



City of Portland, Oregon
Bureau of Development Services
Land Use Services
FROM CONCEPT TO CONSTRUCTION

Carmen Rubio, Commissioner
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Date: June 9, 2023
To: Interested Person
From: Leah Dawkins, Land Use Services
503-865-6734 / Leah.Dawkins@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 23-027161 ZE

GENERAL INFORMATION

Applicant: Stephanie Beckman | Bureau of Development Services
1900 SW 4th Ave #5000 | Portland, OR 97201
(503) 865-6440 | stephanie.beckman@portlandoregon.gov

Owner: Albert Lee Rev Liv Tr
2506 Wellspring St | Carlsbad, CA 92010

Site Address: Multiple tax lots located south of NW CORNELL Road, east of NW Eloise Lane

Legal Description: BLOCK E LOT 1, BARNES PK HTS; BLOCK F, BARNES PK HTS; BLOCK E LOT 2, BARNES PK HTS; BLOCK E LOT 3, BARNES PK HTS; BLOCK E LOT 4, BARNES PK HTS; BLOCK E LOT 5, BARNES PK HTS

Tax Account No.: R055301130, R055301520, R055301140, R055301150, R055301160, R055301170

State ID No.: 1N1W36A 00300, 1N1W36A 00800, 1N1W36A 00301, 1N1W36A 00302, 1N1W36A 00303, 1N1W36A 00304

Quarter Section: 2922

Neighborhood: Forest Park, contact Jerry Grossnickle at landuse@forestparkneighbors.org

Business District: None

District Coalition: Neighbors West/Northwest, contact Darlene Urban Garrett at darlene@nwnw.org

Plan District: Northwest Hills - Balch Creek and Skyline Sub-District

Other Designations: *Skyline West Natural Resources Inventory* – Resource Site SK10- NW Skyline & Brynwood; Unincorporated Multnomah County

Zoning: *Base Zone:* Residential Farm/Forest (RF)

Overlay Zones: Environmental Conservation (c), Environmental Protection (p)

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

Proposal:

The Bureau of Development Services is initiating a Zoning Map Error Correction, at the property owner's request, to alter the boundaries between the Environmental Conservation and Environmental Protection overlay zones on this site. The site is composed of six tax lots and is located south of NW Cornell Road, east of NW Eloise Lane. The site is inventoried in the *Skyline West Natural Resourced Inventory* as Resource Site SK10, NW Skyline and Brynwood, which identified natural resources and functions for protection. Identified resources within Site SK10, NW Skyline and Brynwood, specific to this site include multiple significant riparian corridor and wildlife habitat features including waterbodies, land adjacent to waterbodies, forest vegetation on steep slopes, and forest patches.

The Bureau of Planning and Sustainability (BPS) reviewed the property owner's application which included a request to decrease portions of the Environmental Protection overlay zone and expand the Environmental Conservation overlay zone over some areas of the site where no waterbody was present; and a request to increase the Environmental Protection overlay zone in another portion of the site where an extension of an existing waterbody was located. BPS staff performed a site visit to determine the actual locations of the stream headwaters and channels. BPS determined that there was evidence that an environmental overlay zone map error exists. BPS is recommending zone map corrections based on their field visit and other available information.

This review is to determine whether a mapping error exists affecting this site and will be processed through a Type II land use review. Because a single property owner initiated the request, the zone map error correction would affect only the subject property. The attached zoning maps show the existing and proposed environmental zoning for this site.

Relevant Approval Criteria:

In order to be approved, this proposal must comply with the approval criteria of Title 33. The relevant criteria are:

- ❖ **Section 33.855.070 – Corrections to the Official Zoning Maps.**

ANALYSIS

Site and Vicinity: This approximately 12.5-acre site is located south of NW Cornell Road, east of NW Eloise Lane and is composed of six tax lots. The site is located in an unincorporated Multnomah County pocket. The site is heavily contoured, steeply sloping up from NW Cornell Road and the outer eastern edges of the site toward a peak located along the west side of the site. The site is currently undeveloped. The site is heavily forested. The forest canopy consists of a mix of deciduous and coniferous mature trees, shrubland, and herbaceous vegetation. The site consists primarily of Class I and II high and medium ranked Riparian Corridor Habitat, as identified by the Natural Resources Inventory, and is considered a high value resource area.

The site is surrounded by platted public rights-of-way, but there is no improved street access throughout the site. There is access available to the western tax lot R111987 from NW Eloise Lane, a private street, via an access easement. The surrounding vicinity to the west is developed with low density single dwelling homes. The vicinity to the east is undeveloped forestland.

Zoning: The zoning designation on the site includes Residential Farm/Forest (RF) base zoning with Environmental Conservation (c) and Environmental Protection (p) overlay zones.

The RF base zone is intended to preserve land for housing and to provide housing opportunities for individual households. The zone implements the comprehensive plan policies and designations for

single-dwelling housing and provide options for infill housing that is compatible with the scale of the single-dwelling neighborhood.

Environmental overlay zones protect environmental resources and functional values that have been identified by the City as providing benefits to the public. 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. These regulations also help meet other City goals, along with other regional, state, and federal goals and regulations. The environmental regulations also carry out Comprehensive Plan policies and objectives.

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

- **LU 14-154409 EN:** Environmental Review for a new single dwelling structure. Case was withdrawn by applicant.
- **LU 15-209110 EN:** Approval Environmental Review for construction of a residence, outdoor area, driveway, well, septic system, and stormwater management system.

Agency Review: A "Notice of Proposal in Your Neighborhood" was mailed **April 26, 2023**. The following Bureaus have responded with no issues or concerns:

- Fire Bureau
- Site Development Section of BDS
- Life Safety Section of BDS

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on April 26, 2023. One written response was received from a notified property owner in response to the proposal. The comments are summarized below. The entirety of the response can be found in Exhibit F.1.

- *The HOA president of the existing development to the west of the subject site clarified that NW Eloise Lane is a private access that permits access to only one of the tax lots that is part of the subject site. Access to the larger portion of the subject site is not available from NW Eloise Lane.*

Staff Response: The applicant is aware of the access limitations of the site. This review for a Zone Map Error Correction will not impact or change existing access to the site.

ZONING CODE APPROVAL CRITERIA

Title 33.855.070 Correction 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's representative, the Bureau of Planning and Sustainability (BPS) investigated the proposed zone map error and determined that a mapping error had occurred on the subject property over three of the seven streams that were mapped on the site. Subsequently, the Director of BDS initiated this review to correct the official zone map to more accurately locate the Environmental Zones to correspond with existing onsite resources.

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: Based on a review of the natural resource mapping on the site, Light Detection and Ranging (LiDAR) data, and a site visit performed on January 12, 2023, BPS has concluded that an environmental overlay mapping error exists on three of the identified stream channels that were mapped on the site. The application of environmental overlay zones to protect natural resources,

specifically the streams at this site, was originally based on the mapping of Habitat Conservation Areas (HCAs), in accordance with Metro Title 13, and a separate Economic, Social, Environmental, and Energy (ESEE) analysis that was conducted for resources that are protected by the City of Portland under Oregon State Land Use Planning Goal 5 that are not mapped as HCAs. Environmental Protection Overlay Zones were applied to identified stream channels from top-of-bank to top-of-bank. In this case, the property owner identified an on-the-ground discrepancy in the stream delineations and requested a map correction. Therefore, BPS staff conducted a site visit to field verify the location of natural resources.

BPS Staff conducted their site visit after more than an inch of rain had fallen in the 96 hours that preceded the site visit, occurring in the middle of the rainy season. BPS staff determined the conditions were consistent with typical mid-rainy season and that the flow in the upper headwater streams was likely to be consistent with typical rainy season basal flow.

Per the BPS narrative (Exhibit A.2), BPS staff confirmed that the entire site was covered by forest vegetation. BPS Staff also walked along the channels of each of the streams that are mapped on the site to verify the stream mapping.

BPS staff carried paper copies of maps that showed LiDAR terrain mapping of the site that was overlaid with stream mapping from the Natural Resource Inventory (NRI). BPS staff were able to roughly triangulate their position on the maps by following hillsides and ravines. There were also several roadbeds that ran along the east side of the site that were clearly identifiable in both the LiDAR terrain mapping and on the ground. Using these features, BPS staff were able to determine their location on the site relative to the various streams and lot lines.

To identify the location of stream headwaters, staff walked along the ravines where streams were identified in the NRI. They either started upstream or downstream of the mapped headwaters. They looked for areas where there was discernable flowing or standing water, defined stream beds and banks, or signs of scouring and debris removal by recently flowing water. When BPS staff reached a point where one or all these features were present, but none were present uphill of that point, they designated that point as the stream headwater. They then used the Google Maps app on their phones to verify their location to make sure it was consistent with the point that had been identified on the map. They also took pictures of the stream at the location that they determined to be the headwater (Exhibit A.7).

BPS staff determined there were errors in the mapping of three of the seven streams that are mapped on the site. Portions of two of the streams were deleted from the inventory, and an additional segment was added to one of the streams. When these errors were found, staff made notes in the paper maps (Exhibit A.6) that they carried to show where the headwaters were actually located. These hand drawn notes were later used to make edits to the digital stream inventory.

This site visit provided BPS with evidence that an environmental overlay zone mapping error exists on the subject site. The error meets Criterion A.1 because the e-zones that apply to the site were mapped based on natural resource mapping that the site visit found to be inaccurate. The environmental protection (p) overlay zone applies to streams and land within 100 feet of streams, and to wetlands and land within 25 feet of wetlands. The environmental conservation (c) overlay zone applies to forest vegetation that is contiguous to streams and more than 100 feet away from streams and more than 25 feet away from wetlands. The site visit resulted in more accurate locating of the stream channels than what was previously mapped, which justifies the changes to the areas on the subject site that are mapped as environmental protection (p) zone and environmental conservation (c) overlay zones. BPS found that the zone map should change to match the updated natural resource mapping provided by the site visit. BPS has provided recommended edits to the zone map (Exhibit B.2).

Evidence has been provided showing a discrepancy between the current zoning map and the location of the topographic features (streams), as mapped line designations that were intended to

follow topographic features did not do so. Therefore, *criteria A.1 is met for the three stream channels found to be mapped incorrectly.*

CONCLUSIONS

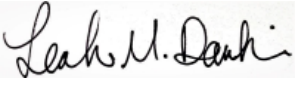
The Bureau of Planning and Sustainability (BPS) researched the potential zoning map errors and determined that errors do exist over three of the seven identified streams on the subject site. BPS recommended that a zoning map error correction be approved to decrease portions of the Environmental Protection overlay zone and increase the Environmental Conservation overlay zone over some areas of the site where no waterbody (only forest) was present; and to increase the Environmental Protection overlay zone in another portion of the site where an extension of an existing waterbody was located.

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 to remove portions of the Environmental Protection overlay zone and implement the Environmental Conservation overlay zone over those areas; and to increase the Environmental Protection overlay zone over one of the existing streams, in conformance with Exhibit B.2, the Proposed Zoning Map.

Staff Planner: Leah Dawkins

Decision rendered by:  **on June 7, 2023**
By authority of the Director of the Bureau of Development Services

Decision mailed: June 9, 2023

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 March 30, 2023, and was determined to be complete on April 21, 2023.

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 March 30, 2023.

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: August 19, 2023.**

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, and if appealed a hearing will be held. The appeal application form can be accessed at <https://www.portlandoregon.gov/bds/45477>. Appeals must be received **by 4:30 PM on June 23, 2023. The completed appeal application form must be emailed to LandUseIntake@portlandoregon.gov and to the planner listed on the first page of this decision.** If you do not have access to e-mail, please telephone the planner listed on the front page of this notice about submitting the appeal application. **An appeal fee of \$250 will be charged.** Once the completed appeal application form is received, Bureau of Development Services staff will contact you regarding paying the appeal fee. The appeal fee will be refunded if the appellant prevails. There is no fee for Office of Community and Civic Life recognized organizations for the appeal of Type II and IIX decisions on property within the organization’s boundaries. The vote to appeal must be in accordance with the organization’s bylaws. Please contact the planner listed on the front page of this decision for assistance in filing the appeal and information on fee waivers. Please see the appeal form for additional information.

If you are interested in viewing information in this file, please contact the planner listed on the front of this notice. The planner can email you documents from the file. A fee would be required for all requests for paper copies of file documents. Additional information about the City of Portland, and city bureaus is available online at <https://www.portland.gov>. A digital copy of the Portland Zoning Code is available online at <https://www.portlandoregon.gov/zoningcode>.

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.

Recording the final decision.

If this land use review is approved the final decision will be recorded with the County Recorder. *Unless appealed*, the final decision will be recorded by the Bureau of Development Services.

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.

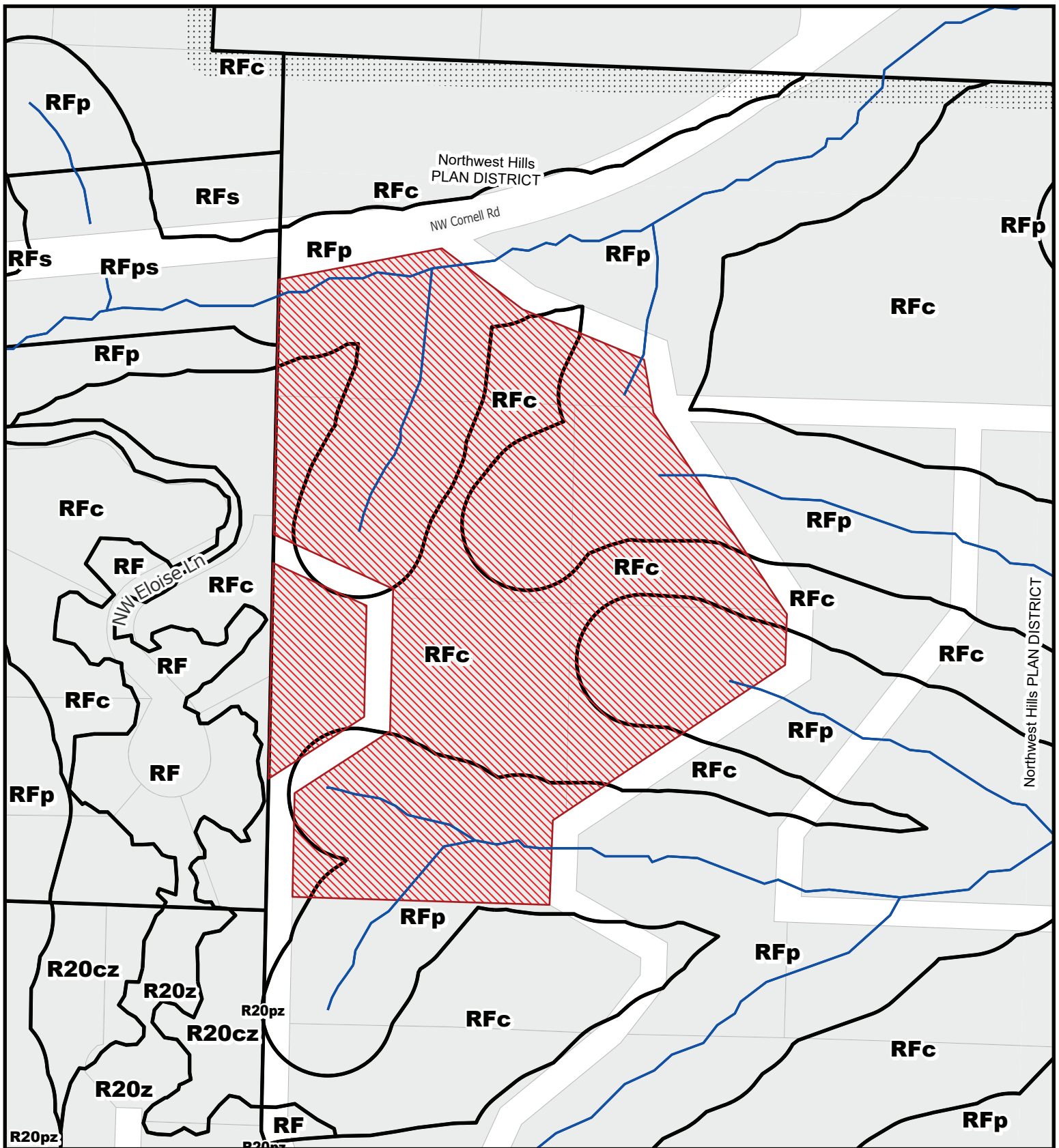
Where a site has received approval for multiple developments, and a building permit is not issued for all of the approved development within three years of the date of the final decision, a new land use review will be required before a permit will be issued for the remaining development, subject to the Zoning Code in effect at that time.

Zone Change and Comprehensive Plan Map Amendment approvals do not expire.


EXHIBITS
NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
 - 1. Original Application Narrative
 - 2. Revised Application Narrative, dated 4/12/23
 - 3. Zone Map Error Correction Request Form
 - 4. Natural Resources Inventory Resource Site SK10 Analysis
 - 5. Natural Resources Mapping Research
 - 6. Mapping Correction Notes from Site Visit
 - 7. Headwater Photos from Site Visit
 - 8. EN Zoning Map 2922
 - 9. Recommended Environmental Zone Map Changes
 - 10. Recommended Environmental Zone Map
- B. Zoning Map
 - 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:
 - 1. Fire Bureau
 - 2. Life Safety Review Section of BDS
 - 3. Site Development Review Section of BDS
- F. Correspondence:
 - 1. Russell Hanf, 5/17/23, site access information
- 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).



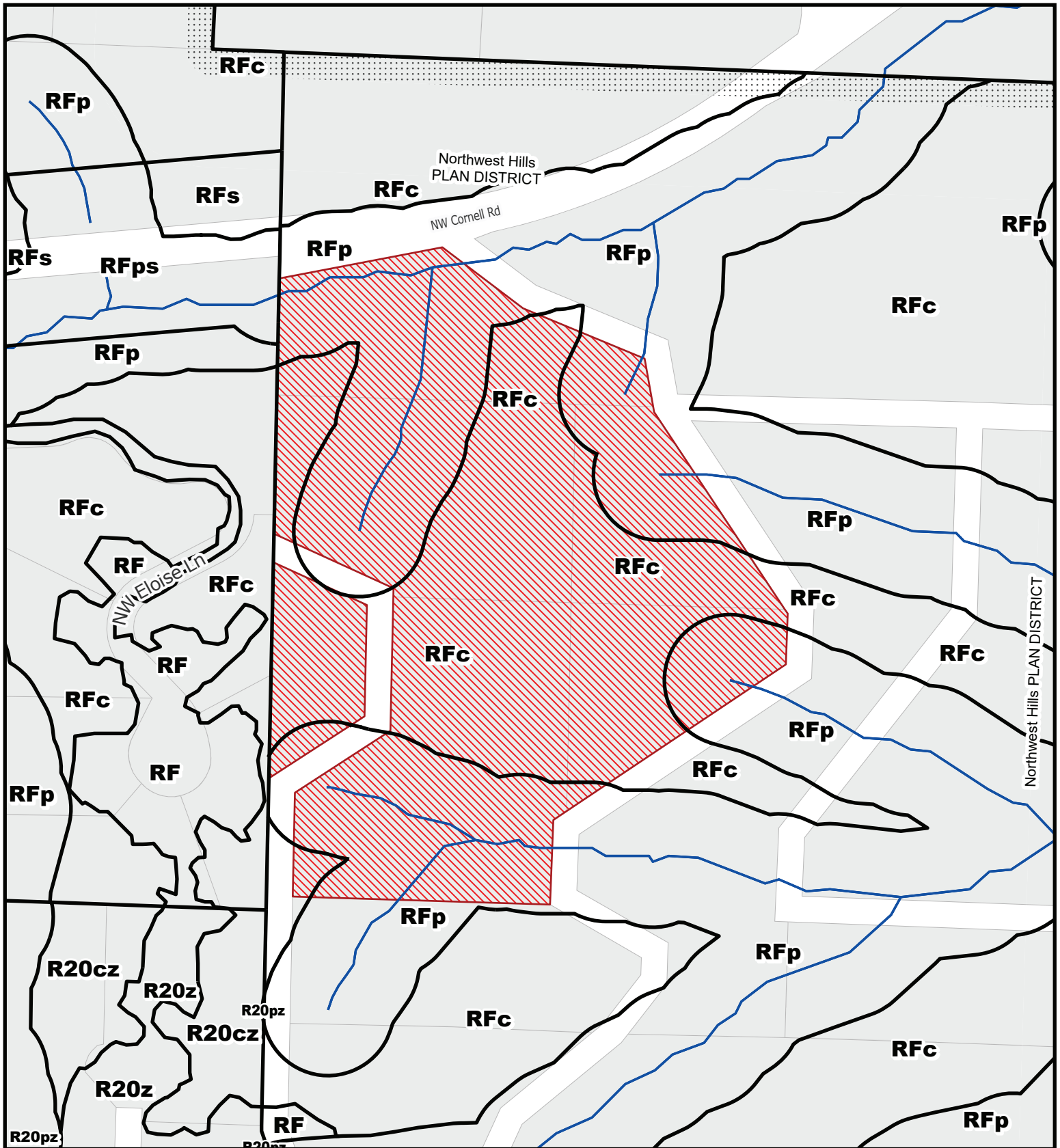
For Zoning Code in Effect Post October 1, 2022

EXISTING ZONING 

UNINCORPORATED MULTNOMAH COUNTY
 NORTHWEST HILLS PLAN DISTRICT
 BALCH CREEK/SKYLINE SUB DISTRICT

-  Site
-  Plan District
-  Stream

File No.	<u>LU 23 - 027161 ZE</u>
1/4 Section	<u>2922</u>
Scale	<u>1 inch = 200 feet</u>
State ID	<u>1N1W36A 300</u>
Exhibit	<u>B.1 Apr 06, 2023</u>



PROPOSED ZONING

UNINCORPORATED MULTNOMAH COUNTY
 NORTHWEST HILLS PLAN DISTRICT
 BALCH CREEK/SKYLINE SUB DISTRICT



-  Site
-  Plan District
-  Stream

File No.	<u>LU 23 - 027161 ZE</u>
1/4 Section	<u>2922</u>
Scale	<u>1 inch = 200 feet</u>
State ID	<u>1N1W36A 300</u>
Exhibit	<u>B.2 Apr 06, 2023</u>