



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

FROM CONCEPT TO CONSTRUCTION

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Date: September 16, 2013
To: Interested Person
From: Douglas Hardy, Land Use Services
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NOTICE OF A TYPE II DECISION
ON A LAND USE REVIEW IN YOUR NEIGHBORHOOD

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

CASE FILE NUMBER: LU 13-180188 ZE

GENERAL INFORMATION

Applicant: City of Portland Bureau of Development Services / Land Use Services
1900 SW 4th Avenue, Suite 5000 / Portland, OR 97201

Property-Owner: Rose City Facilities
1825 NE 50th Avenue / Portland, OR 97213

Property-Owner Representative: Dan Glennon, architect
4106 NE 32nd Place / Portland, OR 97211

Site Address: 5010-5012 NE Oregon Street

Legal Description: Block 2&3, TL 1000, Laurelton Heights
Tax Account No.: R479600240
State ID No.: 1N2E31BD 01000
Quarter Section: 2935
Neighborhood: Rose City Park, contact Tamara DeRidder at 503-249-6977
Business District: Hollywood Boosters, contact Christine Azar at 971-570-8011
District Coalition: Central Northeast Neighbors, contact Alison Stoll at 503-823-3156
Zoning: EG2 General Employment 2
R5 Single-Dwelling Residential 5,000

Case Type: Zoning Map Error (ZE)
Procedure: Type II, Administrative decision with appeal to the Hearings Officer

PROPOSAL

The Bureau of Development Services is initiating a Zoning Map Error to correct the zoning on the northwest-most and northeast-most portions of this site from R5 (Single-Dwelling Residential 5,000) to EG2 (General Employment 2), thereby reflecting the existing zoning on the remainder of the ownership. This process is necessary because the current zoning line bisects existing development on a site that has been in nonresidential use since at least 1969. This zoning map error has resulted in nonresidential development being located in part in a Single-Dwelling Residential zone.

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 Zoning Code Section 33.855.070.

ANALYSIS

Site and Vicinity: The 60,088 square foot site is located in the Rose City Park neighborhood, and is bounded by the Interstate-84 freeway to the south/southwest, with street frontage on NE Oregon Street and NE Pacific Street. The site is developed with a 30,150 square foot building located towards the center of the site, with on-site surface parking areas in the east and northwest portions of the property. Additional parking is located between the building and Interstate-84, on what appears to be leased right-of-way.

Adjacent properties to the northwest and southeast of the subject site, along the freeway, are developed with nonresidential uses. With the exception of an institutional use (Head Start) located at the northwest corner of NE Pacific Street and NE 52nd Avenue, remaining properties along NE Oregon Street and NE Pacific Street, as well as along the nearby NE 52nd Avenue, are developed with single-dwelling residential uses.

Zoning: The vast majority of the subject site is located in a General Employment 2 (EG2) zone. The exception is a small triangular portion of the site, approximately 1,400 square feet in area, located in the northwest corner of the property that is mapped with a Single-Dwelling Residential 5,000 (R5) zone. Additionally, approximately 9,200 square feet of the northeast portion of the property is mapped with the R5 zone.

The General Employment zones implement the Mixed Employment map designation of the Comprehensive Plan. The zones allow a wide range of employment opportunities without potential conflicts from interspersed residential uses. The emphasis of the zones is on industrial and industrially-related uses. Other commercial uses are allowed to support a wide range of services and employment opportunities. For example, the subject site would allow by right up to 60,000 square feet of Retail Sales and Service uses.

The development standards for the General Employment zones are intended to allow new development which is similar in character to existing development. The intent is to promote viable and attractive industrial/commercial areas. EG2 areas have larger lots than those in the EG1 zone, and an irregular or large block pattern. Areas mapped with the EG2 zone tend to be less developed, with sites having medium and low building coverages and buildings which are usually set back from the street. EG2 zoned lands will generally be on larger areas than those zoned EG1.

The use regulations of the Single-Dwelling zones are intended to create, maintain and promote single-dwelling neighborhoods. They allow for some non-household living uses but not to such an extent as to sacrifice the overall image and character of the single-dwelling neighborhood. Parking associated with a warehouse/office/retail use, such as has been occurring on the subject site since 1969, is not one of the allowed uses in the R5 zone. Such development is prohibited in this zone.

The development standards in the Single-Dwelling zones work together to promote desirable residential areas by addressing aesthetically pleasing environments, safety, privacy, energy conservation, and recreational opportunities. The site development standards allow for flexibility of development while maintaining compatibility within the City's various neighborhoods.

Land Use History: City records indicate that prior quasi-judicial land use reviews on the site include the following:

VZ 144-69: Variance from 1969 approving an increase in the height of a fence from the permitted three and one-half feet to six feet on the north front property line, to eliminate the required five foot wide low planting screen adjacent to the north front property line, and to park in the front yard. While the approved site plan identifying where the fence and parking area were located on the site is not available, there is currently a fence along the north side of the parking area fronting NE Oregon Street, and along the north side of the parking area fronting NE Pacific Street. A review of the historic maps in the City's Development Services Center that tracked land use history on a site by site basis identifies this variance applying to Lot 12, Block 2, which is the location of the parking area fronting NE Pacific Street.

A review of the legislative history on the site identifies the following historical zoning on the site:

- Pre-1959: With the exception of the southwesterly two-thirds of Lot 13 and the southwesterly one-quarter of Lot 14, Block 2, the entire site was located in Zone 2 (Multi-Family Residential) (Exhibit G.2). The southwesterly two-thirds of Lot 13 and the southwesterly one-quarter of Lot 14, Block 2, were located in Zone 3 (Commercial).
- June 1964: City Council approved a map amendment that changed the zone from R5S (One-Family Residential with a Signboard Control zone) to M3S (Light Manufacturing with a Signboard Control zone) for the northeast corner of Lot 12, the northerly portion of Lots 16 and 17 and all of Lot 18, Block 2 (Exhibit G.3). (Exhibit G.4 includes a tax map that identifies the existing tax lots that comprise the site.) The mentioned northeast corner of Lot 12, Block 2 is the portion of site that is developed with parking and fronts NE Pacific Street, and that is now mapped with the R5 zone. This map amendment also placed a Parking Zone ("P") on Lots 19 and 20, Block 2. Lots 19 and 20 include the portion of the subject site northeast of the building that is currently developed with parking (accessed from NE Oregon Street) and located in an R5 zone. According to Section 33.70.010 of the 1980 Zoning Code, the "P" zone was intended to be mapped in recognition of the need for a greater number of parking spaces next to businesses, industries, "and other uses permitted in the C and M zones."
- Up until December 31, 1980, the majority of the site was mapped M3S (Exhibit G.5). A small triangular piece of Lot 12, Block 2 (fronting NE Pacific Street) was mapped R5S, with Lots 19 and 20 mapped R5PS.
- Up until December 31, 1990, the majority of the site remained in the M3S zone (Exhibit G.6). The small triangular piece of Lot 12, Block 2 (fronting NE Pacific Street) and Lots 19 and 20, Block 2, were both mapped R5S.
- As of January 1, 1991, the majority of the site was zoned EG2, with the small triangular piece of Lot 12, Block 2 and Lots 19 and 20, Block 2, mapped R5 (Exhibit G.7).

Agency Response: The Bureau of Planning and Sustainability (BPS) reviewed the requested Zoning Map Error Correction and concluded that a map error does exist (Exhibit E.1). BPS finds that the present situation is consistent with the overall intent of the Zoning Map Error Correction process. BPS notes that the streets used to access the parking areas on the site are similar to topographical features on a map, and the zoning lines should have acknowledged the street and the need to access the existing on-site parking areas. Additionally, BPS finds that the legislative intent would not have been to create a prohibited use/development on the site, which was the case when the Parking overlay was removed from the eastern parking areas, and when the R5 zone was erroneously mapped on the northwest-most portion of the site.

Neighborhood Review: A Notice of Proposal was mailed on August 16, 2013. One written response was received from an area resident. The resident stated there were errors in the Public Notice that should be corrected, largely focusing on ownership. Specifically, the resident noted that the property is no longer owned by Carmela Smith, but by Rose City Facilities. BDS notes that when the applicant's representative first submitted an application for the Zoning Map Error Correction, the owner at the time was identified as Carmela Smith. Since that time, the ownership has been transferred to Rose City Facilities. The new ownership is reflected in this decision.

The resident also believes the notice was incorrect in that it stated the site has been in common ownership since 1964. BDS notes that the applicant has provided a property survey from 1964 that identifies the site in its entirety being in a single (common) ownership (Exhibit G.10). The site remains today in a single ownership.

No written response was received from the neighborhood association, district coalition or business district.

ZONING CODE APPROVAL CRITERIA

33.855.070 Corrections to the Official Zoning Maps

A. Mapping errors. The correction may be made for mapping errors such as:

1. A map line that was intended to follow a topographical feature does not do so. Topographical features include the tops and bottoms of hillsides, the banks of water bodies, and center lines of creeks or drainage ditches; or
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: Section 33.855.070 of the Zoning Code is intended to provide a quasi-judicial process whereby potential Zoning Map Errors can be evaluated and corrected if necessary. It is important to note that the language in Subsection A states, "The correction may be made for mapping errors *such as*." Zoning Code Section 33.700.070.D.4 clarifies that lists of items in the Code that include the phrase "such as" or similar language are not limited to just those items. The list is intended to provide examples, but not be an exhaustive list of all possibilities. As such, the language included in Subsections A.1 and A.2, above, is intended to provide examples of situations in which Zoning Map Errors may be addressed, but is not intended to present an inclusive list.

Northeast Corner of Lot 12, Block 2, Laurelton Heights

For the subject site, research of past zoning map history shows that in 1964, City Council passed an ordinance (Ordinance # 118724) that specifically changed the zoning on the northeast corner of Lot 12, Block 2 from a residential zone (R5) to Light Manufacturing (M3), with a Signboard Control ("S") zone (Exhibit G.3). Based on a review of available historic zoning maps following Council's 1964 decision (maps from December 30, 1980, and December 1990), the approved M3 designation erroneously was never mapped on the northeast corner of Lot 12, Block 2. When the M3 zone was replaced in the Zoning Code in 1991 with the EG2 zone, what was formerly an approved M3 designation on this portion of the lot should have become the EG2 zone, as occurred on the majority of this lot.

This conclusion is supported by a building permit that was issued in 1968 (Permit #443866; Exhibit G.8). The permit identifies the boundaries of the entire ownership as it exists today, including the northeast corner of the Lot 12, Block 2, and allowed the construction of a warehouse/office use. The site plan for this building permit identifies a fence located along the entire east property line of Lot 12 (extending to the street lot line along NE Pacific Street), and Lot 12 being developed with “compacted and rolled” gravel, obviously for use by the proposed warehouse/office. A permit would not have been issued in 1968 for development associated with a warehouse/office on this portion of Lot 12, Block 2 had the zoning not allowed such development. The R5 designation would not have allowed such development, whereas the M3 zone did. Subsequent permits, such as one from 1988 (Permit #88-19828; Exhibit G.9), identified parking on the entirety of Lot 12 (extending up to the property lot line along NE Pacific Street) associated with an office/warehouse/retail use on the site.

Additionally, a survey from 1964 shows that the site boundaries included the northeast corner of Lot 12, and Lots 19 and 20, Block 2, reflecting the site boundaries as they exist today) (Exhibit G.10). It is not likely that a zone line would have intentionally bifurcated an existing ownership and an existing tax lot such as is the case with the diagonal zone lot line that clips the northeast corner of Lot 12. Evidence in the record would indicate the 1964 City Council ordinance that rezoned this corner of Lot 12 from R5 to M3S was intended to correct this. Subsequent legislative map changes on this portion of the site merely reflected the incorrect R5 zoning.

Based on this information, it is determined a zoning map error exists on the northeast corner of Lot 12, and the zone should be corrected from R5 to EG2.

Lots 19 and 20, Block 2, Laurelton Heights

The 1964 City Council ordinance referenced above also mapped the Parking (“P”) zone on Lots 19 and 20, Block 2 (Exhibit G.3). Also as noted above, the purpose of the Parking zone (as stated in Section 33.70.010 of the 1980 Zoning Code) was mapped on properties “in view of the need for greater spaces for parking next to businesses, industries, places of public assembly and other uses permitted in C and M zones.” Following the mapping of the P zone on these two lots, the above-referenced 1968 building permit approved a surface parking lot on Lots 19 and 20 for use by the new warehouse and office building proposed on the remainder of the site (and located in an M3 zone) (Exhibit G.8). This parking lot continued over time to be accessory to subsequent businesses that occupied the building on the site, as is evidenced in the 1988 building permit (Exhibit G.9), which identified 10 parking spaces on Lots 19 and 20 for use by the warehouse/office/retail use on the portion of the site in the M3 zone.

According to BPS, the P zone was removed from Lots 19 and 20 as part of the citywide 1980 Comprehensive Plan legislative project, even though the parking lot had been constructed and was in operation for approximately 10 years as accessory development to the nonresidential uses on the remainder of the site (Exhibit E.1). BPS notes in their response that the legislative intent of the 1980 zone change would not have been to prohibit the use of an existing parking lot that is accessory to an allowed use on the site. Instead, when the P zone was removed from Lots 19 and 20, the M3 zone should have been mapped on these lots in recognition that the previously established parking that was serving an allowed use on the same site should be permitted to continue to operate. Given the development that existed on the site in 1980, not placing the M3 zone on Lots 19 and 20 when the P zone was removed created a situation no different than if an R5 zone was mapped through the middle of

an existing warehouse building. While there are historical situations where BPS through a legislative zone change has made uses and development on properties nonconforming, it has not been BPS policy to create split zoning on a single site, whereby a portion of the use is conforming and the remainder becomes nonconforming.

Based on this information, it is determined a zoning map error exists on Lots 19 and 20, Block 2, Laurelton Heights, and the zone should be corrected from R5 to EG2.

Nonconforming Situations

It should also be noted that regardless of the Zoning Map Error Correction process, use of the parking lots, both northwest and northeast of the building, would be allowed to continue to operate as nonconforming development. Zoning Code Section 33.258.038 (Documenting a Nonconforming Situation) identifies the process by which legal nonconforming rights can be documented for a nonconforming situation. Documented legal nonconforming situations are allowed to continue to operate as long as the situation is maintained over time without a lapse exceeding three consecutive years. To document a nonconforming situation, it is necessary to demonstrate that the situation was allowed when established as evidenced by a building permit, land use review or zoning code/map, and that the situation has been maintained over time.

For the subject site, the 1988 building permit documents that parking for a mixed-use development (including retail, warehouse and office) was allowed when established. Phone directory listings for each three-year period following 1988 (Exhibit G.11) demonstrate that at least a retail use (George Smith Warehouse Sales and Standard TV and Appliance) operated at the site up until at least 2012. This information documents that even without the Zoning Map Error Correction, parking for a retail use would be allowed on the portions of the site currently located in an R5 zone.

Summary

Based on the findings above, it has been demonstrated that a zoning map error occurred on the site, and that the portions of the site mapped with the R5 zone should be corrected and mapped with the EG2 zone.

This criterion is met.

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

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

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

Findings: This situation does not apply to the subject site; therefore, 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 via a land use review prior to the approval of a building or zoning permit.

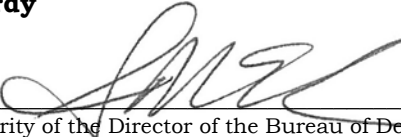
CONCLUSIONS

It has been demonstrated that a zoning map error occurred on the subject site, and that this error is corrected by replacing the R5 zone mapped on the northwest and northeast portions of the site with the EG2 zone. The EG2 zone reflects the zoning that is mapped on the remainder of the site, and acknowledges that development on these portions of the site has been accessory to the nonresidential uses on the site that are in the EG2 zone.

ADMINISTRATIVE DECISION

Approval of a Zoning Map Error Correction (Zoning Code Section 33.855.070) to replace the R5 zone on the northwest and northeast portions of the site with the EG2 zone, as illustrated in Exhibit B.2.

Staff Planner: Douglas Hardy

Decision rendered by:  **on September 13, 2013.**
By authority of the Director of the Bureau of Development Services

Decision mailed: September 16, 2013

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 16, 2013, and was determined to be complete on August 15, 2013.

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 16, 2013.

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 13, 2013.**

Some of the information contained in this report was provided by the applicant.

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

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

These conditions of approval run with the land, unless modified by future land use reviews. As used in the conditions, the term “applicant” includes the applicant for this land use review, any person undertaking development pursuant to this land use review, the proprietor of the use or development approved by this land use review, and the current owner and future owners of the property subject to this land use review.

Appealing this decision. This decision may be appealed to the Hearings Officer, which will hold a public hearing. Appeals must be filed **by 4:30 PM on September 30, 2013**, at 1900 SW Fourth Avenue. Appeals can be filed Tuesday through Friday on the first floor of the Development Services Center until 3 p.m. After 3 p.m. and Mondays, appeals must be submitted to the receptionist at the front desk on the fifth floor. **An appeal fee of \$250 will be charged.** The appeal fee will be refunded if the appellant prevails. There is no fee for ONI recognized organizations appealing a land use decision for property within the organization’s boundaries. The vote to appeal must be in accordance with the organization’s bylaws. Assistance in filing the appeal and information on fee waivers is available from BDS in the Development Services Center. Please see the appeal form for additional information.

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

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

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

Recording the final decision.

If this Land Use Review is approved the final decision must be recorded with the Multnomah County Recorder. A few days prior to the last day to appeal, the City will mail instructions to the applicant for recording the documents associated with their final land use decision.

- *Unless appealed*, the final decision may be recorded on or after **October 1, 2013**.
- 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. Approvals of Zone Map Error Corrections 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:

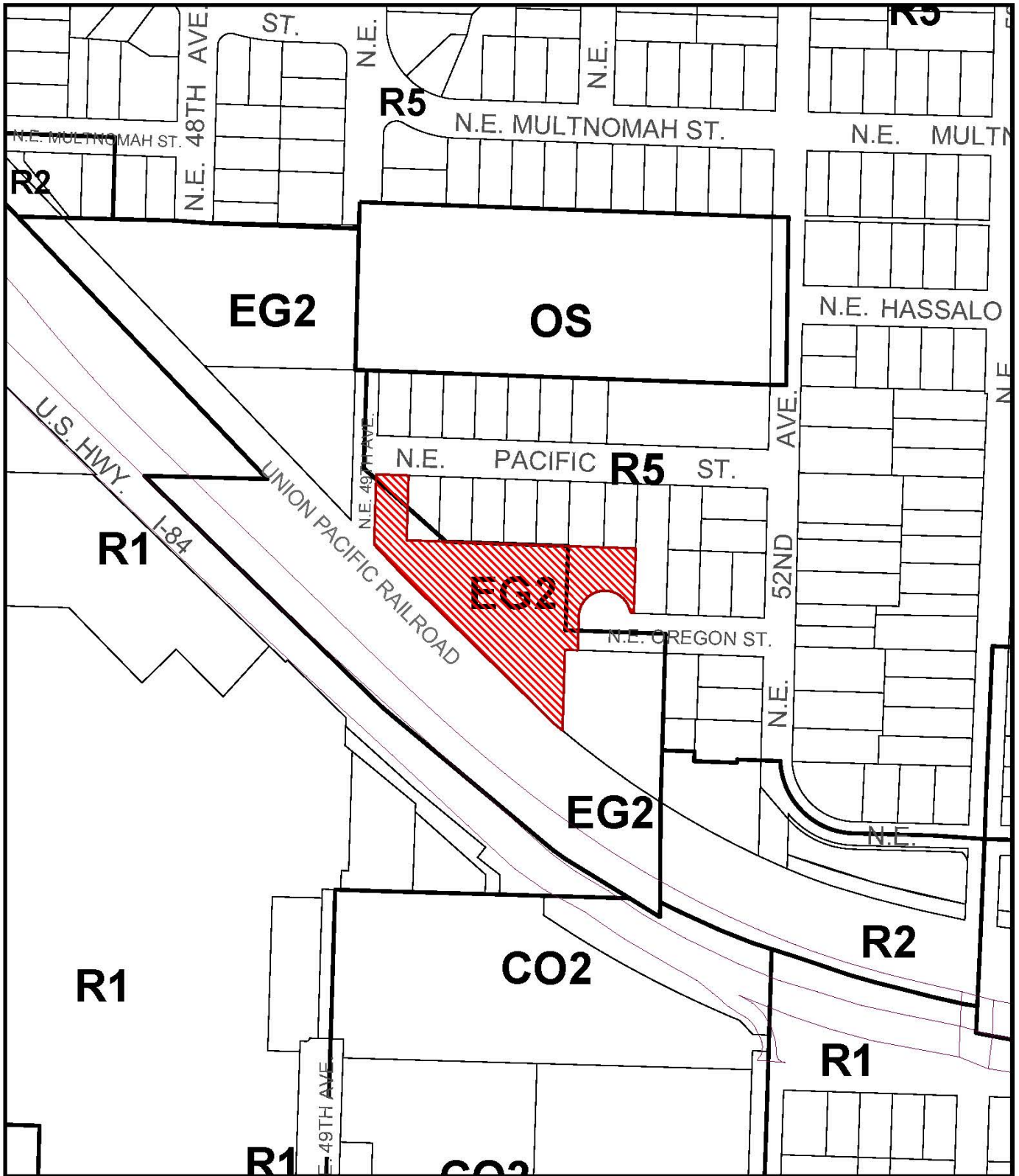
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
- B. Zoning Maps
 - 1. Existing (attached)
 - 2. Corrected (attached)
- C. Plans/Drawings (none)
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Bureau of Planning and Sustainability
- F. Correspondence:
 - 1. E-mail from Lenore LaTour, received August 28, 2013
- G. Other:
 - 1. Original LU Application
 - 2. Pre-1959 Zoning Map
 - 3. City Council Ordinance 118724
 - 4. Current Tax Map
 - 5. Zoning as of 12/31/80
 - 6. Zoning as of 12/31/90
 - 7. Zoning as of January 1, 1991
 - 8. Building Permit # 443866 from 1968
 - 9. Building Permit #88-19828 from 1988
 - 10. 1964 Property Survey
 - 11. Phone Directory Listings 1991-2012

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

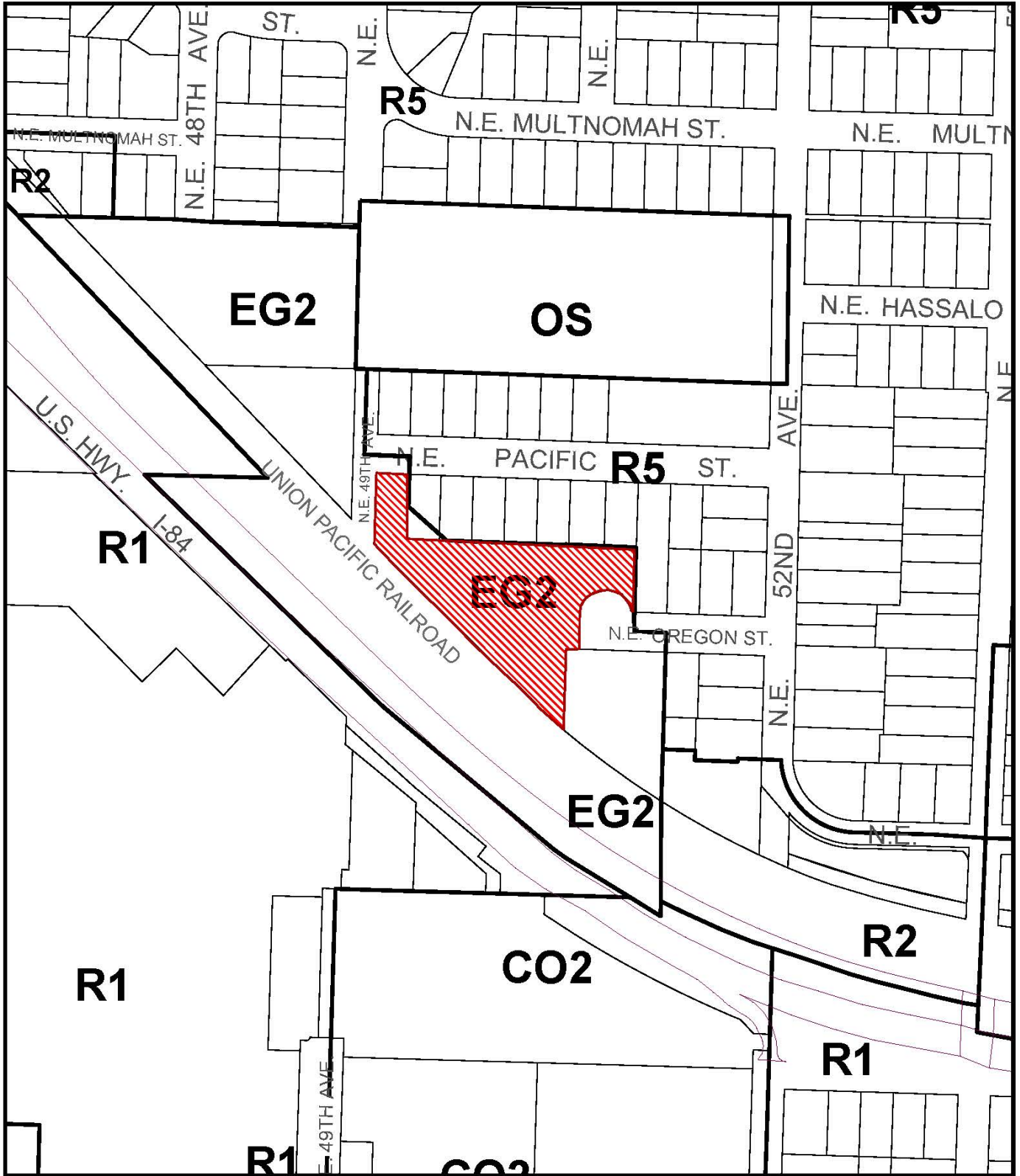


**ZONING
EXISTING**

 Site



File No. LU 13-180188 ZE
 1/4 Section 2935
 Scale 1 inch = 200 feet
 State_Id 1N2E31BD 1000
 Exhibit B.1 (Jul 16, 2013)



ZONING PROPOSED



Site



File No. LU 13-180188 ZE
 1/4 Section 2935
 Scale 1 inch = 200 feet
 State_Id 1N2E31BD 1000
 Exhibit B.2 (Jul 16, 2013)