



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

1900 SW 4th Avenue, Suite 5000
Portland, Oregon 97201
503-823-7300
Fax 503-823-5630
TTY 503-823-6868
www.portlandonline.com/bds

Date: March 27, 2009
To: Interested Person
From: Kathy Harnden, Land Use Services
503-823-7834

NOTICE OF A TYPE II DECISION ON A PROPOSAL IN YOUR NEIGHBORHOOD

The Bureau of Development Services has approved a proposal in your neighborhood. The reasons for the decision are included in this notice. If you disagree with the decision, you can appeal it and request a public hearing. Information on how to appeal this decision is listed at the end of this notice.

CASE FILE NUMBER: LU 09-102103 EN

GENERAL INFORMATION

Applicant: Joseph Schaefer
Schwabe Williamson & Wyatt
1211 SW 5th, Ste 1900
Portland, OR 97204

Property Owners: Stone Water Inc.
9350 NW Skyline Blvd
Portland, OR 97231-2613

Site Address: 9350 NW SKYLINE BLVD

Legal Description: TL 1100 BLOCK 1, KRUSE HTS; INC VAC STS ACCR LOT 1-5 BLOCK 2 INC VAC STS-WLY 40' OF LOT 6&10 BLOCK 2 WLY 40' OF LOT 7-9 BLOCK 2, KRUSE HTS; TL 1200 3.39 ACRES, SECTION 09 1 N 1 W
Tax Account No.: R460300010, R460300220, R961090260
State ID No.: 1N1W09A 01100, 1N1W09A 01000, 1N1W09A 01200
Quarter Section: 2116

Neighborhood: Forest Park, contact Jim Emerson at 503-283-4096.
Business District: None
District Coalition: Neighbors West/Northwest, contact Mark Sieber at 503-823-4212.

Plan District: Northwest Hills – Forest Park and Skyline Subdistricts
Other Designations: 20 Percent Slope Area; Wildfire Hazard Area; *Northwest Hills Natural Areas Protection Plan*, Site 102

Zoning: R20cs – Residential 20,000 (R20) with the Environmental Conservation (c) and Scenic (s) overlays

Case Type: EN – Environmental Review
Procedure: Type II, an administrative decision with appeal to the Hearings Officer.

Proposal:

The applicant proposes to modify the environmental zone boundary to exclude existing septic drainfield and reserve drainfield areas as well as the corner of an existing deck attached to an existing house located on the site. The applicant states that the proposed zone boundary location will more accurately follow existing contours and will include more area of a steep draw/ravine on the site.

After consulting with City staff, the applicant redrew the proposed environmental zone boundary line to more closely follow the existing forest edge. The revised new boundary will include more of the resource area than the original proposal. Four 30-inch Douglas fir trees that would have been excluded from the environmental zone in the original boundary proposal will now be located within the transition area; and the 18 smaller firs and big leaf maple trees that would have been located in the transition area under the original proposal will now remain in the resource area of the environmental conservation zone.

Relevant Approval Criteria:

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

33.430.250.D.3 For the minor modification of environmental zone boundaries based on a more detailed site-specific environmental study, the applicant's impact evaluation must demonstrate that Paragraph D.3 below is met.

ANALYSIS

Site and Vicinity: The property is located on the north side of NW Skyline Boulevard, northwest of the intersection with NW Germantown Road. The lots adjacent to NW Skyline in this area vary between relatively small lots (62,000 S.F.), to more than 12-acre lots. Most of the single-family residential developments occur adjacent to the roads.

The subject site consists of four lots with a total of just over 6 acres. The lot containing the existing house was recently partitioned (LU 07-146329 LDP AD). The entire site is heavily forested with a large open area north of the existing house and another open area to the southeast of the existing house. Forest Park borders the site to the northeast.

Zoning: The R20 zone is intended to foster the development of single-dwelling residences on lots having a minimum area of 12,000 square feet. Newly created lots must have a minimum density of 1 lot per 20,000 square feet of site area. The provisions of this zone allow this use; these provisions are not specifically addressed through this Environmental Review.

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. They protect the most important environmental features and resources while allowing environmentally sensitive urban development where resources are less significant. The purpose of this land use review is to ensure compliance with the regulations of the environmental zones.

The Northwest Hills Plan District protects sites with sensitive and highly valued resources and functional values. The portions of the plan district that include the Balch Creek Watershed and the Forest Park Subdistrict contain unique, high quality resources and functional values that require additional protection beyond that of the Environmental overlay zone. These regulations provide the higher level of protection necessary for the plan district area. The regulations of this District do not apply to this zone boundary modification because there is no proposed development, land division or planned development associated with this review.

Environmental Resources: 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 be sensitive to the site's protected resources. They protect the most important environmental features and resources while allowing environmentally sensitive urban development where resources are less sensitive. The purpose of this land use review is to ensure compliance with the regulations of the environmental zones.

The subject property is identified as the Newton Creek Headwaters Resource Site 102, of the *Northwest Hills Natural Area Protection Plan*. In addition to forming the headwaters of Newton Creek, it has an almost solid tree canopy consisting of a second growth western hemlock forest with conifer topping hardwood. The small open areas along with snags, downed logs and woody debris on the site provide superb wildlife habitat. The forest resource provides scenic and recreational resources, serves as habitat for resident and migratory wildlife and maintains the local water regimen. The creek, downhill of the subject property, provides a seasonal water source for aquatic organisms including amphibians and terrestrial vertebrates. The site's interspersion with surrounding forested areas allows for free migration of wildlife, and increases its value as habitat.

Land Use History: City records indicate that there are several previous land division reviews involving this site, but that only one of these previous reviews is relevant to this proposed zone modification case.

LU 07-146329 LDP AD: This case allowed a two-lot land partition on Tax Lot 1200 that resulted in a flag lot to contain the existing house and a new undeveloped lot adjacent to Skyline Boulevard. The existing house has an existing septic drainfield and reserve drainfield on the adjacent tax lots 1000 and 1100. As a result of the land partition, an easement was required for the existing house to use area on tax lots 1000 and 1100 for septic drainfield purposes.

Agency Review: A Notice of Proposal in Your Neighborhood was mailed on January 29, 2009. Several Bureaus and agencies responded to this proposal. Please see Exhibits E for details. The comments are addressed under the appropriate criteria for review of the proposal.

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on January 29, 2009. No written responses were received from notified property owners in response to the proposal.

ZONING CODE APPROVAL CRITERIA

Title 33.430.250.D Modification of Zone Boundaries. Modifications of environmental zone boundaries that reflect permitted changes in the location or quality of resource areas will be approved upon finding that the applicant's statement demonstrates that either Paragraph D.1 or D.2 below are met. For the minor modification of environmental zone boundaries based on a more detailed site-specific environmental study, the applicant's impact evaluation must demonstrate that Paragraph D. 3 below is met.

Findings: The applicant requested modification of the Environmental Conservation overlay zone due to the location of identified "significant natural resources" on the subject property as well as the location of existing and reserve drainfield areas. To be approved, the applicant must meet the requirements of Paragraph D.3. The applicant advocates that the location of existing septic drainfield and reserve drainfield areas that are grass covered and separated from the forest by a buffer of open grass and a few trees should not be included in an area described as a significant natural resource area.

33.430.250.D.3: The proposed environmental zone line location accurately reflects the location of the significant or highly significant resources and functional values on the site, plus 25 feet of transition area. The significant or highly significant resources are identified in the Resource Site Inventory of the relevant Environmental Study Report, see 33.430.020.

Findings: The 6.37-acre site, composed of three tax lots, lies north of SW Skyline Boulevard. The entire site is heavily forested with a mix of conifers and hardwoods, especially big leaf maples, with two exceptions: an existing house and developed area along the north boundary of the site, and a large, approximately 28,000 square-foot open area that extends from SW Skyline to the tree line approximately 200 feet to the northeast. The top of the site generally slopes gradually towards the tree line, then drops steeply at the tree line, with slopes of 15 percent and greater.

The existing environmental zone boundary makes a large loop across the site, coming onto the property from the southwest where it skirts an established house, up into the non-treed area on the subject site, then back downhill to the north where it passes over the deck of the existing house on the site. The existing house was constructed in the late 1980s, about the same time as the inventories were being conducted, but prior to the application of the environmental zones in 1991.

The original zone boundary modification proposed a new environmental conservation zone boundary that would have zigzagged far down the steeper slope area, about 70 feet downslope of the tree line, or forest edge. It was not apparent how the original proposed revision would “accurately reflect the location of the significant or highly significant resources and functional values on the site” when it included area inside the forest edge. This forested area is well defined across the site. A site visit with the applicant, property owner, and members of the Forest Park Neighborhood Association confirmed that the forested area follows almost a straight line across the site from east to west before dipping to the northeast around the existing house. It has dense undergrowth composed of both native and some non-native species. The forest stops abruptly near the top of the steeper area of the slope and the open area begins at this line of trees and undergrowth, and continues most of the way towards SW Skyline Boulevard.

There are four conifer trees situated 10 to 20 feet south of the break in slope and the forest edge. These trees stand out from trees within the forested area by the lack of undergrowth around them. Instead of shrubs and native groundcovers, only grass and bare areas surround these trees. These four trees range in size from 22 inches to about 30 inches in diameter. The area around these trees also contains a septic drainfield and a reserve drainfield area. Two of these outlier trees lie either uphill of the septic drainpipe or within the existing reserve drainfield area. Another is surrounded by the property owner’s outdoor work area.

Based on the discussions with staff and the Neighborhood Association, the applicant redrew the proposed environmental conservation resource boundary predicated on the location of the forest edge. The redrawn boundary includes all of the forested area up to the well-defined forest edge. A 25-foot wide transition area is applied from the forest edge outward, away from the forest edge. The new proposed transition area will include the four outlier trees described above. The drainfields will be located almost entirely outside the environmental zone, with only a small amount located within the transition area. A smaller zigzag is included in the revised boundary proposal to recognize both the owner’s well-established outdoor work area to be located in the transition area, and to capture a group of trees and undergrowth contiguous with the forest edge near the boundary of tax lot 1200.

The Bureau of Environmental Services suggested that the four outlier trees, and by nature of their locations, a portion of the existing septic drainpipe and drainfield areas should be located within the revised resource area. After much consideration, BDS staff determined that because the forest edge is so well defined on this site due to both the dense undergrowth surrounding

the trees within the forest as well as the break in slope that begins near the tree line, that the defined forest edge should be the boundary for identification of the most significant resources on the site.

Because the revised resource area boundary proposal includes the location of both the significant and highly significant resources and functional values on the site, plus 25 feet of transition area, *this criterion is met.*

33.480 Scenic Resources: The purposes of the Scenic Resource zone are achieved by establishing height limits within view corridors to protect significant views and by establishing additional landscaping and screening standards to preserve and enhance identified scenic resources.

Findings: The Scenic Resources overlay zone crosses the south portion of the site from east to west, adjacent to SW Skyline Boulevard. The environmental zone modification area lies from 50 feet to more than 200 feet northeast of the Scenic Resources zone. The proposed zone boundary modification will not affect resources in the Scenic Resource zone. Because site development is not proposed in this review, the development standards of the Scenic Overlay do not apply to this zone boundary modification proposal.

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 applicant proposed an environmental zone boundary modification based on the location of existing significant resources and existing development on private property. Because the original proposal pushed the resource area too far into the significant resource area, the applicant revised the request and brought the zone boundary back closer to the existing boundary. The revised boundary line follows the forest edge across the site and includes a 25-foot wide transition area that extends outward from the forest edge. The revised proposal accurately reflects the location of both the significant and highly significant resources on the site as identified in the *Northwest Hills Natural Area Protection Plan.*

ADMINISTRATIVE DECISION

Approval of an Environmental Review to:

- Modify the environmental conservation overlay zone, to include a 25-foot wide transition area in conformance with Exhibits B.3 and C.2;

Decision rendered by:  **on March 25, 2009**

By authority of the Director of the Bureau of Development Services

Decision mailed: March 27, 2009

Staff Planner: Kathy Harnden

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 January 13, 2009, and was determined to be complete on January 27, 2009.

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 January 13, 2009.

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. The applicant extended the 120-day review period by 60 days, or until April 25, 2009.

The Bureau of Planning provided some of the information contained in this report.

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 April 10, 2009** at 1900 SW Fourth Ave. Appeals can be filed on the first floor in the Development Services Center until 3 p.m. After 3 p.m., 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. Low-income individuals appealing a decision for their personal residence that they own in whole or in part may qualify for an appeal fee waiver. In addition, an appeal fee may be waived for a low income individual if the individual resides within the required notification area for the review, and the individual has resided at that address for at least 60 days. Assistance in filing the appeal and information on fee waivers is available from BDS in the Development Services Center. Fee waivers for low-income individuals must be approved prior to filing the appeal; please allow 3 working days for fee waiver approval. 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 contact the receptionist at 503-823-7967 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 **April 13, 2009 – (the first business day following the last day to appeal)**
- A building or zoning permit will be issued only after the final decision is recorded.

The applicant, builder, or a representative may record the final decision as follows:

- **By Mail:** Send the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to: Multnomah County Recorder, P.O. Box 5007, Portland OR 97208. The recording fee is identified on the recording sheet. Please include a self-addressed, stamped envelope.
- **In Person:** Bring the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to the County Recorder's office located at 501 SE Hawthorne Boulevard, #158, Portland OR 97214. The recording fee is identified on the recording sheet.

For further information on recording, please call the County Recorder at 503-988-3034

For further information on your recording documents, please call the Bureau of Development Services Land Use Services Division at 503-823-0625.

Expiration of this approval. An approval expires three years from the date the final decision is rendered unless a building permit has been issued, or the approved activity has begun.

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

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

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

- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;

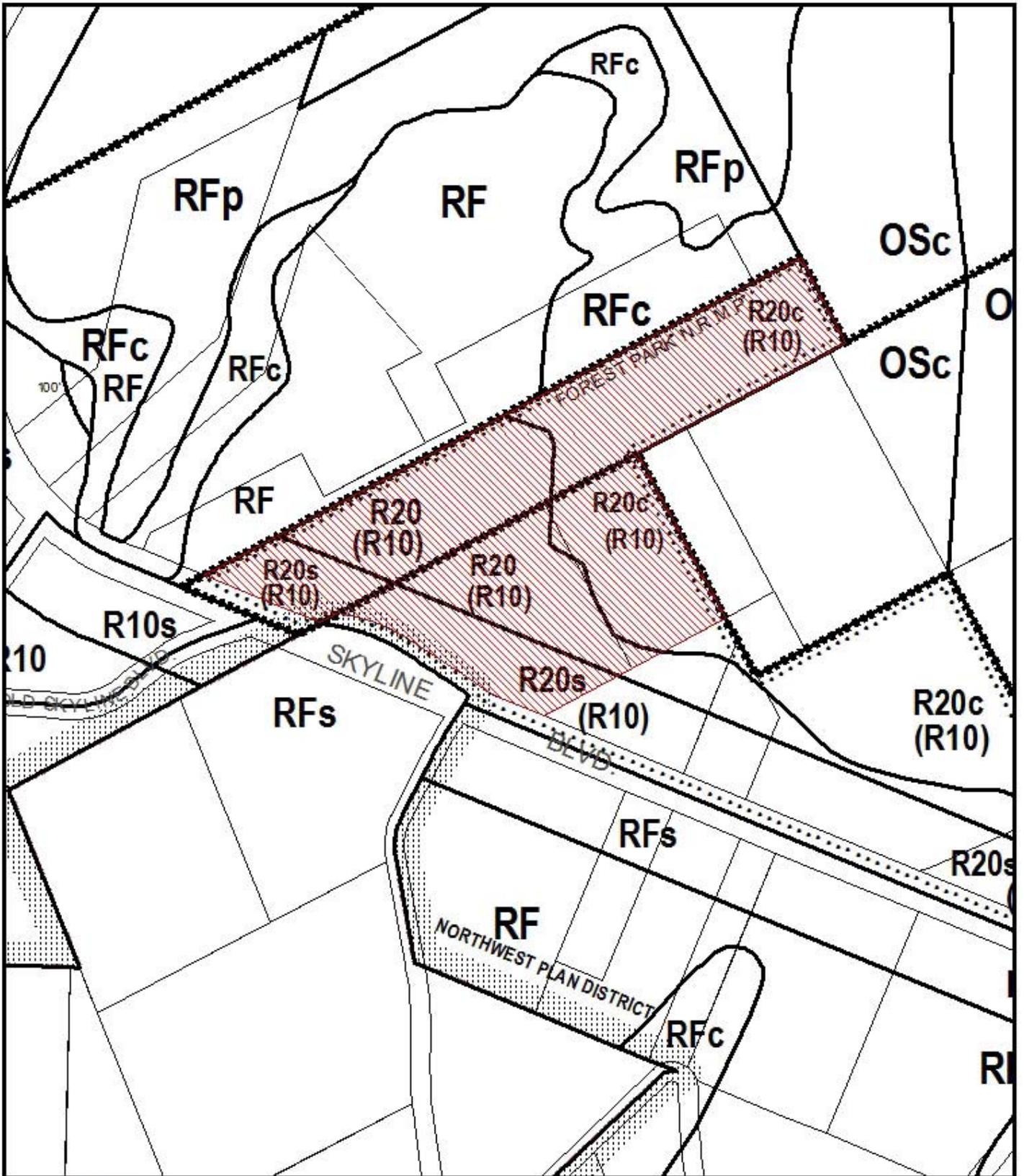
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations of the City.

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
 - 1. Applicant's submittal dated January 13, 2009
 - 2. Applicant's request for extension, dated February 20, 2009
- B. Zoning Maps
 - 1. Existing Zoning (attached)
 - 2. Proposed Zoning (attached)
 - 3. Approved Zoning (attached)
- C. Plans/Drawings:
 - 1. Site Plan with proposed zoning (attached)
 - 2. Site Plan with revised zoning proposal (attached)
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Bureau of Environmental Services (BES)
BES Addendum
 - 2. Water Bureau
 - 3. Site Development Review Section of BDS
- F. Correspondence:
 - None Received
- G. Other:
 - 1. Original LU Application
 - 2. Site History Research
 - 3. Early Assistance Appointment Summary

The Bureau of Development Services is committed to providing equal access to information and hearings. If you need special accommodations, please call 503-823-0625 (TTY 503-823-6868).



ZONING APPROVED

 Site



NORTH

This site lies within the:
NORTHWEST HILLS PLAN DISTRICT

File No.	LU 09-102103 EN
1/4 Section	2116
Scale	1 inch = 200 feet
State Id	1N1W09A 1100
Exhibit	B.3 (Mar 19, 2009)

