



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

FROM CONCEPT TO CONSTRUCTION

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January 22, 2016

**37192**

Mark Kramer, Attorney for Right 2 Dream Too  
 4635 NE Garfield Avenue  
 Portland, OR 97211

Re: Stephens Addition, Block 45, Lots 3-5 including vacated right-of-way formerly SE Harrison Street, Portland, OR

Mr. Kramer:

You requested a Tier 3 zoning confirmation letter to verify that a proposed use of property located at SE 3<sup>rd</sup> Avenue and SE Harrison Street (hereafter referred to as "the site") is permitted by the applicable zoning (Attachments A – E). Your letter has been assigned BDS number PR 16-108969 ZCL (Right 2 Dream Too). Your request asks six specific questions as follows:

1. What is the Use Category in 33.920 that most closely fits a rest area/campground that provides shelter?
2. Does the zoning on the site allow overnight rest areas, recreational campgrounds, or campsites as a permitted, conditional or limited use? Is this use contained in the examples under PCC 33.920?
3. Does the proposed use and/or site plan require a land use review? If yes, are there modifications that could be made in the proposed site plan to make the improvements allowed by right?
4. Are there any plan district or overlay zones that apply to the site?
5. What development standards apply to the proposal?
6. What zoning code regulations apply to a fence made of doors?

Consistent with ORS 227.160(2)(b), this letter is the Bureau of Development Service's advisory response to the City Council regarding your request, and is not a final determination. Since there is great public interest in the proposed use of the site by Right 2 Dream Too, the Commissioner in Charge of BDS, Dan Saltzman, has directed me to prepare an advisory response to your requests and submit that response to the City Council for review and final approval. Only when the Council affirms and adopts this advisory response will there be a final

response to your zoning confirmation requests. My advisory response is limited to addressing only the zoning code (Title 33) and does not address compliance with other city code titles.

This response first describes the site and your proposed use of it and then addresses the relevant questions and zoning code sections considered in the analysis. In brief, my recommendation is that the proposed rest area/campground with tents and accessory structures to be located on the site should be classified as a Community Services use. In the IG1 zone, Community Service uses up to 3,000 square feet of net building area are allowed. Community Service uses larger than 3,000 square feet of net building area are a Conditional Use. Community Service uses not exceeding the 3,000 square foot net building area limit should be considered a use that is specifically authorized by the city code. Permits, such as building, electrical and plumbing permits, may be required, but these require no land use review.

## I. Background

### A. Property Information

The relevant information concerning the property is as follows:

- **Location:** The site is located at SE 3<sup>rd</sup> Avenue and SE Harrison Street and includes a portion of right-of-way being considered for vacation (Attachment D). Analysis in this letter and site area listed below assumes the street vacation has occurred.
- **Tax Account #:** R673288
- **Property Owner:** City of Portland, Office of Management and Finance
- **Site Area:** Approximately 20,000 square feet including vacated right-of-way
- **Zoning Designations:** General Industrial 1 (IG1), Central City Plan District, Central Eastside Subdistrict

### B. Current Development of the Property

The site is currently improved with an existing gravel parking lot.

### C. Proposed Use/Activity at the Site

The information available about the nature and operation of Right 2 Dream Too's proposed rest area is based on Right 2 Dream Too's Zoning Confirmation Request application which includes a letter describing the proposed function of the rest area/campground (hereafter referred to as "rest area") and site plan. The site plan shows tent camping areas with sizes ranging from one and two-person tents to tents for up to 10 individuals. The site plan also shows approximately 2,100 square feet of net building area. The site currently includes a portion of a public street to be considered for vacation by Portland City Council. The proposed rest area will be similar in nature and operation to the rest area located at Right 2 Dream Too's current site.

The proposed use/activity of the site is for a rest area with tents for overnight shelter for people experiencing houselessness. (This letter will use the term "houseless" rather than "homeless"). The rest area is expected to provide shelter for up to 100 people at any given time.

Individuals may be sheltered at the site for one night or longer. The rest area will be managed by Right 2 Dream Too. In addition, Right 2 Dream Too's website and its State of Oregon Restated Articles of Incorporation document that Right 2 Dream Too is a Non-profit Organization of a charitable nature. The rest area will be self-governed by individuals staying there and these individuals may volunteer to assist each other with various activities, such as sharing food, clothing, and information about accessing social services. There will be no employees at the site. Structures totaling approximately 2,100 square feet that include toilets, showers, laundry facilities, a common area with computers and an office, a kitchen, and a storage building for individual's belongings are proposed. No sleeping will be allowed in the structures. A fence, such as the fence made of doors at Right 2 Dream Too's current site at NW 4<sup>th</sup> Avenue and Burnside, may be constructed to provide privacy. Toilets, showers, laundry and storage of belongings will be available to others experiencing houselessness, not only those sheltered at the site.

## II. Code Analysis

### A. Introduction

Analyzing how the zoning code applies to the proposed use of the site requires consideration of several questions including: (1) What is the appropriate zoning use classification for the proposed rest area? (2) Once the appropriate zoning use classification is determined, is this use classification allowed, conditionally permitted, or prohibited in the IG1 zone? (3) Does the proposed rest area involve development that is subject to other zoning regulations? Each of these questions is addressed below.

One code section to consider at the outset is PCC 33.700.070.C. It is part of a code section entitled "General Rules for Application of the Code Language" and states:

**Situations where the code is silent.** Proposals for uses, development, or land divisions where the Code is silent or where the rules of this section do not provide a basis for concluding that the proposal is allowed are prohibited. The Planning Director may initiate an amendment to Title 33 to add a new use category, or make other amendments, as stated in Chapter 33.835, Goal, Policy, and Regulation Amendments.

This language requires consideration of whether the code is truly silent about classifying the proposed use of the site and whether the rules in PCC 33.700.070 lead to a conclusion that the proposed rest area is prohibited. The advisory answer to both questions is "no."

The zoning code does not purport to list every possible type of use or development that might occur in the City. PCC 33.700.070.G underscores this feature of the code and states:

**Applying the code to specific situations.** Generally, where the code cannot list every situation or be totally definitive, it provides guidance through the use of descriptions and examples. In situations where the code provides this guidance, the descriptions

and examples are used to determine the applicable regulations for the situation. If the code regulations, descriptions, and examples do not provide adequate guidance to clearly address a specific situation, the stated intent of the regulation and its relationship to other regulations and situations are considered.

This language strongly suggests the code is “silent” only when code language offers no guidance through descriptions, examples, or a stated intent to assist in determining which regulations apply to a particular situation. This language is reinforced by the code’s description of the City’s method for determining what use category to assign to a particular use. PCC 33.920.030.A.1 states: “Uses are assigned to the category whose description most closely describes the nature of the primary use” and the next subsection, PCC 33.920.030.A.2, identifies the factors to be “considered to determine what use category the use is in.”

As discussed below, the use category descriptions in the zoning code provide enough descriptions and examples to provide guidance in determining the appropriate use category for the proposed rest area even though the words “rest area” or “campground” do not appear in the code. As a result, the code is not silent about the proposed use. The language of PCC 33.700.070.G is one of the “rules of this section” referenced in PCC 33.700.070.C. Together with PCC 33.920.030.A.1 and 2, PCC 33.700.070.G provides guidance about how to analyze the nature of the proposed rest area/campground for purposes of determining the appropriate use category. Therefore, PCC 33.700.070.C is not a basis for concluding this use is prohibited by the zoning code.

#### B. Appropriate Use Category

**This section addresses your question #1 regarding the use category that most closely fits the proposed shelter.** The purpose of PCC Chapter 33.920 (Description of the Use Categories) is as follows:

This Chapter classifies land uses and activities into use categories on the basis of common functional, product, or physical characteristics. Characteristics include the type and amount of activity, the type of customers or residents, how goods or services are sold or delivered, and certain site factors. The use categories provide a systematic basis for assignment of present and future uses to zones. The decision to allow or prohibit the use categories in the various zones is based on the goals and policies of the Comprehensive Plan.

This purpose statement indicates that the use category descriptions in Chapter 33.920 are not intended to identify or list every possible use that could be assigned to each use category. The reference to “present and future uses” underscores the nonexclusive nature of the uses described or listed as examples in each category. Rather, the chapter provides a way to consider the key features of a use and decide with which use category it shares functional, product, or physical characteristics. A use is not prohibited merely because the description and examples in a use category do not enumerate it specifically.

PCC 33.920.030.A.1 directs that uses should be assigned to the category whose description “most closely describes the nature of the primary use.” PCC 33.920.030.A.2 contains a list of factors that are considered “to determine what use category the use is in” as follows:

- The description of the activity(ies) in relationship to the characteristics of each use category;
- The relative amount of site or floor space and equipment devoted to the activity;
- Relative amounts of sales from each activity;
- The customer type for each activity;
- The relative number of employees in each activity;
- Hours of operation;
- Building and site arrangement;
- Vehicles used with the activity;
- The relative number of vehicle trips generated by the activity;
- Signs;
- How the use advertises itself; and
- Whether the activity would be likely to be found independent of other activities on the site.

Many of these considerations do not apply in determining the appropriate use category for the proposed rest area. There is no heavy equipment, sales, customers, employees, vehicle trips, or advertising via signs associated with the rest area. The most relevant considerations are comparing the activities of the rest area with the characteristics of possible use categories, the site arrangement, and how the use will operate. These considerations are discussed below.

Among the use categories listed in the zoning code, the proposed rest area could be considered a potential fit under three of these categories: Community Services, Retail Sales and Service, and Group Living. Based on the analysis below, the Community Services Use category appears to best describe the proposed rest area. Within the Community Services Use category, consideration was given to whether the rest area is Short-Term Housing or a Mass Shelter. It does not match the characteristics of either of these facilities as defined in the zoning code. Consideration was also given to whether the rest area is a Retail Sales and Service or a Group Living use. It also does not match the characteristics of either of these uses.

#### 1. Community Services Use Category

PCC 33.920.420 sets out the following description of community services uses:

**A. Characteristics.** Community Services are uses of a public, nonprofit, or charitable nature generally providing a local service to people of the community. Generally, they provide the service on the site or have employees at the site on a regular basis. The service is ongoing, not just for special events. Community centers or facilities that have membership provisions are open to the general public to join at any

time, (for instance, any senior citizen could join a senior center). The use may provide mass shelter or short term housing where tenancy may be arranged for periods of less than one month when operated by a public or non-profit agency. The use may also provide special counseling, education, or training of a public, nonprofit or charitable nature.

- B. Accessory uses.** Accessory uses may include offices, meeting areas, food preparation areas, food membership distribution, parking, health and therapy areas, daycare uses, and athletic facilities.
- C. Examples.** Examples include libraries, museums, senior centers, community centers, publicly owned swimming pools, youth club facilities, hospices, ambulance stations, drug and alcohol centers, social service facilities, mass shelters or short term housing when operated by a public or non-profit agency, vocational training for the physically or mentally disabled, crematoriums, columbariums, mausoleums, soup kitchens, park-and-ride facilities for mass transit, and surplus food distribution centers.
- D. Exceptions.**
1. Private lodges, clubs, and private or commercial athletic or health clubs are classified as Retail Sales And Service. Commercial museums (such as a wax museum) are in Retail Sales And Service.
  2. Parks are in Parks And Open Areas.
  3. Uses where tenancy is arranged on a month-to-month basis, or for a longer period are residential, and are classified as Household or Group Living.
  4. Public safety facilities are classified as Basic Utilities.

Analysis: In terms of characteristics, the proposed rest area will be operated by a non profit and provides a local service (a temporary place to rest and sleep overnight in tents with shower, toilet, meeting and laundry facilities) for houseless people in the community. This service will be provided on a continual basis and not just for special events. The customers (i.e., those who will use this service) are similar to those utilizing the services provided in a number of the examples listed in PCC 33.920.240.C. Right 2 Dream Too has no employees, but individuals staying at the rest area may volunteer their time without payment. These volunteers may help others at the site with sanitation, food, clothing, and pursuing social services with appropriate social service agencies. This facility itself and these volunteer activities can be considered charitable in nature. Right 2 Dream Too is not a public agency. There are no membership requirements and any member of the public may seek to use this rest area on an as-needed basis. All of these characteristics are consistent with the characteristics of a Community Services use. Right 2 Dream Too has not indicated that the rest area will offer formal counseling, education, or training of a public, nonprofit or charitable nature, which are possible and permissive elements of a community service use, but not required.

A Community Service use may take the form of a mass shelter or short term housing, but is not required to take either of those two forms. The proposed rest area is neither a mass shelter nor short-term housing as the code defines those terms. A "Mass shelter" is defined as follows:

A structure that contains one or more open sleeping areas, or is divided only by non-permanent partitions, furnished with cots, floor mats, or bunks. Individual sleeping rooms are not provided. The shelter may or may not have food preparation or shower facilities. The shelter is managed by a public or non-profit agency to provide shelter, with or without a fee, on a daily basis (PCC 33.910.030).

The definition refers to a structure, furnished with cots, floor mats or bunks. The zoning code defines a "structure" as: "Any object constructed in or on the ground. Structure includes buildings, decks, fences, towers, flag poles, signs, and other similar objects. Structure does not include paved areas or vegetative landscaping materials." The examples given are all things that are semi-permanent. The tents individuals will erect at the rest area, whether one-person, two-person or small group (up to 10-person) tents, are temporary in nature and are not "structures" as defined in the Zoning Code. Examples of structures describe those that are supported by one or more footings or a foundation. The types of tents proposed are easily assembled and taken down.

There are proposed structures on the site. However, sleeping is also not allowed in these structures. As a result, the individuals at the rest area will not be occupying a structure, which is an essential element of a "mass shelter." The toilet, shower, kitchen, and laundry facilities, meeting and office structure, and storage structure are accessory to the proposed use and therefore do not constitute additional primary uses of the site. Additionally, Right 2 Dream Too will not provide furnishings such as cots, floor mats or bunks, nor will there be an open sleeping area or areas divided by partitions. Right 2 Dream Too is a nonprofit corporation and will manage the site, but is not a public agency.

Since a fence is also a structure, it was considered whether the proposed rest area surrounded by fences is "a structure that contains one or more sleeping areas" that is characteristic of a mass shelter. Although the fence is a structure, a mass shelter contemplates that the structure will actually serve to contain the sleeping areas in the sense that it will provide indoor space. Therefore, the advisory recommendation is that the presence of a fence does not cause the proposal to become a mass shelter.

Multiple temporary tents and accessory structures on the site are not like a single open sleeping area or multiple sleeping areas separated by non-permanent partitions that are characteristic of a mass shelter. The standards for mass shelters in PCC Chapter 33.285 refer to a building and net building area, and differentiate between indoor and outdoor activities. The concept of a "structure" that contains sleeping areas separated by non-permanent partitions expressed in the definition of a "mass shelter" is more characteristic of a shelter in a building, like the Portland Rescue Mission, than a site with a collection of tents and accessory structures surrounded by a fence. Additionally, the tents do not function solely as sleeping areas, but as a place that individuals use for other daily activities as well. Based on these considerations, the proposed rest area has none of the characteristics of a "mass shelter."

For similar reasons, the rest area is not “short-term housing,” which the code defines as:

A structure that contains one or more individual sleeping rooms, and where tenancy of all rooms may be arranged for periods of less than one month. The short term housing facility may or may not have food preparation facilities, and shower or bath facilities may or may not be shared. The facility is managed by a public or non-profit agency to provide short term housing, with or without a fee. Examples include transitional housing, and emergency shelter where individual rooms are provided. Where individual rooms are not provided, the facility may be a mass shelter. (PCC 33.910.030)

The definition refers to a structure and rooms and assumes there is a building. The proposed rest area does not include a structure with individual sleeping rooms and as previously discussed, the proposed tents where sleeping will occur do not constitute structures. Nor do they constitute rooms. The Portland Zoning Code does not define “room”, however, in cases where a definition is not provided, the code refers to the “normal dictionary meaning” (PCC 33.910.010). Webster’s Third International Dictionary defines room as “a part of the inside of a building that is divided from other areas by walls and a door and that has its own floor and ceiling; a room in a house, hotel etc. where someone sleeps; and a space used for something else”. The dictionary definition refers to a building with walls, a door, a floor and ceiling. It also refers to structures such as a house or hotel. The proposed tents do not contain these features and therefore cannot be considered rooms. Food preparation and shower facilities are proposed; however, the short-term housing definition clearly notes that these type of facilities may or may not be present.

Right 2 Dream Too has not indicated that individuals must make reservations or be referred to the site in order to use the rest area, nor is there any indication that parking will be required, which are among the standards for short-term housing in PCC Chapter 33.285. The proposed rest area lacks many of the key characteristics of short-term housing. The conclusion is that it is not a short-term housing facility.

The zoning code lists certain kinds of uses that are “exceptions” that are not considered to be a Community Services Use (PCC 33.920.420.D). One exception is for “uses where tenancy is arranged on a month-to-month basis, or for a longer period.” This type of use is considered to be residential in nature and falls under the Household Living or Group Living use categories. The proposed rest area does not include arranging tenancy, whether on a month-to-month basis or longer. Individuals may use the rest area for overnight sleeping as necessary. The length of time individuals may stay at the rest area may vary from one day to several weeks or longer. As a result, the proposed rest area does not fit within this exception and is not considered to be a Household Living or Group Living use.

None of the listed examples perfectly captures the nature and operational qualities of the proposed rest area. However, the examples listed in each use category are not intended to be exclusive as the code makes clear. PCC 33.700.070.D.4 states: “Lists of items that state ‘including the following,’ ‘such as,’ or similar language are not limited to just those items. The lists are intended to provide examples, but not to be exhaustive of all possibilities.” The zoning

code also explains that the uses listed in the “example” section of a use category description are generic and it is the actual activity on a site, not what a use calls itself, that determines whether it should be assigned to a particular use category. (PCC 33.920.030.D) Like many of the uses listed in the examples, the rest area will offer individuals a place to gather on a temporary basis for a common purpose. Based on consideration of the characteristics of the proposed rest area, the conclusion is that the Community Services Use category most closely describes the nature of this use.

## 2. Retail Sales and Service Use Category

A Retail Sales and Service Use is defined in PCC 33.920.250 as:

- A. Characteristics.** Retail Sales and Service firms are involved in the sale, lease or rent of new or used products to the general public. They may also provide personal services or entertainment, or provide product repair or services for consumer and business goods.
- B. Accessory uses.** Accessory uses may include offices, storage of goods, manufacture or repackaging of goods for on-site sale, food membership distribution, and parking.
- C. Examples.** Examples include uses from the four subgroups listed below:
  - 1. Sales-oriented: Stores selling, leasing, or renting consumer, home, and business goods including art, art supplies, bicycles, clothing, dry goods, electronic equipment, fabric, furniture, garden supplies, gifts, groceries, hardware, home improvements, household products, jewelry, pets, pet food, pharmaceuticals, plants, printed material, stationery, and videos; food sales, and Farmers Markets; and sales or leasing of consumer vehicles including passenger vehicles, motorcycles, light and medium trucks, and other recreational vehicles.
  - 2. Personal service-oriented: Branch banks; urgency medical care; laundromats; photographic studios; photocopy and blueprint services; hair, tanning, and personal care services; business, martial arts, and other trade schools; dance or music classes; taxidermists; mortuaries; veterinarians; kennels limited to boarding, with no breeding; and animal grooming.
  - 3. Entertainment-oriented: Restaurants, cafes, delicatessens, taverns, and bars; indoor or outdoor continuous entertainment activities such as bowling alleys, ice rinks, and game arcades; pool halls; indoor firing ranges; theaters, health clubs, gyms, membership clubs, and lodges; hotels, motels, recreational vehicle parks, and other temporary lodging with an average length of stay of less than 30 days.
  - 4. Repair-oriented: Repair of TVs, bicycles, clocks, watches, shoes, guns, appliances and office equipment; photo or laundry drop off; quick printing; recycling drop-off; tailor; locksmith; and upholsterer.
- D. Exceptions.** There are no relevant exceptions related to the proposed rest area.

Analysis: The service being provided at the proposed rest area (a temporary place for houseless individuals to rest and sleep) is a personal service, which is one of the characteristics

of a Retail Sales and Service Use. The rest area will not include any of the uses listed as accessory uses or anything similar in nature. The most similar examples listed as an "entertainment-oriented" Retail Sales and Service Use include recreational vehicle parks and other temporary lodging with an average length of stay of less than 30 days. Some individuals will stay at the rest area for less than 30 days and in this respect the proposed rest area could be considered a form of temporary lodging. However, recreational vehicle parks and temporary lodging listed as "entertainment-oriented" Retail Sales and Service Uses more closely describe RV Campgrounds or KOA-type campgrounds for RVs or tents for recreational purposes. The purpose of the proposed rest area is not for entertainment or for recreational purposes, but to provide a temporary place for houseless individuals to rest and sleep overnight.

Although the proposed use could be considered a personal service providing temporary lodging, there is a disconnect with the "entertainment-oriented" subcategory. Individuals will be using the proposed rest area because they have no other available lodging and sleeping in tents is not for the purpose of entertainment or recreation. As a result, the conclusion is the Retail Sales and Service Use category does not describe the nature of the proposed rest area in any meaningful way and the rest area is not a Retail Sales and Service use.

### 3. Group Living Use Category

PCC 33.920-.100 describes a "Group Living" use as follows:

- A. Characteristics.** Group Living is characterized by the residential occupancy of a structure by a group of people who do not meet the definition of Household Living. The size of the group will be larger than the average size of a household. Tenancy is arranged on a month-to-month basis, or for a longer period. Uses where tenancy may be arranged for a shorter period are not considered residential. They are considered to be a form of transient lodging (see the Retail Sales And Service and Community Service categories). Generally, Group Living structures have a common eating area for residents. The residents may or may not receive any combination of care, training, or treatment, as long as they also reside at the site. Group Living may include the State definition of residential facility (see PCC 33.910, Definitions).
- B. Accessory Uses.** Accessory uses commonly found are recreational facilities, parking of autos for the occupants and staff, parking of vehicles for the facility, and food membership distribution.
- C. Examples.** Examples include dormitories; communes; fraternities and sororities; monasteries and convents; nursing and convalescent homes; some group homes for the physically disabled, mentally retarded, or emotionally disturbed; some residential programs for drug and alcohol treatment; and alternative or post incarceration facilities.
- D. Exceptions.**
  - 1. Lodging where tenancy may be arranged for periods less than one month is considered a hotel or motel use and is classified in the Retail Sales And Service category. However, in certain situations, lodging where tenancy may be arranged for periods less than one month may be classified as a Community Service use such as short term housing or mass shelters.

2. Lodging where the residents meet the definition of Household, and where tenancy is arranged on a month-to-month basis, or for a longer period is classified as Household Living.
3. Facilities for people who are under judicial detainment and are under the supervision of sworn officers are included in the Detention Facilities category.

Analysis: The individuals using the site will not be occupying a structure. A "structure" is defined in the Zoning Code as: "Any object constructed in or on the ground. Structure includes buildings, decks, fences, towers, flag poles, signs, and other similar objects, Structure does not include paved areas or vegetative landscaping materials." The examples given are all things that are semi-permanent. A tent is not semi-permanent and is not a "structure" as defined in the Zoning Code. There is currently no proposal for a structure with a common eating area for those receiving shelter at the rest area. There is no proposal for residents to receive any combination of care, training, or treatment as long as they rest or camp at the site. The rest area is not a facility for people who are under judicial detainment and under the supervision of sworn officers. As a result, it is not considered to be a Detention Facility Use.

The length of time individuals will stay at the rest area may vary from one day to longer than a month. The term "transient lodging" is not defined in the Zoning Code, but the dictionary definition of "transient" is "not lasting long" and "staying somewhere only a short time." The proposal is to use the site to provide a temporary rest area and temporary lodging for houseless people. There is no requirement in the proposed operation of the rest area for houseless people to commit to stay for any specific period of time (such as on a month-to-month basis) or to sign a lease or any other form of tenancy agreement. These factors indicate the proposed rest area is a form of transient lodging, but is not a Group Living use, hotel or motel.

The proposed rest area will not include any of the activities or development identified as uses accessory to a Group Living use (automobile parking or food distribution). Similarly, the rest area is not similar to the uses listed as "examples," all of which are buildings or structures where a group of people may live or stay for an extended period of time and for a specific purpose (religious, treatment, or incarceration).

The "exceptions" stated in Subsection D indicate that some forms of transient lodging may be classified as a Community Services use while others are better classified as short term housing or mass shelters. This subsection uses the term "such as," which indicates these are examples and are not an exhaustive list of all possibilities. Community Services uses for lodging where tenancy may be arranged for periods less than one month can take other forms than short term housing or mass shelters. As explained above under Item 1 Community Service Use Category, the proposed rest area/temporary (transient) lodging is best described as a Community Services use, and not short term housing or a mass shelter. As a result, the proposed rest area is not consistent with the characteristics of a Group Living use.

The zoning code lists certain kinds of uses that are "exceptions" and are not considered to be a Community Services Use (PCC 33.920.420.D). One exception is for "uses where tenancy is arranged on a month-to-month basis, or for a longer period." This type of use is considered to be residential in nature and falls under the Household Living or Group Living use categories. The

proposed rest area does not include arranging tenancy, whether on a month-to-month basis or longer. Individuals may use the rest area for overnight sleeping as necessary. The length of time individuals may stay at the rest area may vary from one day to several weeks or longer. As a result, the proposed rest area does not fit within this exception and is not considered to be a Household Living or Group Living use. Further analysis of the Group Living category is found below under Item 3 Group Living Use Category.

Use Category Conclusion: None of the listed examples perfectly captures the nature and operational qualities of the proposed rest area. However, the examples listed in each use category are not intended to be exclusive as the code makes clear. PCC 33.700.070.D.4 states: "Lists of items that state 'including the following,' 'such as,' or similar language are not limited to just those items. The lists are intended to provide examples, but not to be exhaustive of all possibilities." The zoning code also explains that the uses listed in the "example" section of a use category description are generic and it is the actual activity on a site, not what a use calls itself, that determines whether it should be assigned to a particular use category. (PCC 33.920.030.D) Like many of the uses listed in the examples, the rest area will offer individuals a place to gather on a temporary basis for a common purpose. Based on consideration of the characteristics of the proposed rest area, the Community Services Use category most closely describes the nature of this use.

#### C. Allowed, Conditionally Allowed, Limited or Prohibited Use in the IG1 Zone

**This section addresses your questions #2 and #3 regarding whether the proposal would be permitted, conditional or limited in the IG1 zone and whether a land use review would be required.** The site of the proposed rest area, is zoned General Industrial 1 (IG1). The use regulations for the IG1 zone are found in PCC 33.140.100 and Table 140-1. Community Services uses are allowed by right in the IG1 zone, provided they contain no more than 3,000 square feet of net building area, with the exception of short term housing and mass shelters. Under PCC 33.140.100.B.11, short term housing and mass shelters are prohibited. For the reasons explained in Attachment B and in section II.B above, the proposed rest area is not short term housing or a mass shelter. The proposed rest area is a Community Services use that is allowed outright under the IG1 zoning regulations applicable to the site provided it contains no more than 3,000 square feet of net building area.

#### D. Base Zone, Overlay Zone and Plan District Requirements

Your letter asks questions about base zone, overlay zone and plan district development standards. **This section addresses your questions #4, #5 and #6 regarding whether any plan district or overlay zone regulations apply to the site, the development standards that apply to the proposal and regulations that apply to a fence made of doors.**

The base zone is IG1. Few development standards apply in the IG1 zone. Height, setbacks and building coverage are not limited. A minimum landscaped area is not required. Ground floor windows and pedestrian standards do not apply. Exterior storage, display and work activities are not restricted. No on-site vehicle parking is required (PCC 33.510.265.F.1). Two short term and two long term bicycle parking spaces are required (PCC 33.266.210A and Table

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266-6). These spaces must meet the standards of PCC 33.266.220. No on-site loading space is required (PCC 33.266.310.C.2).

Fences up to 8 feet in height are allowed (PCC 33.140.275.C.2). This regulation would apply to a fence made of doors such as the fence at Right 2 Dream Too's current site at NW 4<sup>th</sup> and Burnside. It is understood that the fence made of doors may be moved from Right 2 Dream Too's current site to the proposed site to provide privacy at the rest area.

The site is not located in an Overlay Zone. Regulations of the Central City Plan District, Central City Subdistrict regulations do not address the use or development or development standards aside from parking as already discussed.

E. Conclusion

This zoning confirmation letter is based on information provided by Right 2 Dream Too, documents found on the State of Oregon Restated Articles of Incorporation for a Nonprofit website and the website of Right 2 Dream Too, as well as, the Bureau of Development Service's review of zoning regulations pertaining to the site. This information is current, but zoning regulations change over time so future regulations may affect the use and/or development of the site.

Sincerely,



Rebecca Esau  
Land Use Services, Division Manager  
Bureau of Development Services

Attachments

- A – Zoning Confirmation Request (Right 2 Dream Too)
- B – Zoning Confirmation Request Letter
- C – Description of Use
- D – Site Plan
- E – Zoning Map



**City of Portland, Oregon - Bureau of Development Services**

1900 SW Fourth Avenue • Portland, Oregon 97201 • 503-823-7526 • www.portlandoregon.gov/bds



**Zoning Confirmation Request**

File Number: PR 16-109 969 ECL

<b>FOR INTAKE, STAFF USE ONLY</b>		<input type="checkbox"/> <input checked="" type="checkbox"/> Unincorporated MC
Date Received <u>1/21/2016</u>	Plan District <u>CC - Central Eastside</u>	Bill # _____
Received By <u>DB</u>	Building Permit # _____	Related File# _____
Qtr Sec Map(s) <u>3230</u>		
Overlay Zone <u>N/A</u> Base Zone <u>IG1</u>		

**APPLICANT: Complete all sections below that apply to the proposal. Please print legibly.**

**Application Type** - The purpose of a zoning confirmation letter is to verify in writing the allowed uses, development standards, and regulations applicable to a specific site. Zoning confirmation letters may fall into either the Tier 2 or Tier 3 category. Please indicate below which type of letter you are requesting.

**Tier 2 - Bank Letter**

- Description of current zoning
- Summary of uses allowed by zoning
- List of applicable land use history
- Response in 3 to 4 weeks

**Tier 3 - Complex Zoning Analysis**

- Description of zoning and zoning history
- Details of building permit and land use history
- Responses to specific questions
- Development analysis upon request
- Response in 6 to 8 weeks

**Requirements** - To ensure the most accurate information, the properties listed below should include all of the lots that make up the site. You may use www.portlandmaps.com or call Planning and Zoning Review at 503-823-7526 to confirm property information. Submit an 8.5 x 11 inch site plan, showing property lines and all existing development. (For Tier 3 applications, please include a list of specific questions or zoning issues you would like addressed in the letter. The site plan submitted must include enough information to respond to the request.)

**Note:** Please address mailed applications to Bureau of Development Services - Planning & Zoning. For fee information, please refer to the Land Use Services fee schedule: <http://www.portlandoregon.gov/bds/34184>.

Site Address or Location SE 3<sup>rd</sup> AVE + SE HARRISON ST

**Site Tax Account Number(s) and Legal Description(s)**

Tax Account #	Property ID #	State ID #	Tax lot/Lot Block Addition/Section
R 673288	R 794.002580	1S1E03DA 4700	Tax Lot 4700 / Block 45, Lots 3-5
R	R (alternate)		Stephen's Addition
R	R		

Applicant Name RIGHT 2 DREAM TOO

Street Address 4635 NE Garfield Ave #

City PORTLAND State OR Zip Code 97211

Day Phone \_\_\_\_\_ FAX \_\_\_\_\_ email usfifty@gmail.com

Letter should be addressed to  Applicant  Other, address below

Other Mark Kramer, Attorney for Right 2 Dream Too

Street Address 520 SW 6th Ave., Ste 1010

City Portland State OR Zip Code 97204

Day Phone 503.243.2733 FAX 503.274.4774 email Mark@kramer-assocates.com

Rebecca Esau  
Bureau of Development Services  
1900 SW 4<sup>th</sup> Avenue  
Portland, OR 97201

January 20, 2016

Dear Ms. Esau,

Please find attached a map of a lot at SE 3<sup>rd</sup> and SE Harrison, which currently has the stub of SE 3<sup>rd</sup> ending within the subject property. On behalf of Right 2 Dream Too (R2DToo), I am requesting a Zoning Confirmation Letter regarding potential use of the site, if the City Council approves vacation of the stub of SE 3<sup>rd</sup> Avenue. Please evaluate the proposed use of the site as if the Street Vacation has been approved.

See also the attached site plan showing structures and other areas of use proposed for the use of the lot as a rest area/recreational campground managed and self-governed by Right 2 Dream Too. It will provide a temporary rest area with tents to provide overnight shelter for people experiencing homelessness. Structures are proposed, the proposed floor area of which is not to exceed 3000 square feet. A maximum of 100 individuals may rest on the site in temporary shelters for varying lengths of time (one night or more). No sleeping will be allowed in the structures (toilets, showers, kitchen, storage areas, etc.). Individuals staying at the site may volunteer to help each other by sharing food, clothing, and information about accessing social services, among other things. There will be no employees.

Please address the following questions in the requested Zoning Confirmation Letter for Right 2 Dream Too:

- 1) What is the Use Category in 33.920 that most closely fits a campsite or rest area?
- 2) Does the zoning on the site allow overnight rest areas, campgrounds, or campsites as permitted, conditional or limited uses? If there is no such use listed under permitted, conditional, or limited uses, is the use contained in the list of examples under PCC 33.920?
- 3) Does the proposed use and/or site plan require a land use review? If yes, are there modifications that could be made in the proposed site plan to make the improvements allowed by right?
- 4) Are there any plan district or overlay zoning regulations that apply to the site?"
- 5) What specific development standards apply to the proposed use?
- 6) What zoning code regulations apply to the proposed fence made of doors?

Right 2 Dream Too requests a hardship waiver of the application fee. We are a 501(c)(3) non-profit providing services for people experiencing houselessness.

Please reply to me at the email address below with a copy to our attorney Mark Kramer, 520 SW Sixth Ave, #1010, Portland, OR 97204 (fax: 503.274.4774; email: [mark@kramer-associates.com](mailto:mark@kramer-associates.com)) and please do not hesitate to contact me or our attorney if you have questions or need further information to reply to this request. Thank you.

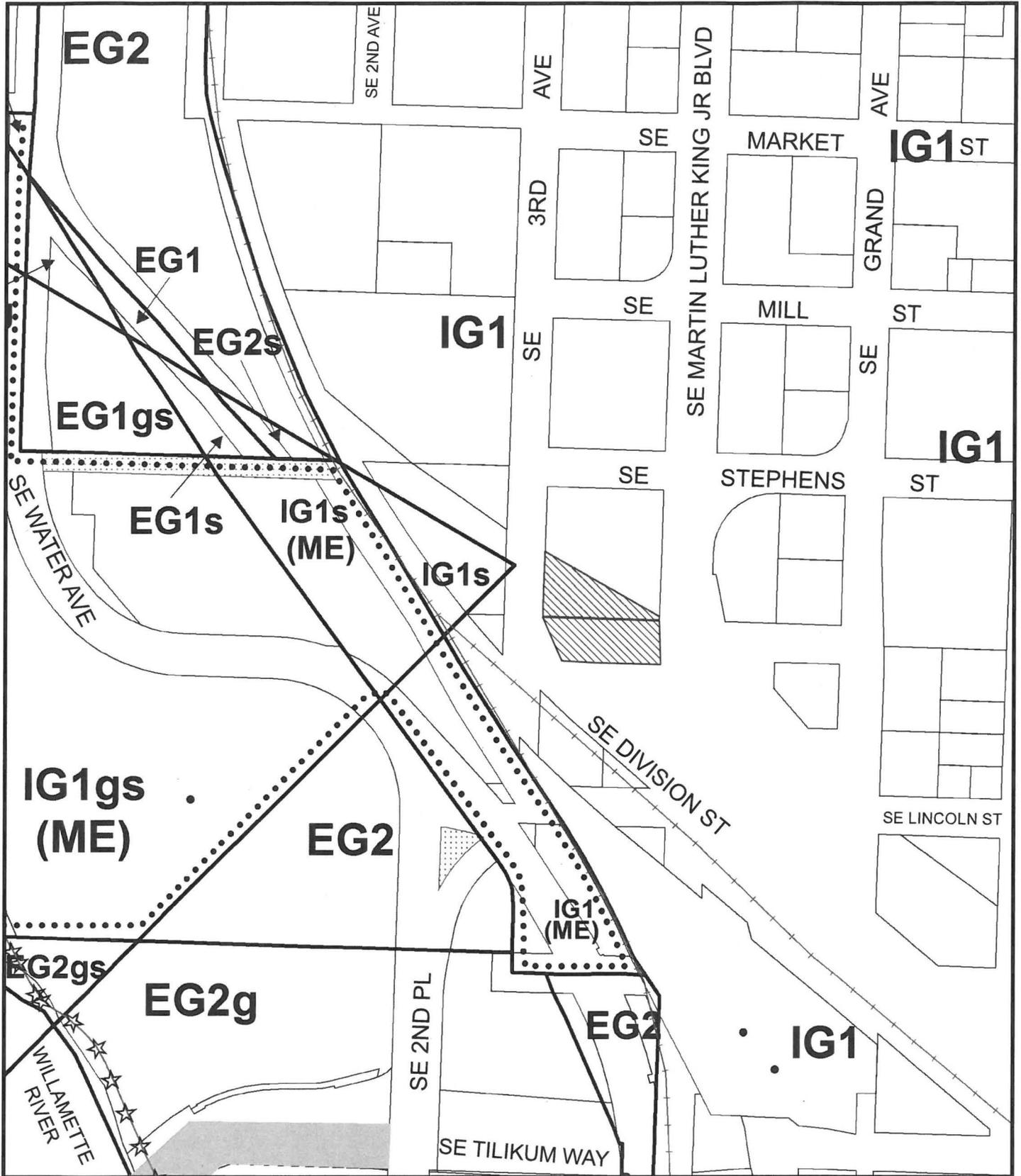
Respectfully submitted,



Grant Swanson, Board Treasurer

Right 2 Dream Too

[usfifty@gmail.com](mailto:usfifty@gmail.com)



# ZONING

This site lies within the:  
 CENTRAL CITY PLAN DISTRICT  
 CENTRAL EASTSIDE SUBDISTRICT



-  Site
-  Also Owned Parcels 1/4 Section
-  Recreational Trails
-  Historic Landmark

File No.	<u>PR 16-108969 ZCL</u>
	<u>3230</u>
Scale	<u>1 inch = 200 feet</u>
State_Id	<u>1S1E03DA 4700</u>
Exhibit	<u>B</u> (Jan 21, 2016)

SUBSTITUTE EXHIBIT B

# CONCEPT SITE PLAN



date: 1.21.2016

scale: 1" = 20"

legend:

- 8 person tent 
- 2 person tent 
- utility tent 
- structure 

