



Bureau of Planning and Sustainability

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MEMO

DATE: January 12, 2014

TO: Planning and Sustainability Commission

FROM: Deborah Stein, Principal Planner

CC: Susan Anderson, Director; Joe Zehnder, Chief Planner; Eric Engstrom, Principal Planner

SUBJECT: Non-Conforming Uses and Split Zones, January 27 PSC Work Session

Introduction

This report is intended to inform the Planning and Sustainability Commission work session on January 27, 2015. Through the Comprehensive Plan update, we have an opportunity to review **non-conforming uses** and determine whether these properties should be re-designated and rezoned to allow the current use. Similarly, we have an opportunity to adjust Comprehensive Plan designations to rectify **split zone situations**.

This report addresses:

- **Non-conforming uses*:** situations in which a current use (say, retail or office) occurs on a site that is designated or zoned for another purpose (say, residential use).
- **Split zones:** situations in which there is one lot divided by two different Comprehensive Plan designations and zones.

This report also includes staff recommendations to address testimony on situations similar to split zones: where a single ownership includes two contiguous lots, each with a different designation/zone. In these situations, if an existing or intended use would be better served if the two lots were in the same designation/zone, staff recommends a map change.



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**Note that this report only addresses non-conforming commercial uses. Non-conforming residential densities (i.e., an allowed residential use that exceeds the allowed density) will be addressed in the staff report accompanying the March 10, 2015 PSC work session*

Overview of testimony

Testimony can be generally grouped as follows:

- Property owner requests to “fix” non-conforming situations by changing the land use to allow the current use.
- Property owner requests to “fix” split zone situations by adjusting the map so that a lot or ownership is no longer divided by the designation or zone.
- Neighbors or others proposing or supporting any of the above requests.
- Neighbors or others opposing requests due to concerns about compatibility of a commercial use or structure (current or future) with the residential neighborhood.
- The Bureau of Development Services (BDS) provided testimony advocating for a comprehensive clean-up of non-conforming uses to reduce burdens for property owners who are now required to provide extensive documentation of their non-conforming status when obtaining permits for property improvements. Similarly, BDS advocates for clean-up of split zone situations to help facilitate more efficient development and to reduce confusion for property owners who may not be aware of their situation.

Discussion questions

1. **Non-conforming uses:** Under what circumstances should we change the Comprehensive Plan map designations on properties that currently have legal non-conforming status so that commercial uses are allowed long-term?
2. **Split zones:** Under what circumstances should we adjust the Comprehensive Plan map designation lines on properties to better enable development or redevelopment under a single designation?
3. **Nurseries:** How should we address nurseries and associated retail operations that are located in residential areas?

Introduction

Background

Through the Comprehensive Plan update, we have an opportunity to review individual non-conforming uses and determine whether these properties should be re-designated and rezoned so that the current commercial use (retail, restaurant, office, etc.) is allowed by the zone long-term. Similarly, we have an opportunity to adjust Comprehensive Plan designations to rectify split zone situations that may be inhibiting efficient redevelopment otherwise supported by policy.

The Portland Zoning Code defines a non-conforming use as “a use that was allowed by right when established or a use that obtained a required land use approval when established, but that subsequently, due to a change in the zone or zoning regulations, the use or the amount of floor area of the use is now prohibited in the zone. (Portland Zoning Code, Chapter 33.910 Definitions)

Regarding split zones, the Portland Zoning Code states “when a site is in more than one zone, the development standards of each zone apply to the portion of the site in that zone. (Portland Zoning Code, Section 33.700.070 General Rules for Application of the Code Language)

How are non-conforming uses and split zone situations created?

Non-conforming use situations arise when a use (retail store, restaurant, office, etc.) is established legally, but subsequently the zone has changed and the established use is no longer allowed. This zone change may have occurred deliberately (with the intent that the non-conforming use would eventually go away), or unintentionally (e.g., the zone was changed without knowing a particular use would be rendered non-conforming). Non-conforming uses may also have been established illegally, and have continued to operate under the radar of City zoning enforcement.

Split zone situations may arise in a few different ways: when a property owner purchases an adjacent parcel in a different zone; or when a property owner owns two adjacent properties and the zoning is changed on one of the two through a legislative process (e.g., an area plan) without awareness of the ownership pattern. Split zones were also created inadvertently when the City shifted from hand drawn to digital maps long ago. In this case, the imprecision of the older maps resulted in some misalignment of zoning boundaries.

Why are non-conforming uses important to address through the Comprehensive Plan?

The update of the Comprehensive Plan map provides an avenue for rectifying situations that otherwise may be addressed through processes which are costly and/or complicated for individual property owners to bear on their own.

An individual property owner may request a quasi-judicial Comprehensive Plan map amendment, a process that is extremely costly to applicants (currently ~ \$32,000).

As an alternative, property owners may seek **legal non-conforming status**. This status doesn't change the zoning of a property, but instead enables a property in a residential zone to continue to be used for a business or office use as long as certain conditions are met. For a property to have legal non-conforming status, the current use must have been:

- Permitted when the use was established.
- Maintained over time (i.e., continuously operated as a commercial use without a gap longer than three years).

Documenting the establishment and history of continuous commercial activity can be difficult. Once conferred, legal non-conforming status is valid for three years. Any property improvements that require a building permit trigger a new review of non-conforming status. A commercial use can only be expanded if the level of impacts (noise, litter, vehicle trips, etc.) does not increase.

Because of the inherent lack of long-term certainty associated with a non-conforming use, business and property owners may face difficulties in financing and/or securing insurance to cover improvements to a building or property. Consequent disinvestment and a resulting lack of maintenance of a property may have an impact on a neighborhood.

Why are split zone situations important to address through the Comprehensive Plan?

Split zones can deter efficient use and practical development of a parcel when the Comprehensive Plan designation and/or zoning is split across an ownership. A legislative adjustment of the map lines to enable more efficient development of a property relieves the property owner from having to individually request to adjust the line through a quasi-judicial Comprehensive Plan map amendment (which, as mentioned above, costs ~ \$32,000).

Staff approach

To develop the Proposed Comprehensive Plan map, staff followed these steps to identify non-conforming commercial uses to consider for map changes:

1. Review available data identifying commercial non-conforming uses and situations based non-conforming situation letters, non-conforming situation reviews, and non-residential uses permitted in residential zones (note that this is not a complete set, and work will continue to identify additional candidates).
2. Filter this data set to concentrate on centers, corridors and in identified commercial gap areas.

3. Add non-conforming uses identified by property owners or business districts with demonstrated support from neighbors, neighborhood and/or business association (these may be outside of centers, corridors and commercial gap areas).

Staff then did an initial review:

1. Are there adopted area, community or neighborhood plans that intentionally created this non-conforming use/situation — either through direct decisions or later interpretation of policies? (This was considered to understand the context for the current designation, but was not a deciding factor since conditions and circumstances may be different today.)
2. What is the zoning history for the site?
3. If the property is in a cluster of similar uses in non-conforming zones, should additional properties in the cluster also be considered for a map change?
4. Does the site have a historic structure/resource or other notable designation or overlay zone?

Staff then followed up by recommending map changes for properties that affirmatively meet the following criteria:

- Are there proposed Comprehensive Plan policies that support a change of map designation?
- Is the non-conforming use part of a cluster of similar uses (and conforming zones)? Some situations where the use is isolated and surrounded by other uses/zones may also be considered.
- Is the non-conforming use located in an area that lacks commercial uses and/or zoning and is an area of diverse socio-economic racial/ethnic populations? (To consider this criterion, various Map App layers were reviewed: Commercial Gap Areas, Median Income, Communities of Color, Density, Vulnerable Populations and Gentrification Risk.)
- Was the structure originally designed/built for commercial use?
- Is the structure a historic resource or inventoried site?
- Is there a clear recommendation for a new designation/zone, given the physical context of the site and other relevant factors? If no, further analysis may be warranted in some circumstances.
- Is the infrastructure in place to support a commercial use on this property?

- ☑ Is there a low likelihood that there would be unintended consequences? Examples include demolition of existing structures, potential for excessive intensification, and uses unwanted by neighbors.
- ☑ Is there support for a map change from neighbors, the neighborhood or business association, and/or other organizations?

After the Proposed Comprehensive Plan map was published in July 2014, property owners and others have provided testimony identifying additional properties to be considered for map changes. Staff has reviewed each new candidate against the same criteria.

Recommending map changes to address these situations: a note of caution

In considering a map change to remedy a non-conforming situation, it's important to apply this test: *would the new land use designation be appropriate if this property were redeveloped?* Once a mixed use designation and zone is applied to a property in this situation, the property carries with it all of the allowances of the new designation and zone, opening the door to potential redevelopment that may be different in form and/or use than what is there today.

A decision to retain a non-conforming use in its current status may be perceived as a way to preserve a desirable use or structure – at least in the short term. In reality, non-conforming status signals that the property is intended to revert to residential use in the long term. In some instances, non-conforming status may increase the risk of demolition and loss of a historic structure because of the burden on a property owner to deal with permitting issues when a tenant leaves or at the time of major improvements.

Other approaches that may be considered to address these situations

- Establish an annual or biannual legislative process, similar to RICAP, in which staff could bundle a set of non-conforming use situations to address at one time. Properties to be considered could be identified by property owners, District Liaisons, Bureau of Development Services staff and the general public. Criteria similar to or the same as those outlined above could be used to evaluate which of these properties should be re-designated and rezoned through this process.
- Amend the zoning code to allow nurseries with associated retail uses in residential zones, subject to a conditional use review process.
- Through the Mixed Use Zones project, ensure that the smaller scale mixed use zone is designed to address issues that are common in small nodes of commercial uses that abut or are near lower density residential areas. Consider limitations on outdoor bar patios, retail square footage, outdoor storage, hours of operation, and other limitations on certain uses. The current

CN zone includes elements that may be the starting point for the new small scale mixed use zone.

- Amend the zoning code to allow non-conforming uses to continue indefinitely after being formally acknowledged by the City (rather than just three years), as long as the use remains in the same ownership, and no changes occur to the use beyond maintenance and repair. Any change in ownership or to the use may trigger another non-conforming situation review similar to what is required today.

Discussion Question 1. Under what circumstances should we change the Comprehensive Plan map designations on properties that currently have legal non-conforming status so that commercial uses are allowed long-term?

The Proposed Comprehensive Plan Map includes a number of non-conforming uses that are proposed to be changed from a residential designation to a mixed use designation to allow the current commercial use to continue. Through testimony, a number of additional properties have been proposed for similar map changes.

Staff has grouped testimony on non-conforming commercial uses into four categories, based on common circumstances, characteristics and issues:

- A. Non-conforming commercial uses that are adjacent to areas designated and zoned for mixed use.
- B. Non-conforming commercial uses that are dispersed (i.e., not contiguous with a mixed use area), but are relatively proximate to a mixed use area by foot or bike.
- C. Non-conforming commercial uses that are dispersed, isolated and entirely surrounded by a residential area.
- D. Non-conforming commercial uses that are located in houses rather than in structures originally built as commercial buildings.

Group A: Non-conforming commercial uses that are adjacent to areas designated and zoned for mixed use.

Many pieces of testimony pertained to properties with legal non-conforming uses located at the edge of an area already zoned commercially. Staff reviewed these requests using the criteria listed above, particularly considering impacts on adjacent residential areas.

Notes: "Reference numbers" correspond to the attached district maps. The address in the "Location" column indicates which district map to consult. Under the "Discuss" column staff has indicated with a check mark which issues they recommend for discussion. Please add check marks in the boxes of any additional issues you wish to discuss.

Reference number	Location	Request	Who testified	Recommendation	Rationale	Discuss?
1-1	2627 N Lombard	Change nonconforming property from R1 to mixed use	Individual	Change designation to MU-Civic Corridor as requested	Structure was built for commercial use; building is located on Civic Corridor, adjacent to existing commercial area.	<input type="checkbox"/>
1-2	3011 SW Canby	Change nonconforming property from R5 to mixed use	Individual	Add property to adjacent MU – Neighborhood as requested. Consider retaining R5 zoning, so that any redevelopment would be reviewed against quasi-judicial zone map approval criteria.	Originally built and currently used for commercial purposes; located across from existing commercial area.	<input type="checkbox"/>
1-3	SE Stark between 14 th and 15 th	Change two R1 properties (commercial building at 1421 SE Stark and a dwelling at 423 SE 15 th) to mixed use to match proposal for adjacent commercial property (1403-1415 SE Stark) and commercial property	Request comes from the property owner. The Buckman NA, individual and petition oppose this request; they also oppose staff's proposal to	Retain proposal for change from R1 to MU-Urban Center at 1403-1415 SE Stark and 1400-1416 SE Stark, and add adjacent commercial property at 1421 SE Stark to match. Retain R1 on 423 SE 15 th .	Properties at 1403-1415, 1421 SE Stark (north side of Stark) and 1400-1416 SE Stark (south side of Stark) were built as commercial structures and are located next to existing commercially zoned area. The home at 423 SE 15 th is	<input checked="" type="checkbox"/>

Reference number	Location	Request	Who testified	Recommendation	Rationale	Discuss?
		across the street (1400-1416 SE Stark St).	make the adjacent R1 properties conforming.		set back from the street and isn't contiguous with the other storefronts on this block.	
1-4	1808 SE Belmont	Change non-conforming property from R2.5 to mixed use	Property owner	Add property to adjacent MU-Urban Center as requested	Built as a commercial structure; located next to existing commercially zoned area.	<input type="checkbox"/>
1-5	4911 NE 82 nd	Change non-conforming property from R2 to mixed use	Individual	Add property to adjacent MU-Dispersed as requested	Located next to existing dispersed commercial area, adjacent to industrial area.	<input type="checkbox"/>
1-6	2306 SE Cesar E Chavez Blvd	Change non-conforming property from R1 to mixed use	Individual	Add property to adjacent MU-Urban Center as requested	Built as commercial structure; located on Civic Corridor next to commercially zoned area.	<input type="checkbox"/>
1-7	4107-4117 SE Holgate Blvd	Change non-conforming property from R1 to mixed use	Individual	Add property to adjacent MU-Dispersed as requested	Built as commercial structure; located next to existing commercial zoned area.	<input type="checkbox"/>
1-8	5243 SE 77TH Ave and 7531-7629 SE Steele St	Change non-conforming properties from R1 to mixed use	Staff	Add properties to adjacent MU-Civic Corridor	Built as commercial structure (SE 77 th); split zoned parcel (SE Steele); located next to existing commercially zoned area on Civic Corridor.	<input type="checkbox"/>
1-9	28th and Ankeny	Change non-conforming property from R2.5 to mixed use	Property owner and tenants	Add property to adjacent MU-Urban Center as requested	Built as mixed-use and commercial structures; located next to existing commercially zoned area.	<input type="checkbox"/>

Reference number	Location	Request	Who testified	Recommendation	Rationale	Discuss?
1-10	6912-6926 SE 52nd Ave	Change non-conforming property from R5 to mixed use	Staff	Add property to adjacent MU-Dispersed	Built as a commercial structure; located next to existing commercially zoned area.	<input type="checkbox"/>
1-11	7036 and 7050 NE MLK	Change non-conforming properties from R1 to mixed use	Property owner	Apply MU-Civic Corridor to all properties fronting MLK between NE Morgan and NE Bryant (all properties are non-conforming)	This block face is located adjacent to existing commercially zoned area on a Civic Corridor.	<input type="checkbox"/>
1-12	3333 and 3335 NE Marine Dr	Change non-conforming properties from RF to Industrial Sanctuary to match surrounding designation and zoning	Property owner	Change designation to Industrial Sanctuary as requested	This is a marina surrounded by existing industrial zoning.	<input type="checkbox"/>
1-13	5705 SE Powell Blvd	Change non-conforming property from R1 to mixed use	Property owner	Add property to adjacent MU-Civic Corridor as requested	Built as a commercial structure; located next to existing commercially zoned area on a Civic Corridor.	<input type="checkbox"/>
1-14	6327 SE Powell Blvd	Change non-conforming property from R1 to mixed use	Property owner, Staff	Add property to adjacent MU-Civic Corridor as requested	Built as a commercial structure; located next to existing commercially zoned area on a Civic Corridor.	<input type="checkbox"/>
1-15	E Burnside between 57th and 58th	Change properties from R1 to mixed use	Individual	Add existing non-conforming commercial use at 5711 E Burnside to adjacent MU-Neighborhood, as requested; leave other property R1.	5711 E Burnside was built as a commercial structure; located next to existing commercially zoned area.	<input type="checkbox"/>

Group B: Non-conforming commercial uses that are dispersed (i.e., not contiguous with a mixed use area), but are relatively proximate to a mixed use area.

Some non-conforming commercial situations are located close to mixed use areas, while not immediately adjacent. Staff recommendations are heavily dependent on context, such as the type of building, and the size and development status of the nearby commercial area.

Reference number	Location	Request	Who testified	Recommendation	Rationale	Discuss?
1-16	6011 NE Oregon St	Change nonconforming property from RH to mixed use	Staff	Change property to MU-Dispersed	Built as a commercial structure; located on transit lines and near commercial area.	<input type="checkbox"/>
1-17	SE 24 th and SE Ankeny	Change nonconforming properties from R1 and R2.5 to mixed use	Property owners of one legal non-conforming property and one property that lost its non-conforming status, and two individuals	Change properties at 2345 and 2342-2348 SE Ankeny from R1 and R2.5 to MU-Urban Center as requested	Properties are close to a robust commercial area. Map changes would bring longstanding non-conforming properties into conformance.	<input type="checkbox"/>
1-18	SE 16 th and SE Clinton	Delete proposal to change residential properties to mixed use, with the exception of one non-conforming property at 1532-1540 SE Clinton St	Multiple individuals opposing proposed change	Delete proposed change from residential to mixed use on residences in this node, as requested. Retain proposal for change from R2 to MU-conforming commercial property at 1532-1540 SE Clinton St.	Residential parcels are somewhat affordable housing, turn-of-the-century buildings. No need for additional mixed use in this area.	<input type="checkbox"/>
1-19	3400 SE Clinton St	Change non-conforming property from R2.5 to mixed use	Individual	Apply MU-Dispersed as requested	Built as a commercial structure; located close to mixed use area.	<input type="checkbox"/>

Reference number	Location	Request	Who testified	Recommendation	Rationale	Discuss?
1-20	4039 SE Clinton St	Change non-conforming property from R2.5 to mixed use	Individual	Apply MU-Dispersed as requested	Built as a commercial structure; located close to mixed use area.	<input type="checkbox"/>
1-21	3838-3848 SE Franklin St	Change non-conforming property from R2.5 to mixed use	Individual	Apply MU-Civic Corridor as requested	Built as a commercial structure; located close to a mixed use area and on a Civic Corridor.	<input type="checkbox"/>
1-22	6204 SE Division St	Change non-conforming property from R2 to mixed use	Staff	Apply MU-Neighborhood	Built as a commercial structure; located close to a mixed use area and on a Neighborhood Corridor.	<input type="checkbox"/>
1-23	7910-7916 SE Division St, 7940 SE Division St	Change non-conforming properties from R1 to mixed use	Staff	Apply MU-Neighborhood	Built as commercial structures; located close to mixed use area and on a Neighborhood Corridor.	<input type="checkbox"/>
1-24	304 SE 28th Ave	Change non-conforming property from R5 to mixed use	Individual	Apply MU-Dispersed as requested	Built as a commercial structure, located near several robust mixed use areas.	<input type="checkbox"/>

Group C: Non-conforming commercial uses that are dispersed, isolated and entirely surrounded by a residential area.

Non-conforming commercial uses that are located in residential areas require more careful consideration than those near or in mixed use areas, and the decision about whether or not to make them conforming is very situation- and location-dependent.

Reference number	Location	Request	Who testified	Recommendation	Rationale	Discuss?
1-25	6310-6316 NE 33 rd Ave	Change non-conforming property from R5 to mixed use	Concordia NA	Apply MU-Dispersed as requested	Built as a commercial structure; located close to neighborhood-serving node.	<input type="checkbox"/>
1-26	6729 SE 162 nd Ave	Change non-conforming property from R10 to mixed use	Property owner submitted request for map change; individual testimony in opposition.	Retain current designation of R10	Mixed use is not appropriate for this large site due to flood and landslide risks and surrounding low density residential areas.	<input type="checkbox"/>
1-27	Lakeside Gardens 16211 SE Foster Rd	Change non-conforming property from R10 to mixed use	Property owner	Retain current designation of R10	Mixed use is not appropriate for this large site due to flood and landslide risks and surrounding low density residential areas.	<input type="checkbox"/>
1-28	5250 NE Halsey Ave	Testimony supporting and opposing proposal to change non-conforming property from R5 to mixed use	Supporting testimony is from an individual; Rose City Park NA opposes the change	Retain current proposal to change non-conforming property to MU-Dispersed	Structure was built for commercial use, is next to a park, and is neighborhood-serving.	<input checked="" type="checkbox"/>

Reference number	Location	Request	Who testified	Recommendation	Rationale	Discuss?
1-29	9647 SE Harold St	Change non-conforming property from R5 to mixed use	Request made by property owner and is supported by individual	Retain residential designation	This business does not have legal non-conforming status. The site is entirely surrounded by R5 homes. I-205 creates a barrier separating this property from the mixed use center in Lents.	<input checked="" type="checkbox"/>

Group D: Non-conforming commercial uses that are located in houses rather than in structures originally built as commercial buildings.

Reference number	Location	Request	Who testified	Recommendation	Rationale	Discuss?
1-30	SW Main between Claire and King	Oppose proposed change for four nonconforming properties from R5 to mixed use	Multiple individuals	Revise proposal; change properties from R5 to Multi- Dwelling 2,000 (R2) instead of mixed use	The R2 designation would provide opportunity for properties to apply for a Historic Preservation Incentive Review to legalize the office uses, while also being a designation that fits well between high density multi-family and single family areas.	<input type="checkbox"/>
1-31	4714 and 4730 NE Fremont St; 3436 NE 47 th and 3436 NE 48 th	Change this block from R2 to mixed use to make 2 non-conforming uses on one property (4730 NE Fremont) conforming, and to allow commercial uses on the other properties on this block, including an existing unacknowledged commercial use	Property owners (note that owner of home at 3436 NE 47 th requests to be changed only if adjacent properties are changed from residential to mixed use)	Change three properties between 47 th and 48 th (3436 NE 47 th Ave and 4714 and 4730 NE Fremont) fronting on Fremont to MU-Neighborhood, as requested. Retain residential designation on next block to the east (3436 NE 48 th).	Change would bring two non-conforming uses into conformance, and provide one block of commercial on south side of Fremont St to complement commercial corridor on north side of Fremont St.	<input type="checkbox"/>
1-32	3235 SE Cesar Chavez	Change R2.5 to mixed use	Individual	Apply MU-Civic Corridor as requested	Change would bring non-conforming use into conformance; located on a Civic Corridor.	<input type="checkbox"/>

Discussion Question 2. Under what circumstances should we adjust the Comprehensive Plan map designation lines on properties to better enable development or redevelopment under a single designation?

The following are situations in which ownerships are divided between two different Comprehensive Plan map designations and zones. An ownership may include two or more contiguous tax lots. In some cases, buildings may span across two different zones on the same tax lot. Correcting these situations clarifies what development standards apply to property improvements, and enables more efficient redevelopment in the future.

Notes: "Reference numbers" correspond to the attached district maps. The address in the "Location" column indicates which district map to consult. Under the "Discuss" column staff has indicated with a check mark which issues they recommend for discussion. Please add check marks in the boxes of any additional issues you wish to discuss.

Reference number	Location	Request	Who testified	Recommendation	Rationale	Discuss?
2-1	6411 SE Milwaukie Ave	Delete proposal to change parking lot from R5 to mixed use in order to preserve nonconforming status of parking lot in R5 zone.	Sellwood Moreland Improvement League (SMILE) and 3 individuals	Retain current proposal. During zoning process, consider retaining R5 zoning on parking lot.	Applying a single Comprehensive Plan designation to cover the full site is desirable from a long-term perspective, to enable more efficient redevelopment in the future. Retaining R5 zoning on the parking lot would not rectify the split-zone situation; however, this approach would enable current limits on hours of operation and outdoor storage to remain in place per Zoning Code chapter 33.258 (Non-Conforming Situations).	<input checked="" type="checkbox"/>

Reference number	Location	Request	Who testified	Recommendation	Rationale	Discuss?
2-2	3519-3531 SE Division St	Change parking lot from R2.5 to mixed use so that entire ownership has one designation	Property owner, tenants	Apply MU-Urban Center to full site as requested	Rectifies split zoning.	<input checked="" type="checkbox"/>
2-3	4033 SE Woodstock	Change full site to mixed use; church is now located on a site that is split between mixed use (¼) and R2.5 (¾)	Individual (representing church)	Apply MU-Neighborhood to full site as requested	Rectifies split zoning. Allows full-block redevelopment in future.	<input type="checkbox"/>
2-4	804 N Alberta St & 4925 N Albina	Change parking lot from R2.5 to mixed use so that full ownership is in a single designation	Property owner	Apply MU-Dispersed to encompass full ownership as requested	Rectifies non-conforming situation (4925 N Albina) and split-zoned property (804 N Alberta, CG/R2.5).	<input type="checkbox"/>
2-5	9520 N Lombard Ave	Change one lot in split-zoned site from R1 to mixed use so that full ownership is in a single designation	Staff	Apply MU-Dispersed to encompass full ownership	Rectifies situation in which a commercial structure spans two zones.	<input type="checkbox"/>
2-6	1819 NW Everett St	Change one lot in split-zoned site from RH to mixed use	Property owner	Apply MU-Urban Center to adjacent lot under same ownership as requested	Rectifies split-zoned situation; parking lot is owned by Cultural Center on adjacent lot.	<input type="checkbox"/>

Discussion Question 3. How should we address nurseries and associated retail operations that are located in residential neighborhoods?

Property owners of two nurseries testified about use limitations on their sites, and requested changes to the Comprehensive Plan map designation and zoning for their properties. Because the sites in question are currently residential, nursery operations (classified in the zoning code as “retail sales and services”) are not an allowed use. Non-conforming uses may continue operating; however, improvements (including any site redesign and/or expansion of the buildings) may only be permitted through a non-conforming situation review and if off-site impacts on neighbors would not increase.

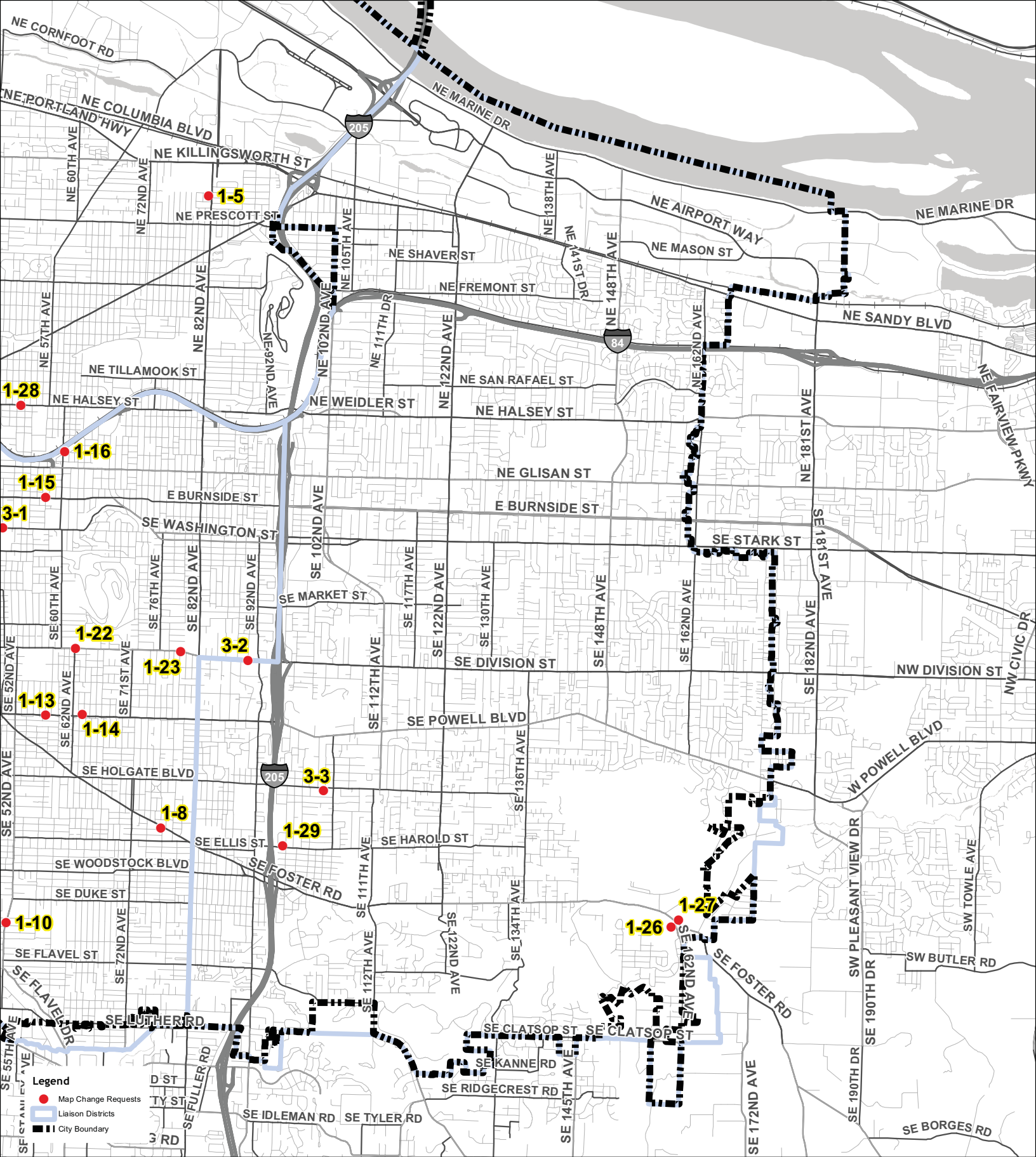
Staff recommends addressing these situations in two ways:

1. Change the Comprehensive Plan map, as described in the table below.
2. Explore options to allow nurseries in residential zones as a conditional use.

Notes: “Reference numbers” correspond to the attached district maps. The address in the “Location” column indicates which district map to consult. Under the “Discuss” column staff has indicated with a check mark which issues they recommend for discussion. Please add check marks in the boxes of any additional issues you wish to discuss.

Reference number	Location	Request	Who testified	Recommendation	Rationale	Discuss?
3-1	Portland Nursery SE 50 th and SE Stark	Change southern part of lot from R2.5 to mixed use so that the entire property is designated in a way that allows the nursery to operate by right.	Property owners	Retain current proposal, which applies MU-Dispersed to the northern portion of the site that fronts on Stark, where the current retail operation is located. The proposal expands the existing commercial zoning here, but doesn’t encompass the full site. This change would partially but not completely address the non-conforming status of the nursery	The proposed expansion of mixed use on this site (i.e., moving the zoning line that now splits the site further south) would make the current retail structure conforming. If the whole site were designated for mixed use, as requested, the door would be open for future large-site mixed use development that would be	<input checked="" type="checkbox"/>

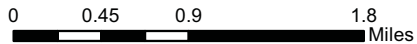
Reference number	Location	Request	Who testified	Recommendation	Rationale	Discuss?
				because the property owners' plans for expansion and site reconfiguration may be limited. Staff also recommends exploring options to allow nurseries in residential zones as a conditional use.	inconsistent with the neighborhood scale and transportation infrastructure.	
3-2	Portland Nursery, SE 90 th and SE Division St	Change designations on properties north of Clinton from R1 to mixed use, and all properties south of Clinton from R1 to RH	Property owners	Retain current proposal	Current proposal for MU-Civic Corridor along the large ownership fronting on SE Division accommodates nursery use. Infrastructure and scale of adjacent area do not support RH in this area.	<input type="checkbox"/>
3-3	Tony's Garden Center at 10152, 10216, 100244 and 10300 SE Holgate	Change full ownership from R1 to mixed use	Property owner	Extend MU-Dispersed to four lots under one ownership as requested. In addition, extend the MU-Dispersed to the adjacent lot at 10326 SE Holgate (currently R1) to correct a split zone situation (since this lot is under same ownership as the adjacent MU lot at 10318-10326 SE Holgate).	Nursery spans across three lots along Holgate next to and across the street from a MU-Dispersed area. A fourth contiguous lot is under the same ownership. By adding the lot at 10326 to this map change, there will be a continuous stretch of MU-Dispersed along this block of SE Holgate covering two separate ownerships.	<input type="checkbox"/>



Nonconforming Uses and Split Zones Reference Map

East Liaison District

City of Portland, Oregon ||
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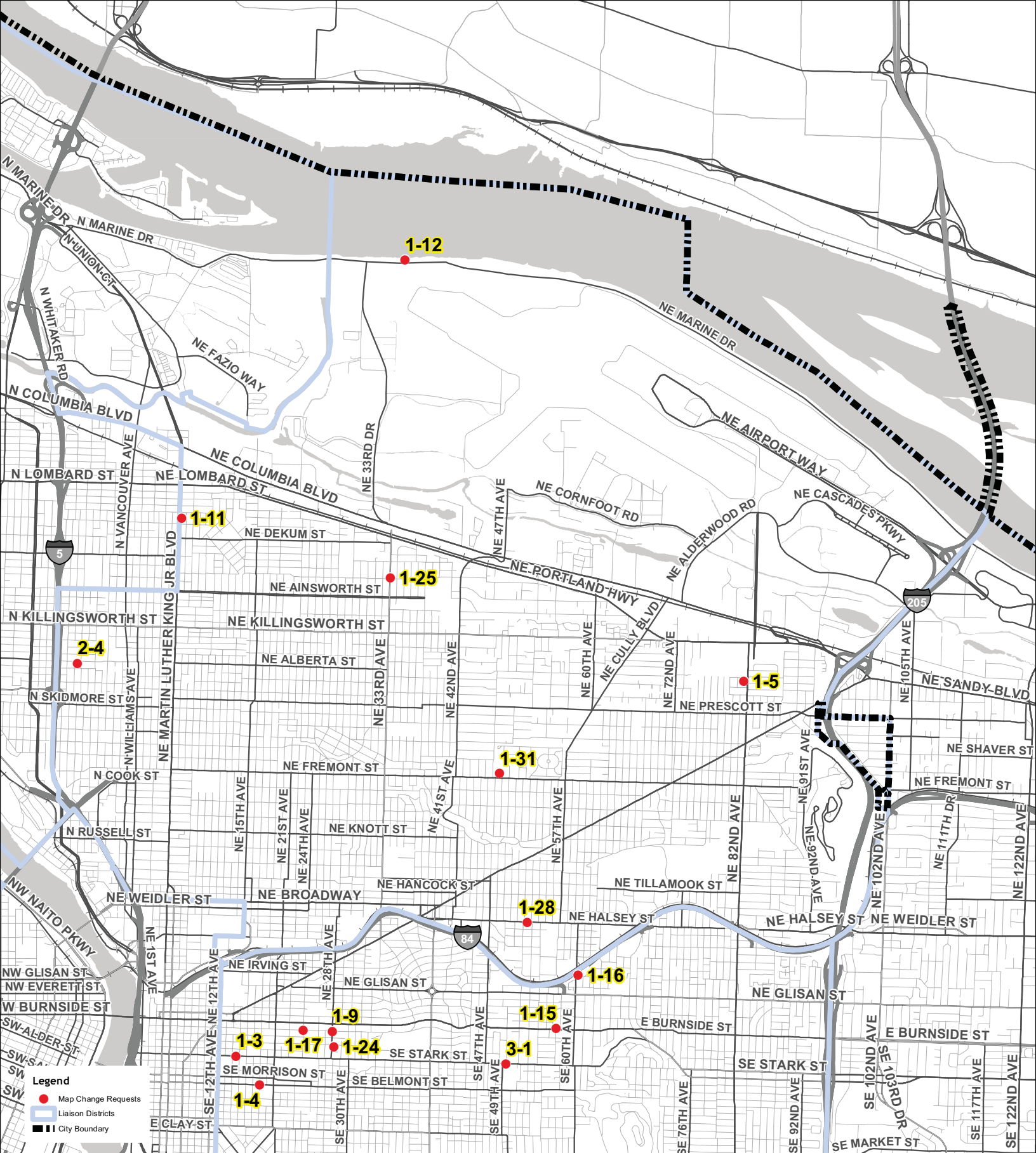


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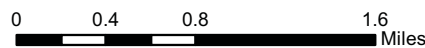
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Nonconforming Uses and Split Zones Reference Map

Northeast Liaison District

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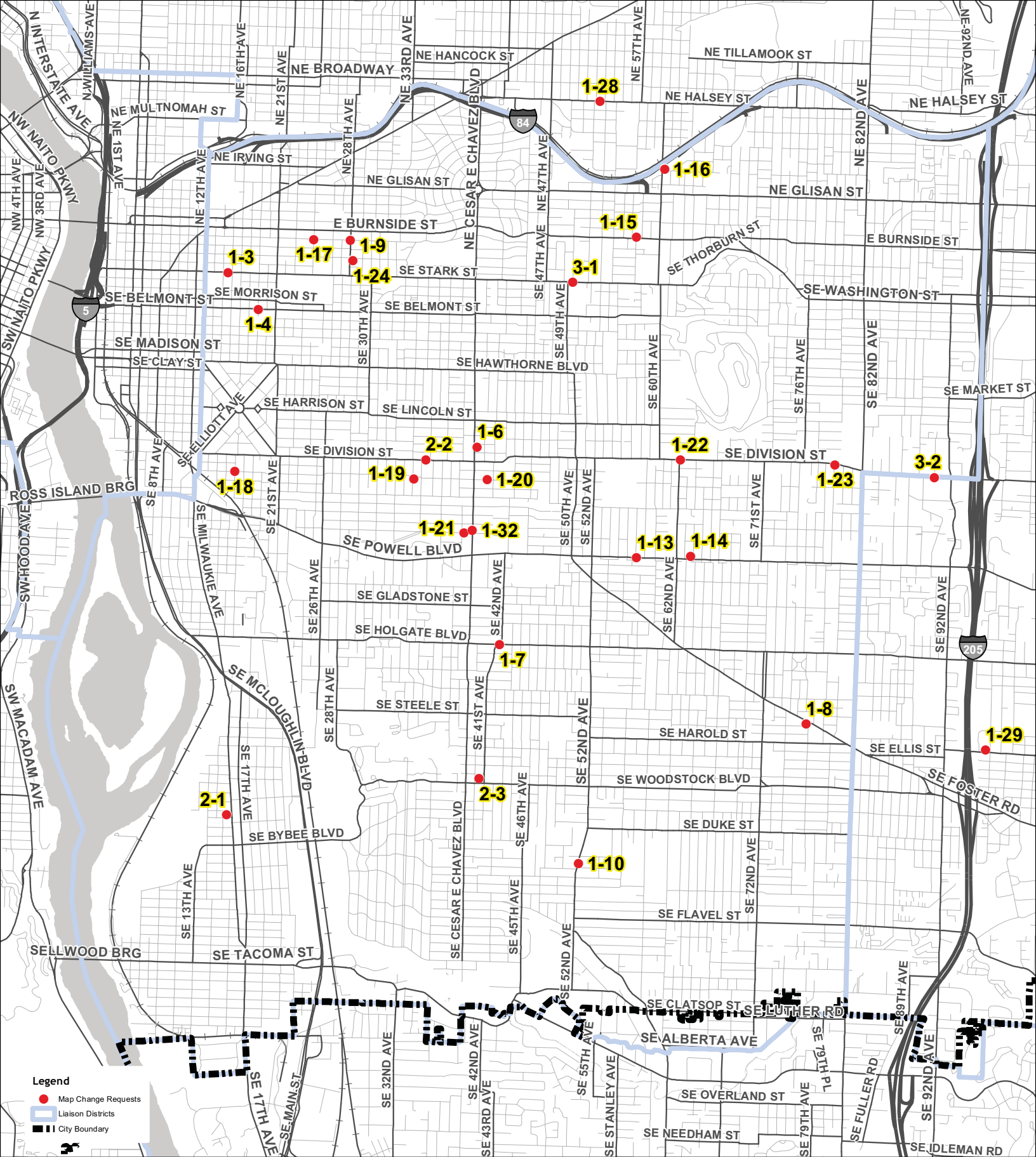


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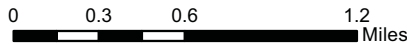
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Southeast Liaison District

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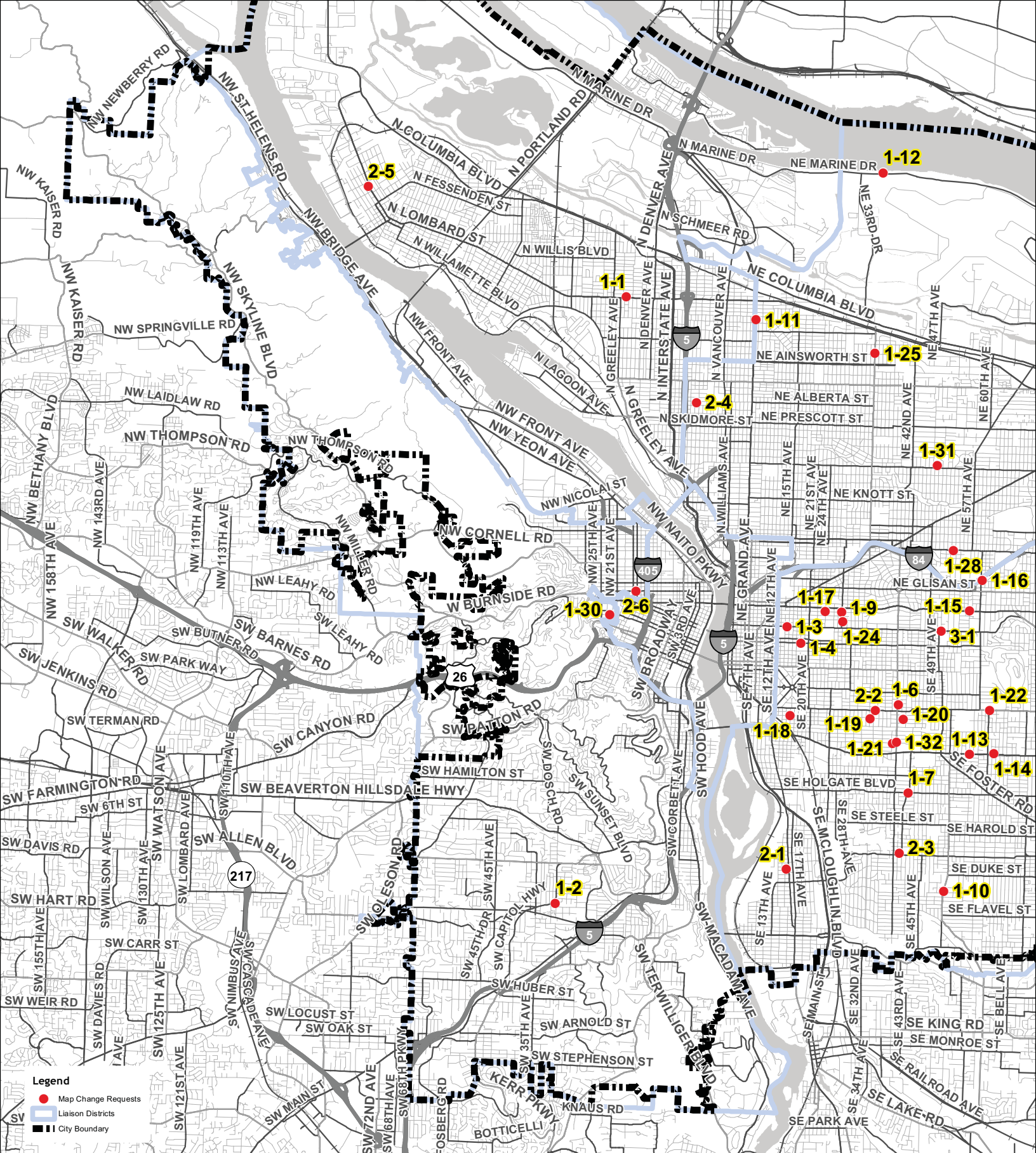


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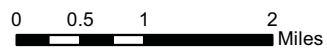
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