUR 01-00596 GW: Greenway Review
- LUR 97-00666 GW: Greenway Review
- GP 003-87: Approval of 1,200 sf addition to existing office.
- GP 012-83: Approval of 1,250 sf office/lab with 6 off street parking spaces for river dependent loading/unloading of ships with bulk oil.
- GP 017-82: Approval to install 18 by 32 foot steel canopy.
- GP 004-80: Three oil tank addition to terminal.
- CU 082-79: Greenway and conditional use for fill of approximately 35,000 cubic yards and riprap of riverbank in order to stabilize shoreline in M1 zone.
- CU 006-78: Greenway and conditional use (in river) for the construction of an upstream mooring dolphin in conjunction with a recently completed dock reconstruction.
- CU 058-73: Conditional use for fill.
- CU 027-73: Conditional use request for gas plant, storage and fill.
- CU 010-69: Microwave transmission tower.
- CU 078-66: Liquefied gas storage.

All conditions of prior reviews remain in effect and are the responsibility of the property owner.

PUBLIC REVIEW COMMENTS

Agency and Neighborhood Review: A Notice of Proposal in your Neighborhood was mailed on **August 16, 2011**.

- 1. Agency Review:** Several Bureaus and agencies have responded to this proposal. The comments are addressed under the appropriate criteria for review of the proposal. Exhibits E contain additional details.
- 2. Neighborhood Review:** One written response was received from either the Neighborhood Association or notified property owners in response to the proposal. The response was in opposition to approving the proposal.

ZONING CODE APPROVAL CRITERIA

ADJUSTMENTS

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. have been met.

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

Findings: In order to be approved, this proposal must be consistent with the purpose of the nonconforming situation standards. Each code chapter includes a purpose statement that outlines the reason for the associated regulations:

Nonconforming Situations*33.258.010 Purpose*

Nonconforming situations are created when the application of a specific zone to a site changes, or a zoning regulation changes. As part of the change, existing uses, density, or development might no longer be allowed. The intent of the change is not to force all noncomplying situations to be immediately brought into conformance. Instead, the intent is to guide future uses and development in a new direction consistent with City policy, and, eventually, bring them into conformance.

An additional purpose statement is included with the portion of the chapter that deals specifically with nonconforming development to further clarify the intention of the code:

33.258.070.A Purpose

This section is primarily aimed at upgrading nonconforming development elements that affect the appearance and impacts of a site. It is not intended to require extensive changes that would be extremely impractical such as moving or lowering buildings.

NW Natural states that completing the Greenway code requirements for the river bank area by August 23, 2011 is extremely impractical due to ongoing remedial activities occurring onsite and continuing onsite through 2016. There are three components to the remedial activities currently underway /planned onsite: groundwater source control, an upland remedy, and a riverbank and in-water sediment remedy. The first and third components are occurring within the greenway area required to be planted by 33.440.230.A-C. The third component may also drastically alter the configuration of the bank at the site once the final design is approved.

Pursuant to an Order from DEQ, NW Natural has been implementing source control measures on the property since 2009 to contain contaminated groundwater at the shoreline and prevent it from entering the Willamette River. The existing greenway setback currently has monitoring wells and an access road, with a series of extraction wells to be installed. There are two additional phases planned for source control and remediation, which are being coordinated with DEQ. Most relevant to this application is the Riverbank and In-Water Sediment Remedy, which is planned as the final component of the cleanup. This part of the cleanup cannot begin until the EPA issues their Record of Decision for the Portland Harbor Superfund Site, which will impact the NW Natural site. The EPA ROD decision will likely require work including riverbank modifications and sediment cleanup; this work is anticipated to take about two and a half years, and cannot begin until the ROD is issued. The result is that any plantings would not be able to be installed until these work components are completed.

The Superfund process is a progression of specific steps with key points for federal, state, and local regulatory review and public comment. The City agrees that it would be extremely impractical for the applicant to install the greenway plantings because it is likely that they will have to remove them in order to complete EPA or DEQ remediation. However, the applicant has not demonstrated that a 6-year extension of the compliance period is necessary.

In conformance with prior approvals for sites awaiting the EPA ROD, BDS has approved an extension to the compliance period by two years from the date of the EPA ROD. Two years should allow adequate time to develop a Remedial Design and apply for any necessary local reviews.

A 2-year extension complies with the primary purpose of eventually bringing the site into conformance and is consistent with the intent to avoid extensive changes that would be extremely impractical. With a reduction to a 2-year extension from the date of the EPA Record of Decision for the Portland Harbor Superfund Site, this criterion will be 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 desired character of the area is based on the purpose statement or character statement of the base zone, overlay zone, and/or plan district. It also includes the preferred and envisioned character based on any adopted area plans or design guidelines for an area. The street classifications and zoning designations were listed and discussed on Page 2 and 3 of this report.

The plan district, base zone, and overlay zone regulations encourage the preservation and growth of river-dependent and river-related industries, which depend on the area's multimodal transportation system, to strengthen the economic viability of Portland as a marine shipping and industrial harbor. This must be balanced with the goal to preserve and enhance the riparian habitat along the Willamette River.

Given these street and zoning designations, development in the area is anticipated to be supportive of river-dependent and river-related industrial operations, and to accommodate a wide range of transportation options. In this situation, with the provisions noted above for a 2-year extension of the nonconforming upgrade compliance period, the site will remain industrial in character. Therefore, this criterion will be 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 to extend the compliance period for required non-conforming upgrades, so this criterion does not apply.

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

Findings: The site does have a designated scenic resource as noted on Page 2. No development is proposed as part of this proposal, thus no impacts to scenic resources will occur. This criterion is met.

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

Findings: The purpose of the greenway landscaping is to screen development from the river, shade and cool riparian areas, stabilize the riverbank and provide increased wildlife habitat. Unfortunately, any disturbance to the riverbank and greenway setback soils or increased infiltration at the NW Natural site could mobilize contaminants. Requiring full compliance or even just invasive species removal and seeding may cause more harm to the river than the few years of benefit provided by an increased native plant presence.

The existing vegetation in the greenway setback, while mostly invasive species, does provide some minimal habitat value. The NW Natural site must be fully characterized and the site contamination delineations fully understood before complete plantings are required. Allowing compliance with the greenway standards to be deferred until the EPA ROD is available adequately balances the impacts of continued low habitat value with the impacts of mobilized contaminants caused by disturbed soil. As such, this criterion will 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 a designated environmental zone, so this criterion does not apply.

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

In order to complete the federal EPA Superfund process, NW Natural requested an Adjustment to extend the compliance period on their existing Nonconforming Upgrade Option 2 covenant. Based on the findings throughout this report, the proposal will meet the applicable approval criteria, with a reduction to a two-year extension from the date of the EPA Record of Decision for the Portland Harbor Superfund Site rather than the six years requested. Therefore, a two-year extension from the EPA ROD should be approved.

ADMINISTRATIVE DECISION

Approval of an extension to the Nonconforming Upgrade Option 2 compliance period, for the installation of the greenway landscape plantings, up to two years from the date of the EPA Record of Decision for the Portland Harbor Superfund Site.

Staff Planner: Kim Freeman

Decision rendered by:  **on September 15, 2011.**

By authority of the Director of the Bureau of Development Services

Decision mailed: September 20, 2011

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 July 8, 2011, and was determined to be complete on August 8, 2011.

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 July 8, 2011.

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: December 6, 2011.**

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 October 4, 2011** 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 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 **October 5th, 2011 – (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.

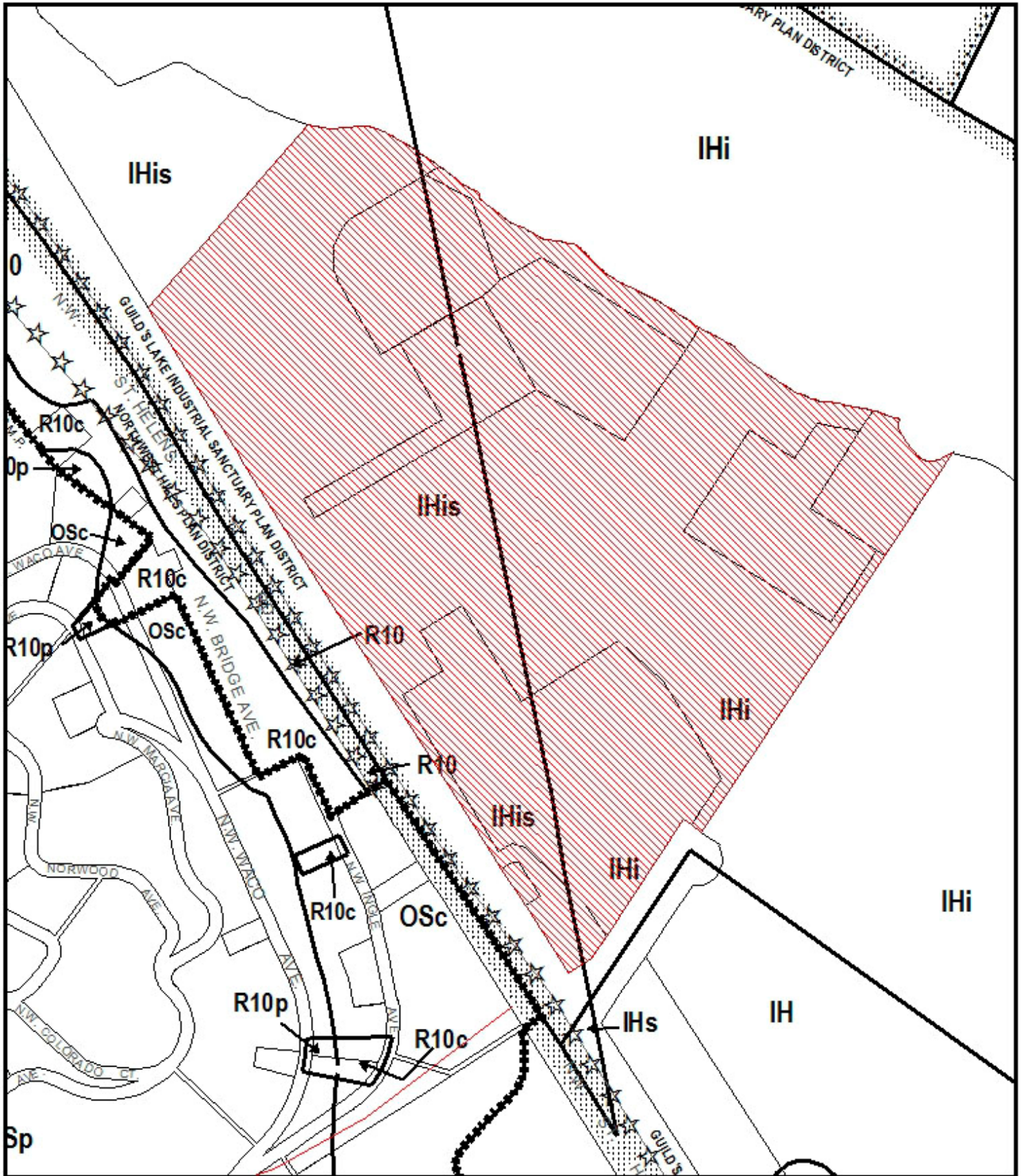
Applying for your permits. A building permit, occupancy permit, or development permit may be required before carrying out an approved project. At the time they apply for a permit, permittees must demonstrate compliance with:

- 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. 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:
 - 1. Brian Lebeck, September 6, 2011
- G. Other:
 - 1. Original LU Application
 - 2. Site History Research
 - 3. Option 2 – Nonconforming Upgrades Covenant



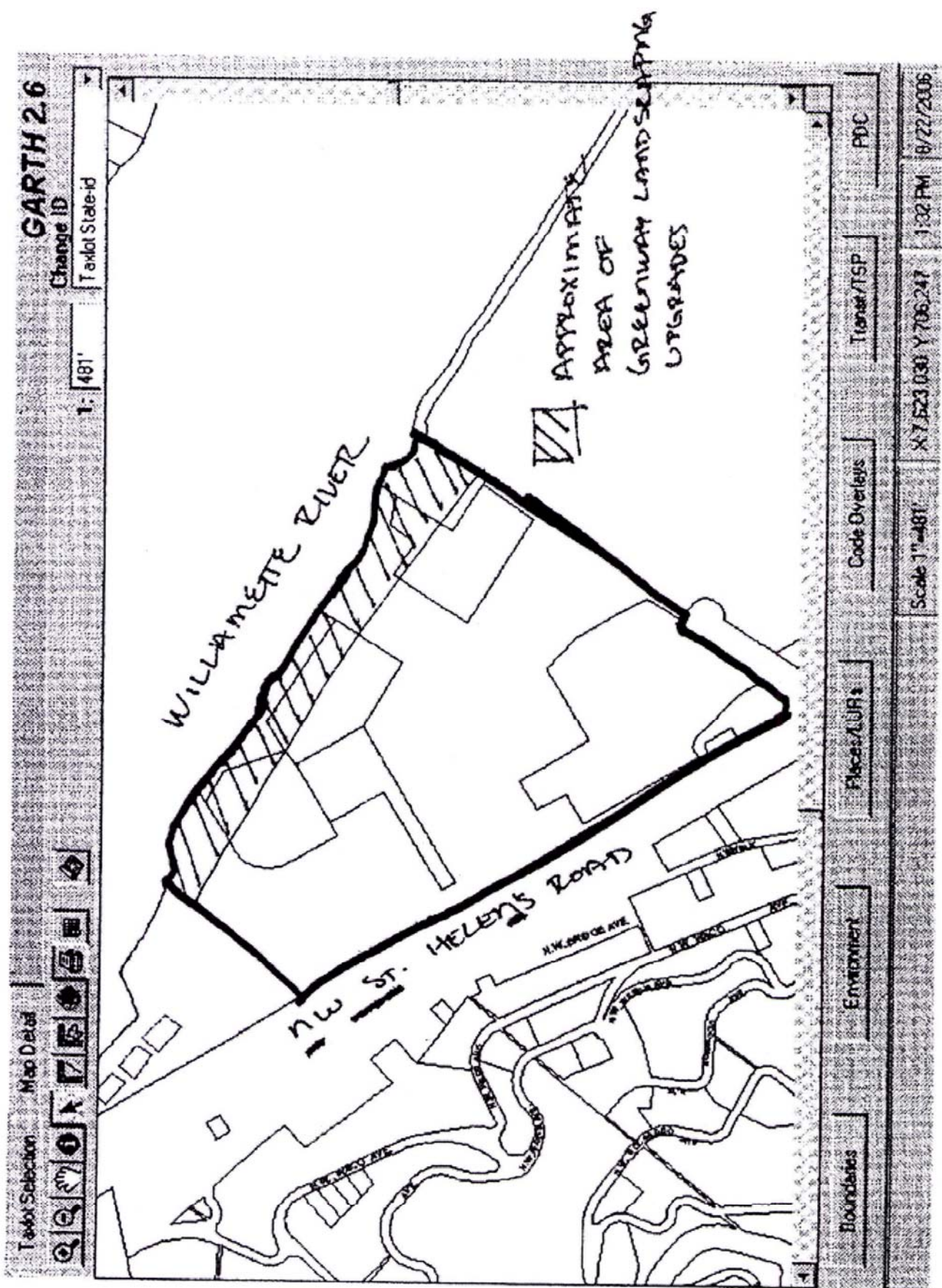
ZONING

 Site



This site lies within the:
GUILD'S LAKE INDUSTRIAL SANCTUARY PLAN DISTRICT

File No.	<u>LU 11-156071 AD</u>
1/4 Section	<u>2221,2321</u>
Scale	<u>1 inch = 300 feet</u>
State_Id	<u>1N1W12 900</u>
Exhibit	<u>B (Aug 09,2011)</u>



NONCONFORMING DEVELOPMENT ASSESSMENT
 SITE PLAN
 EXHIBIT 1