



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

FROM CONCEPT TO CONSTRUCTION

Dan Saltzman, Commissioner  
Paul L. Scarlett, Director  
Phone: (503) 823-7300  
Fax: (503) 823-5630  
TTY: (503) 823-6868  
[www.portlandoregon.gov/bds](http://www.portlandoregon.gov/bds)

**Date:** August 8, 2016  
**To:** Interested Person  
**From:** Kathy Harnden, Land Use Services  
503-823-7318 / [Kathy.Harnden@portlandoregon.gov](mailto:Kathy.Harnden@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 mailed copy of this document is only a summary of the decision. 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 16-179300 ZE**

#### **GENERAL INFORMATION**

**Applicant:** Bureau of Development Services  
1900 SW 4th Avenue, Ste 5000  
Portland, OR 97201

**Owner:** Anne Jaqua  
11660 SW Lancaster RD  
Portland, OR 97219-7655

**Site Address:** 11660 SW LANCASTER RD

**Legal Description:** LOT 6&7 TL 1400, ALDERCREST; CANCEL ACCOUNT INTO -0330, ALDERCREST; CANCEL ACCOUNT INTO -0330, ALDERCREST; TL 1600 1.69 ACRES, SECTION 33 1S 1E

**Tax Account No.:** R013300330, R013300331, R013300332, R991331100

**State ID No.:** 1S1E33BD 01400, 1S1E33BD 01400U2, 1S1E33BD 01400U3, 1S1E33BD 01600

**Quarter Section:** 4127

**Neighborhood:** Arnold Creek, contact Liz Marantz at 503-823-3161.

**Business District:** None

**District Coalition:** Southwest Neighborhoods Inc., contact Syla Bogert at 503-823-4592.

**Plan District:** None

**Other Designations:** Southwest Hills Resource Protection Plan, Regulatory Landslide Hazard Area, ancient landslide scarp flank, steep slopes

**Zoning:** Residential 20,000 (R20) with the Environmental Conservation overlay (c)

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

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

**Proposal:** A property owner has requested to the environmental zoning in the northwest corner of the owner's property and in the adjoining undeveloped public right of way. The modification

would capture a spring in this area that appears to be one of several that form a branch of Lady Fern Creek.

Natural resources on this site were identified and inventoried in the *Southwest Hills Resource Protection Plan* as Site No. 122, Arnold Creek. Resources include Arnold Creek and its tributaries, steep slopes and forests. Natural resource functions include groundwater recharge, wildlife habitat, fisheries, recreation and scenic. Natural resource functions include groundwater recharge, wildlife habitat, fisheries, recreation and scenic. Mapping for this site shows a tributary beginning just north and downhill of the subject site. However, the applicants have provided evidence that the spring on their property is the actual headwaters source of this Arnold Creek tributary.

The Bureau of Planning and Sustainability reviewed the property owners' request and agreed that a mapped resource that was intended to follow a topographical feature does not do so, as shown on current zone maps, that there is a mapping discrepancy, and that there is sufficient evidence of legislative intent for where the line should be located.

The attached zoning maps show the existing and proposed environmental zoning for the site which includes a section of public right of way.

A map error correction is processed through a Type II land use review.

**Relevant Approval Criteria:**

To be approved, this proposal must comply with the approval criteria of Title 33. The relevant criteria are found in **Zoning Code Section 33.855.070.A** (Corrections to the Official Zoning Map, Mapping errors).

## FACTS

**Site and Vicinity:** This 73,598 square-foot, heavily forested site is located in Resource Site 122 of the Arnold Creek drainage basin. It is heavily forested and contains very steep slopes and a spring which appears to be one of several Arnold Creek headwater streams in the area. The site and area to the north are heavily forested, including the undeveloped SW Coronado Street right of way.

**Zoning:** The site is zoned Residential 20,000 (R20) with the Environmental Conservation (c) overlay.

The R20 designation is one of the City's single-dwelling zones that are 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.

**Environmental Resources:** The application of the environmental overlay zones is based on detailed studies that have been carried out within ten separate areas of the City. Environmental resources and functional values present in environmental zones are described in environmental inventory reports for these study areas. The environmental regulations encourage flexibility and innovation in site planning and provide for development that is carefully designed to preserve the site's protected resources. They protect the most important environmental features and resources while allowing environmentally sensitive urban

development where resources are less significant. The “c” overlay refers to the Environmental Conservation zone, which is applicable to this review.

The natural resources in the area that includes this property were inventoried as part of the *Southwest Hills Resource Protection Plan*, Site No. 122. Resources in this area include Arnold Creek and its tributaries, steep slopes, and forests. Natural resource functions include groundwater recharge, wildlife habitat, fisheries, recreation and scenic. The Inventory identifies steep slopes and riparian forest on the subject site and a tributary beginning just north of, and downhill from, the spring. However, the applicants have provided evidence that the spring on their property, and many other springs in the area, may help provide the water which creates the headwater tributary to Arnold Creek that begins just north of their property.

**Land Use History:** City records indicate that a property line adjustment was approved to reconfigure lot lines on this property in 2008.

**Agency Review:** A “Notice of Proposal in Your Neighborhood” was mailed **June 16, 2016**. The following Bureaus have responded with no issues or concerns:

- Bureau of Environmental Services
- Bureau of Transportation Engineering
- Water Bureau
- Site Development Section of the BDS

**Neighborhood Review:** Five written responses were received from either the Neighborhood Association or notified property owners in response to the proposal. Several comments noted that the applicant should limit their request for a zone modification to their own property and not include the public right of way (ROW), but others suggested that the zone error should extend the length and width of the draw to where it joins the stream segment in another protection-zone area. Concerns were also expressed that the new protection zone across the ROW might limit pedestrian use of the ROW.

Planner Response: The review can only involve the property included in the request and cannot consider other adjacent or nearby private property. The protection zone will not limit or restrict pedestrian access in the right of way. Exemptions for trails (33.430.080.D.10) do not have any restrictions related to protection zones; recreational trail standards (33.430.190) do not have restrictions or standards based on protection zones; and review procedures for trails or right-of-way improvements are processed through a Type II review, regardless of zoning.

## ZONING CODE APPROVAL CRITERIA

### **33.855.070 Corrections to the Official Zoning Maps**

**The Director of BDS may initiate and approve a review following the Type II procedure for the types of discretionary corrections to the Official Zoning Maps listed below.**

**Nondiscretionary corrections to the Official Zoning Maps may be initiated by the Director of Planning as described in Section 1.01.037 of the Portland City Code.**

**Findings:** Following a request by a property owner, the Bureau of Planning and Sustainability investigated the proposed zone map error and determined that a mapping error had occurred on the subject property. Subsequently, the Director of BDS initiated this review to correct the official zone map to more accurately locate the environmental protection overlay zone over a spring which is the source of a small branch of Lady Fern Creek, a tributary to Arnold Creek.

**A. Mapping errors.** Corrections may be made for mapping errors such as:

- 1. A map line that was intended to follow a topographical feature does not do so. Topographical features include the tops and bottoms of hillsides, the banks of water bodies, and center lines of creeks or drainage ditches.**

**Findings:** The zone map error correction request is based on the fact that the steep draw containing a short tributary to Arnold Creek was identified as an area to be protected in Site 122, Southwest Hills Resource Protection Plan. The adopted 2011 ESEE Analysis (*Economic, Social, Environmental and Energy*) states that the natural resource features to be protected in this area include perennial and seasonal creeks, groundwater recharge, wildlife habitat, fisheries, recreation, scenic, steep slopes and riparian forest. Steep draws containing streams were identified for the Environmental Protection overlay, and non-water areas were identified for the Environmental Conservation overlay.

The property subject to this review contains a spring whose water flows downslope in a large draw/ravine until it eventually joins a stream referred to as Lady Fern Creek by area residents. Lady Fern Creek eventually joins Alder Creek, approximately 2,700 feet downslope/north of the site. The applicant's 2016 Geotechnical Report also identifies the spring on the property. Staff visited the site and identified a swale on the site that begins in the spring area and that deepens into a steep draw. LIDAR mapping further indicates stream topography beginning in the northwest corner of the subject property (Exhibit A.1) and extremely steep slopes heading down towards Lady Fern Creek.

The Bureau of Planning and Sustainability reviewed the owner's request for correction, confirmed the legislative intent, and confirmed that an error exists in the location of zone lines on the site. The ESEE decision for Site 122 was to apply the protection zone to drainages flowing to Tryon Creek. The Inventory identifies a creek beginning immediately north of the property in question and the forested riparian area associated with the creek. The geotechnical report identifies a groundwater spring on the site that flows downhill and helps form a creek downslope of the property. The LIDAR image (Exhibit A.1.k) from this report depicts a linear depression on the property and connections with the creek identified in the Southwest Hills Resource Protection Plan. The proposal will result in approximately 3,600 square feet of new protection zone in the SW Coronado Street row and approximately 9,000 square feet of new protection zone on the applicant's property. Planning and Sustainability researched the proposal, visited the site and determined that there is physical evidence to confirm that a zoning error exists on the site, as further evidenced by the geotechnical report submitted in support of the zone map correction.

The Arnold Creek Neighborhood responded to this proposal noting that the revised zoning is for one small area surrounding a spring on private property and a short runoff area crossing an undeveloped right of way, and that the revised zoning does not include the drainage downslope of the spring. Further, the neighborhood notes there are many similar springs in the area with similar draws leading downslope to larger streams where the Protection overlay is placed over the surface stream areas only. The Neighborhood noted that it appears unusual to place the Protection Overlay over a spring that does not have a surface stream and that in this area, only draws with surface streams contain the Protection overlay.

The Neighborhood letter also notes that use of the right of way is common by area residents who would not want their access to be curtailed by the revised zoning. The protection zone, however, does not contain any limitations on the use of rights of way. Exemptions, standards and review procedures of 33.430 allow access and improvements to rights of way either outright or through a land use review approval.

The mapping error meets Criterion A.1 because the adopted ESEE states that natural resource features to be protected within a protection overlay include seasonal creeks that flow to Tryon Creek and the most current data shows, as substantiated in the Geotechnical Report and LIDAR mapping, the differences between the location features and the application of the protection overlay zone. Therefore, a mapping error exists and the protection zone should be applied as reflected in Exhibit B.2.

## 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 and Sustainability researched the potential zone map error and determined that an error does exist at the site. BPS recommended that a zoning map error correction be approved to place the environmental protection overlay zone over the identified spring and depression area on the subject property and right-of-way. The protection overlay zone boundary on the property in question should include the delineated spring, drainage and land within 50 feet as shown on the Proposed Zoning Map.

BDS has reviewed the BPS recommendation and, based on the findings and attachments supplied by BPS, which include an analysis of the inventory documents and the existing resources on the site, this proposal as illustrated in Exhibit B.2 should be approved.

## ADMINISTRATIVE DECISION

**Approval of a zoning map error correction regarding the relocation of the environmental zone boundary line, in conformance with Exhibit B.2, the Proposed Zoning Map.**

**Staff Planner: Kathy Harnden**

Decision rendered by:  on August 4, 2016  
By authority of the Director of the Bureau of Development Services

**Decision mailed:** August 8, 2016

**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 May 26, 2016, and was determined to be complete on June 6, 2016.

*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 May 26, 2016.

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 waived the 120-day review period, as stated with Exhibit G.2. Unless further extended by the applicant, **the 120 days will expire on: June 6, 2017.**

**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 August 22, 2016** at 1900 SW Fourth Ave. Appeals can be filed at the 5<sup>th</sup> floor reception desk of 1900 SW 4<sup>th</sup> Avenue Monday through Friday between 8:00 am and 4:30 pm. **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](http://www.portlandonline.com).

**Attending the hearing.** If this decision is appealed, a hearing will be scheduled, and you will be notified of the date and time of the hearing. The decision of the Hearings Officer is final; any further appeal must be made to the Oregon Land Use Board of Appeals (LUBA) within 21 days of the date of mailing the decision, pursuant to ORS 197.620 and 197.830. Contact LUBA at 775 Summer St NE, Suite 330, Salem, Oregon 97301-1283, 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.

**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.

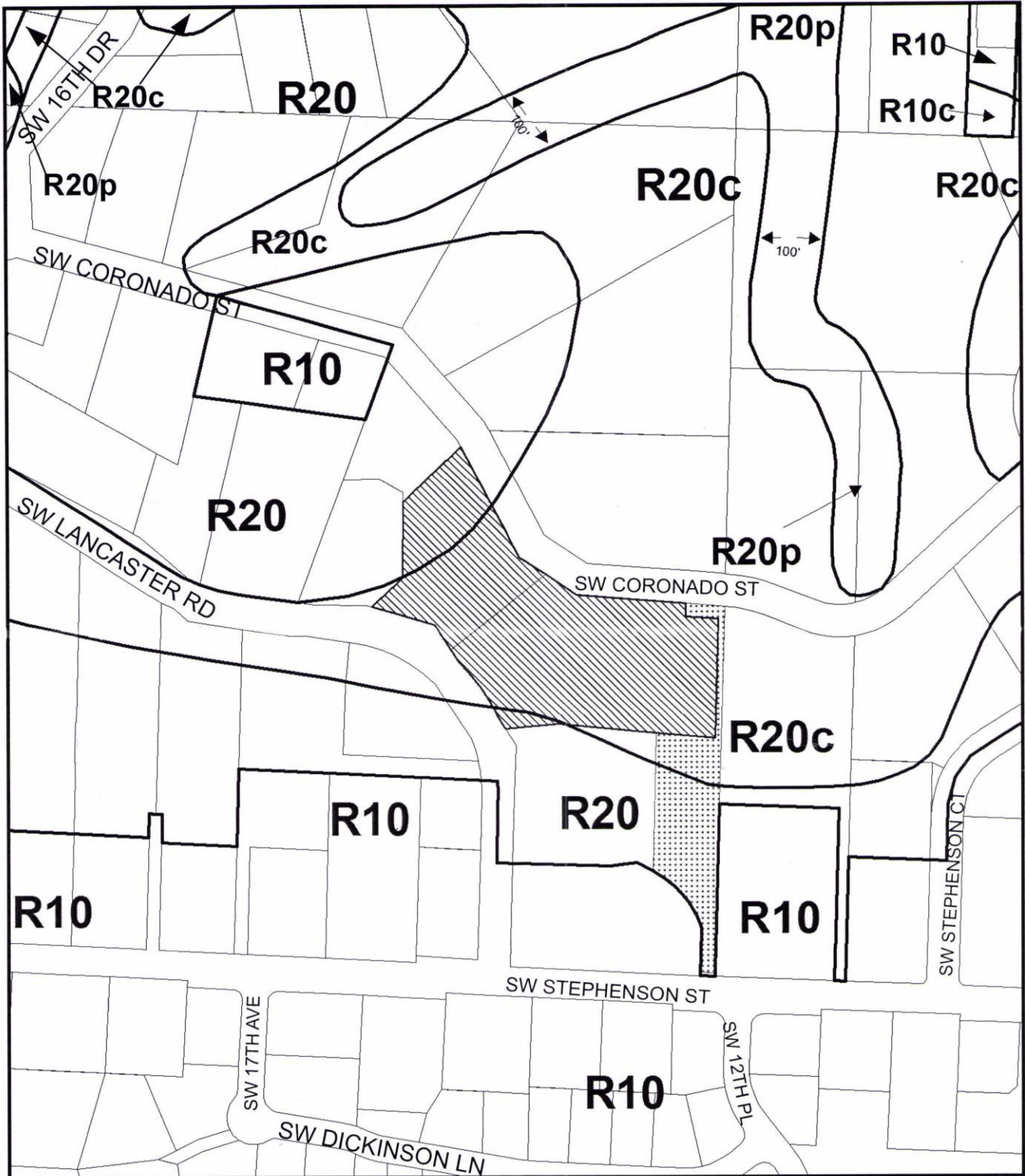
### **EXHIBITS**

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
  1. Memo with attachments from Mindy Brooks (5/23/16), Bureau of Planning & Sustainability
    - a. Anne Jaqua & Hugh McGavick Request for Zoning Correction
    - b. Columbia Geotechnical Report with LIDAR map showing drainage topography (3/28/2016)
    - c. Columbia Geotechnical Report (3/5/2014)
    - d. Columbia Geotechnical Report (10/18/2013)
    - e. Columbia Geotechnical Report (4/9/2010)
    - f. Portland Bureau of Transportation to Arnold Creek Neighbors (5/17/13)
    - g. Anne Jaqua letter to Neighbors (10/29/97)
    - h. Baseline Wildlife and Habitat Survey Report – Lady Fern Creek, May 10, 1996
    - i. Zoning Map Error Correction Request Form (2/23/16)
    - j. Site Plan with Proposed Protection Zone (no date)
  2. Memo from Mindy Brooks, (7/6/16)
- B. Zoning Maps
  1. Existing Zoning Map (attached)
  2. Proposed Zone Map (attached)
- C. Plans/Drawings: None
- 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. Site Development Review Section of BDS
- F. Correspondence:
  1. Arnold Creek Neighborhood Association, Elizabeth Marantz, Land Use Chair, Arnold Creek Neighborhood Association, 6/15/16, notes that there is no stream on the site which is consistent with the existing Conservation overlay, that of the many springs in the area, none has the environmental protection overlay, and if approved, the protection zone should be applied equally to all similar springs and draws in the area
  2. Paulette Watanabe, 6/15/16, in support of the proposal
  3. Larry Crawshaw, 6/15/16, in support of the proposal
  4. Richard Marantz, 6/28/16, in disagreement with the proposal
  5. Eric and Sunny Sorensen, 6/20/16 in support of the proposal
- G. Other:
  1. Original LU Application
  2. Extension of 120-Day Review Period Request, 6/30/16

**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).**



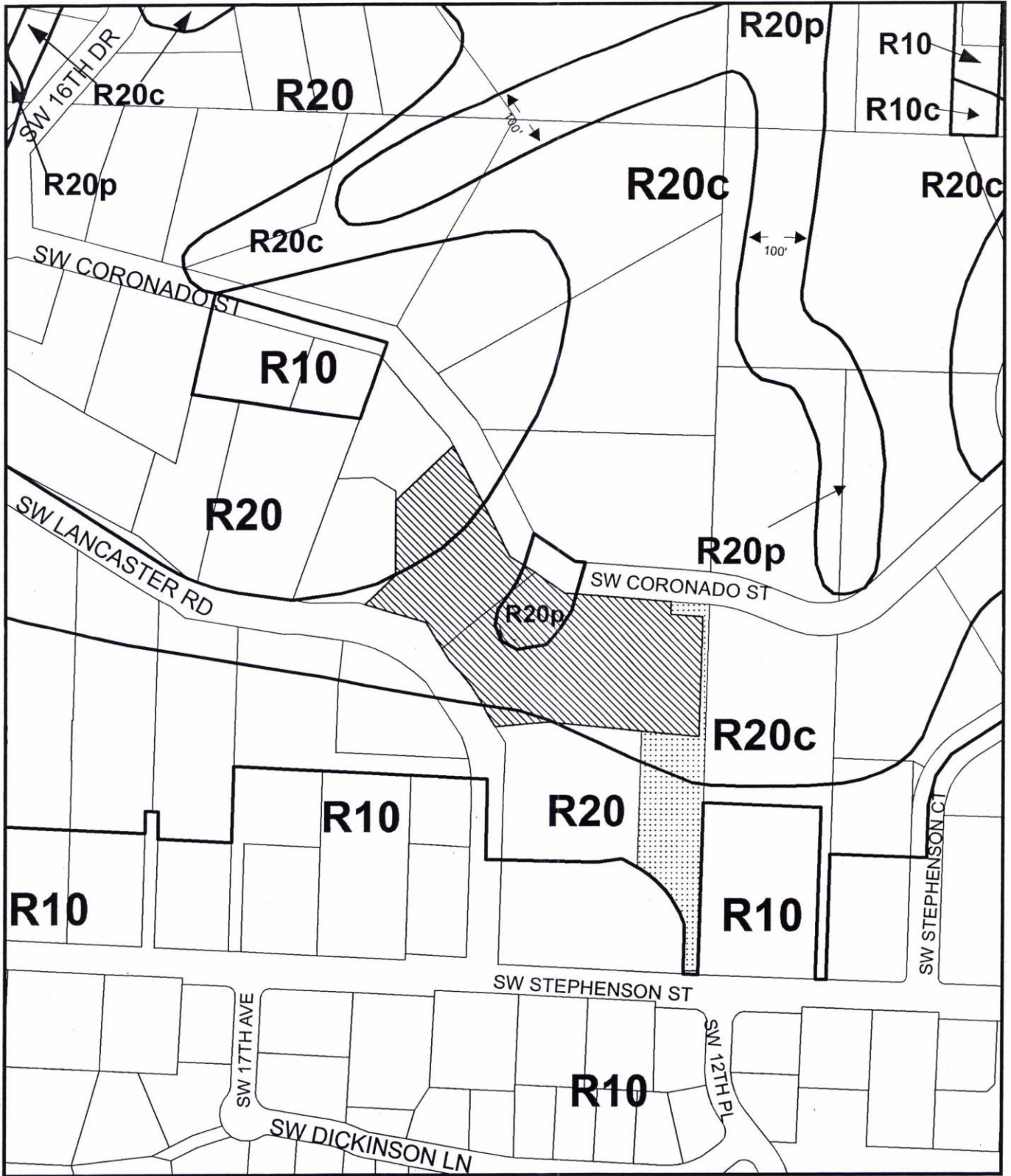


# EXISTING ZONING

-  NORTH
-  Site
-  Also Owned Parcels

File No. LU 16-179300 ZE  
 1/4 Section 4127  
 Scale 1 inch = 200 feet  
 State\_Id 1S1E33BD 1600  
 Exhibit B1 (May 31, 2016)

*Exhibit B.1*



# PROPOSED ZONING

- ↑ NORTH
-  Site
-  Also Owned Parcels

File No. LU 16-179300 ZE  
 1/4 Section 4127  
 Scale 1 inch = 200 feet  
 State\_Id 1S1E33BD 1600  
 Exhibit B. 2 (Jun 03, 2016)