



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

FROM CONCEPT TO CONSTRUCTION

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Date: November 27, 2013
To: Interested Person
From: Kathy Harnden, Land Use Services
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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 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 13-217745 ZE **UNINCORPORATED MULTNOMAH COUNTY** **GENERAL INFORMATION**

Applicant: Kim Tallant, Land Use Services
City of Portland, Bureau of Development Service
1900 SW 4th Ave., Suite 5000 / Portland OR 97201

Property Owners: Ted K. and Connie J. Gilbert
1205 SW 18th Ave / Portland, OR 97205

Site Address: 1761 SW 61st Drive

Legal Description: LOT 1, PARTITION PLAT 2000-61
State ID No.: 1S1E06CB 01401
Tax Account No.: R649802410
Quarter Section: 3223

Neighborhood: Sylvan-Highlands, contact Dave Malcolm at 503-805-9587.
District Coalition: Neighbors West/Northwest, contact Mark Sieber at 503-823-4212.
Plan District: Northwest Hills - Skyline
Other Designations: Unincorporated Multnomah County
Zoning: Residential 20,000 with the Environmental Protection (p) and Conservation (c) overlays (R20p and c)

Case Type: Zone Map Error Correction (ZE)
Procedure: Type II, an administrative decision with appeal to the Hearings Officer.

Proposal:

A Zoning Map error exists that is related to the placement of the Environmental Conservation overlay zone on this property. This property is included in the intergovernmental agreement (IGA) between Multnomah County and Portland. The IGA gives Portland the authority to provide zoning and other urban services to portions of Multnomah County that are within the Urban Growth Boundary and Portland's Urban Services Boundary. The IGA was adopted and went into effect on January 1, 2002. The current zoning on the subject property, located in Resource Area 111-A, Sylvan, is a result of the Multnomah County pockets project.

The natural resources in this area were inventoried as part of the *Multnomah County-Portland Unincorporated Urban Areas Functional Plan Compliance Project* in 1992. This study was done to implement the *Economic, Social, Environmental and Energy Analysis and Recommendations for*

Multnomah County Unincorporated Urban Areas, October 2001 and is referred to as the “ESEE” analysis. The natural resource inventory work included mapping the area, which was based on air photo interpretation and field reconnaissance. The natural resources identified for the subject area included wildlife habitat and a riparian corridor. The ESEE ranked these resources as “B” quality on the Recommended Significant Resource Area Rankings map. The riparian corridor on the subject property follows a natural drainageway.

At the request of the Portland Bureau of Planning and the property owner, the Director of the Bureau of Development Services initiated this Zone Map error correction procedure to modify the boundary of the environmental conservation overlay zone to better reflect the location of the natural resources existing on the site. Although this proposal will result in a modification to the overlay zone boundary, it will have no impact on the basic uses allowed on these properties by right or in the future.

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 approval criteria are found in **Zoning Code Section 33.855.070**.

FACTS

Site and Vicinity: This 1.3 acre site is located in Resource Site 111-A, Sylvan. This area is characterized by relatively large tracts of undeveloped forestland, but other uses include medium to low density residential and some, limited, agricultural uses. The site itself is currently undeveloped. It has steep slopes that are forest covered on the west half of the site. The east half of the site, where the zone map error exists, is largely a scrub/shrub mix of small shrubs and grasses, with few to no native plant species on less steep terrain.

Zoning: The site is zoned R20 with both the “c” (Environmental Conservation) and “p” (Environmental Protection) overlays.

The R20 designation is one of the City’s single-dwelling residential zones which is intended to preserve land for housing and to promote housing opportunities for individual households. The zone implements the comprehensive plan policies and designations for single-dwelling housing.

The “c” overlay is intended to conserve important environmental features and resources while still allowing compatible development. New development and exterior modifications to existing development must meet environmental standards or are subject to environmental review.

The “p” overlay provides the highest level of protection to the most important resources and functional values. Development will be approved in the environmental protection zone only in rare and unusual circumstances through environmental review.

Land Use History: City records indicate three prior land use reviews for this site, including a land division in 1999 which created the subject parcel and a flag lot to the west with access onto SW 61st Drive through the “pole” of the lot along the south side of the subject site.

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on October 28, 2013. No written responses were 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.

- 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 Bureau of Planning and Sustainability (BPS) investigated this site to determine whether it meets the criteria for approval of a zone map error, and found evidence of an environmental zoning map error. The BPS analysis determined that placement of the conservation zone was to be based on topography and vegetation, and that the intent of the ESEE analysis was to limit conflicting uses on steep slopes and/or forested upland slopes that provided terrestrial habitat.

The environmental conservation overlay zone was applied based on the presumed presence of terrestrial habitat located on steep slopes. The BPS report (Exhibit A) provides a detailed account of this process and how staff confirmed via document analysis and a site visit that “the conservation overlay does not follow the intended topographic features and forested slopes.” Instead, the subject area lies at the top of the slope and does not contain forests or provide forest habitat, but is instead, a scrub-shrub environment. The location of the proposed map error, therefore, meets this criterion.

- 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: Air photos from 1998 confirm that the forest resource location on the site in 1998 is nearly identical with the forest cover on the site today. Therefore there is no discrepancy between maps and it is clear that a map error has occurred on this site.

BOP staff reviewed the current proposal to remove the environmental conservation overlay from that portion of the site where the mapping does not conform with the intent of the ESEE decision that was to limit conflicting uses in resource areas that provided terrestrial habitat on steep slopes and/or forested upland slopes. The subject area is clearly not a steep slope and did not contain forested resources at the time of the original study or today. Therefore, there is significant evidence for where the conservation overlay zone line should have been located but the maps do not show the correct location.

Therefore, with approval of the proposed zoning map (Exhibit B.2) which removes a portion of the incorrectly mapped environmental conservation overlay zone, these criteria are met.

DEVELOPMENT STANDARDS

Unless specifically required in the approval criteria listed above, this proposal does not have to meet the development standards in order to be approved during this review process. The plans submitted for a building or zoning permit must demonstrate that all development standards of Title 33 can be met, or have received an Adjustment or Modification via a land use review prior to the approval of a building or zoning permit.

CONCLUSIONS

The Bureau of Planning recommends that a correction of a zoning map error should be approved based on the facts that:

1. The legislative record clearly indicates that forest vegetation on steep slopes was the precipitating factor for the conservation overlay mapping;
2. The vegetative cover is nearly identical today with the cover on the site in 1998;

3. The area with the conservation overlay did not then or now contain forested resources and is not a steep slope.

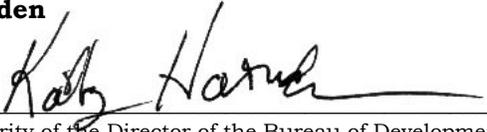
BDS has reviewed the BPS recommendation and, based on the findings supplied by BPS that provide a detailed analysis of how these sites were mapped, agree with this Zoning Map Error correction.

Therefore, this proposal should be approved.

ADMINISTRATIVE DECISION

Approval of a zoning map error correction regarding the relocation of the environmental zone lines, in conformance with the Proposed Zoning Map designated as Exhibit B.2.

Staff Planner: Kathy Harnden

Decision rendered by:  **on November 25, 2013**
By authority of the Director of the Bureau of Development Services

Decision mailed: November 27, 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 October 16, 2013, and was determined to be complete on October 28, 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 October 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 extended by the applicant, **the 120 days will expire on: February 25, 2014.**

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

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

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

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

Appealing this decision. This decision may be appealed to the Hearings Officer, which will hold a public hearing. Appeals must be filed **by 4:30 PM on December 11, 2013** 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.

Appeal fee waivers. Multnomah County may cover the appeal fees for their recognized associations. An appeal filed by a recognized association must be submitted to the City with either the appropriate fee or the attached form signed by the County. Contact Multnomah County at 503-988-3043, 1600 SE 190th, Portland, OR 97233.

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 775 Summer St. NE, Suite 330, 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 **December 12, 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. 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:

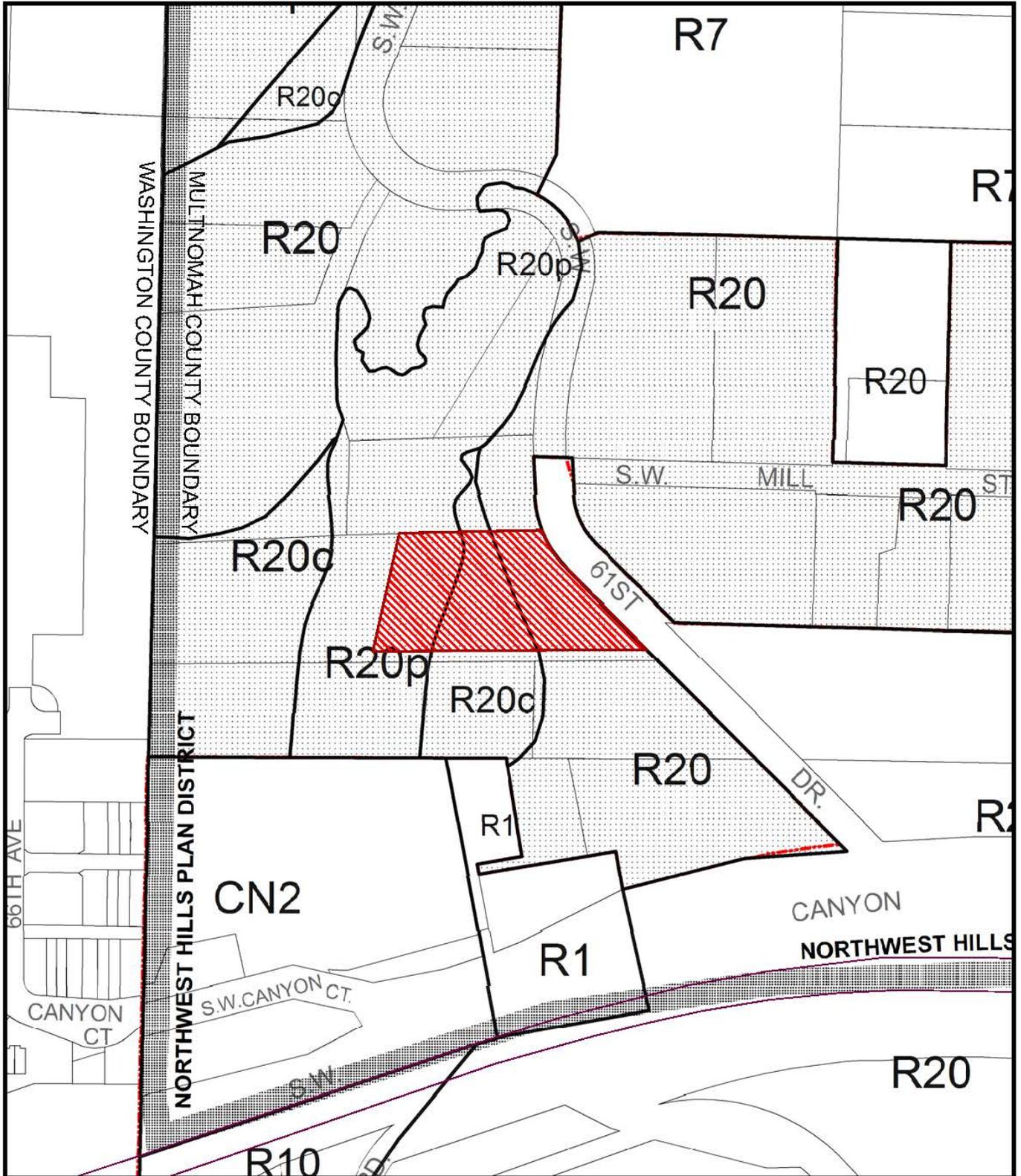
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement:
 - 1. Memo from Mindy Brooks, Environmental Tech II, BPS
 - 2. Multnomah County Urban Lands – Goal 5 Analysis, Resource Site 111-A: Sylvan
 - 3. Zoning May Error Correction Request from Ted and Connie Gilbert, property owners
 - 4. Topographical/2-foot Contour Maps with Existing and Proposed Zoning
- B. Zoning Maps
 - 1. Existing Zoning Map (attached)
 - 2. Proposed Zoning Map (attached)
- C. Plans/Drawings: None
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses: None
- F. Correspondence: None
- G. Other:
 - 1. Original LU Application

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).



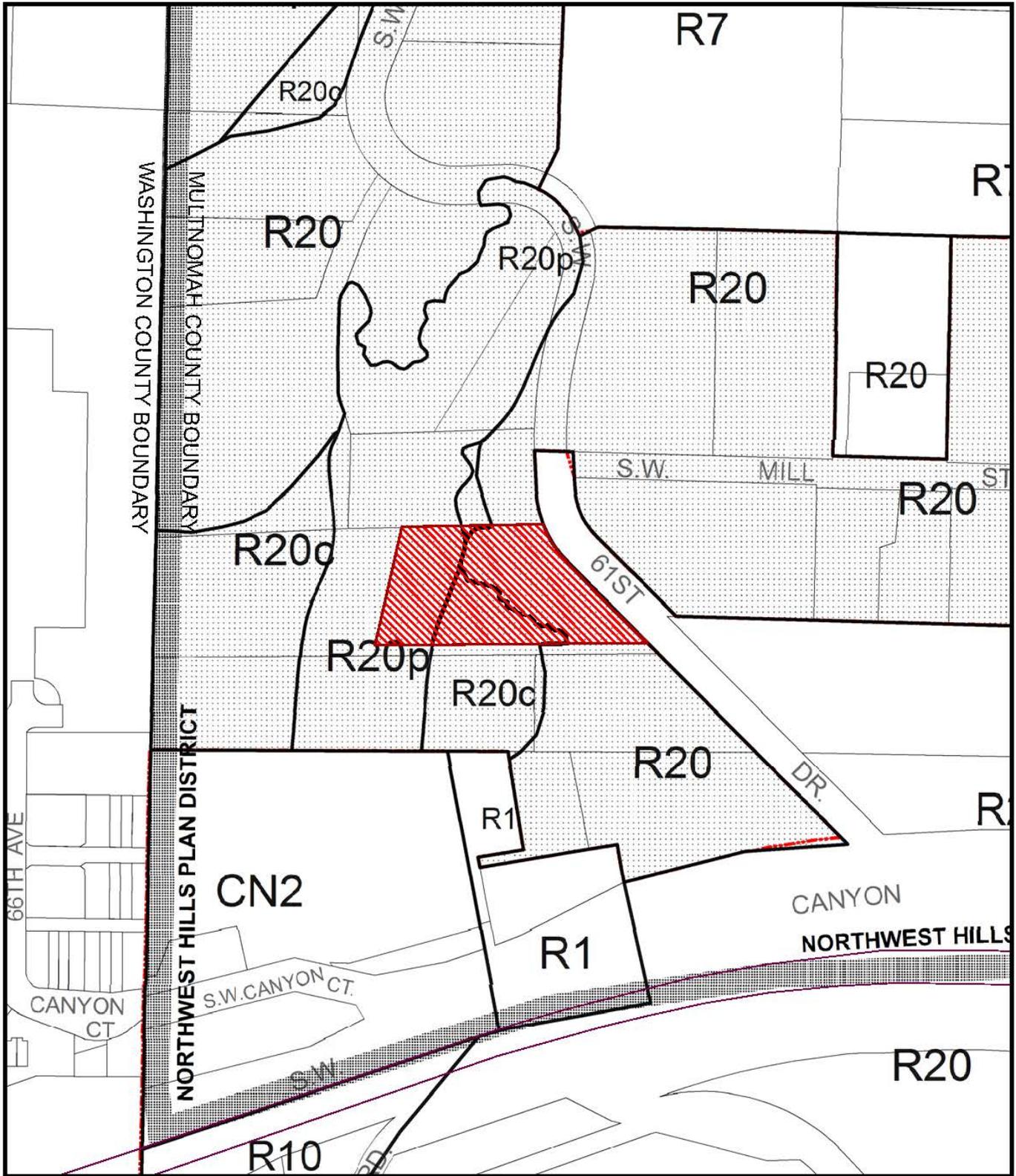
ZONING EXISTING

-  Site
-  Unincorporated Multnomah County Pocket



This site lies within the:
NORTHWEST HILLS PLAN DISTRICT

File No. LU 13-217745 ZE
 1/4 Section 3223
 Scale 1 inch = 200 feet
 State_Id 1S1E06CB 1401
 Exhibit B.1 (Oct 17, 2013)



ZONING PROPOSED



This site lies within the:
NORTHWEST HILLS PLAN DISTRICT



Site



Unincorporated Multnomah
 County Pocket

File No.	<u>LU 13-217745 ZE</u>
1/4 Section	<u>3223</u>
Scale	<u>1 inch = 200 feet</u>
State_Id	<u>1S1E06CB 1401</u>
Exhibit	<u>B.2 (Oct 17, 2013)</u>