



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

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Date: September 23, 2009
To: Interested Person
From: Kim Freeman, Land Use Services
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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 09-149125 GW UNINCORPORATED MULTNOMAH COUNTY

GENERAL INFORMATION

Applicant: Daniel Hebert
Bureau of Environmental Services
5001 N. Columbia
Portland, OR 97203

Representative: Susan Cunningham
Vigil-Agrimis Inc.
819 SE Morrison St., Ste 310
Portland OR 97214

Site Address: SW RIVERWOOD RD right of way
Quarter Section: 4132
Neighborhood: None
Business District: None
District Coalition: None
Plan District: None
Other Designations: Unincorporated Multnomah County; 100-Year Flood Plain
Zoning: R20cg – Residential 20,000 zone with the Environmental Conservation “c” and Willamette Greenway River General “g”.

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

Proposal:

The Elk Rock Pump Station, operated and maintained by the City of Portland’s Bureau of Environmental Services (BES), is located within the right-of-way of SW Riverwood Road. The pump station is located in unimproved right-of-way between the paved portion of the SW Riverwood Road and the Willamette River. The existing pump station has a dilapidated trellis structure that currently screens the pump station and a large 32 inch Beechnut tree located just south of the structure. BES proposes to remove the trellis structure and place a new fence, access gate, site lighting, and renovate the existing pump station building. The building

renovation will include moving a window, adding a doorway and adding a stucco finish to the structure. The tree is proposed to be preserved. All ivy and non-native vines currently growing on the trellis are proposed to be removed.

All work is proposed to occur landward of the 25 foot greenway setback that begins at the top of bank for the Willamette River. Additionally, all work is proposed within the transition and non-resource areas of the conservation overlay. Exterior alterations to development and changes to structures within the Greenway overlay zones trigger a type II Greenway Review (33.440.310, 33.440.330).

Relevant Approval Criteria:

In order to be approved, this proposal must comply with the approval criteria of Title 33. The relevant criteria are found in section 33.440.350 Greenway Overlay Zone.

ANALYSIS

Description of the Site:

The pump station site is located between the end of SW Riverwood Road and the Willamette River. Top of bank is located about 32 feet river ward of the pump station. The existing pump station building and associated accessory equipment covers about 600 square feet. There is an existing 32 inch Beachnut Tree located south west of the work area. The river bank is not currently in a natural state with two structures or ramps providing access to the water, and Himalayan blackberry dominates vegetation down to ordinary high water. The pump station is surrounded by single-family residential homes.

Infrastructure: The SW Riverwood right of way is sixty feet wide where the pump station is located. The road is paved to the edge of the project site.

Zoning: The zoning designation on the site includes Residential 20,000 (R20) base zone, with Environmental Conservation ("c"), and Willamette Greenway River General ("g") overlay zones (see zoning on Exhibit B).

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.

The Greenway overlay zone is intended to protect, conserve, enhance, and maintain the natural, scenic, historical, economic, and recreational qualities of lands along Portland's rivers; establish criteria, standards, and procedures for the development of land, change of uses, and the intensification of uses within the greenway; and implement the City's Willamette Greenway responsibilities as required by ORS 390.310 to 390.368 and Metro's Title 3.

The River General zone allows for uses and development which are consistent with the base zoning, which allow for public use and enjoyment of the waterfront, and which enhance the river's natural and scenic qualities.

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 proposed work in this land use review is completely within the transition area and non-conservation overlay; the work does not require Environmental Review since all standards that apply to transition areas (33.430.140.E, M, P, Q and R) are met.

Environmental Resources: The application of the environmental overlay zones is based on detailed studies that have been carried out within ten separate areas of the City.

Environmental resources and functional values present in environmental zones are described in environmental inventory reports for these study areas.

The project site is mapped within the *Inventory of Natural, Scenic, and Open Space Resources for Multnomah County Unincorporated Urban Areas* as Site # 117-A. Resources and functional values of concern on the project site include water quality, flood storage, soil stabilization, scenic quality, and heritage.

The *Lower Willamette River Wildlife Habitat Inventory* does not rank the Unincorporated Urban Pockets of Multnomah County.

Land Use History: City records indicate there are no prior land use reviews for this site. The project site is located within an unincorporated area of Multnomah County, but lies within Portland's Urban Services and Urban Growth Boundary. The City and Multnomah County have entered into an intergovernmental agreement [IGA] that allows the County to focus on rural land use issues and authorizes the City to administer applicable City of Portland regulations, including zoning requirements, for lands within these so-called 'urban-county pockets'. This intergovernmental agreement was necessary in order for Multnomah County to comply with regional land use laws. While it is important to note that the affected properties have not been annexed into Portland, these sites are subject to City review for building and development permits, as well as Land Use Reviews.

The City zoning implemented on these areas are generally equivalent to what the County had applied, but some variations have occurred. Even with equivalent zoning, the City's codes and regulations vary from the previous Multnomah County requirements. For lands with environmental resources present, the City's environmental overlay zones have been applied, as well. All of these lands within the urban-county pockets are subject to City of Portland standards for stormwater disposal, erosion control, grading and floodplain review. If services [sewer, water, fire] are provided by agencies other than the City, those agencies must be contacted prior to development.

Agency and Neighborhood Review: A Notice of Proposal in your Neighborhood was mailed on August 26, 2009.

1. Agency Review: Several Bureaus and agencies have responded to this proposal. Please see Exhibits E for details. Multnomah County's Land Use and Transportation Program noted that an encroachment permit will be required for work proposed in this review. The comments are addressed under the appropriate criteria for review of the proposal.

2. Neighborhood Review: No written responses have been received from either the Neighborhood Association or notified property owners in response to the proposal.

ZONING CODE APPROVAL CRITERIA

33.440.350 Greenway Review Approval Criteria

A greenway review application will be approved if the review body finds that the applicant has shown that all of the approval criteria are met.

A. For all greenway reviews. The Willamette Greenway design guidelines must be met for all greenway reviews.

Findings: The Willamette Greenway Design Guidelines address the quality of the environment along the river and require public and private developments to complement and enhance the riverbank area. The Design Guidelines are grouped in a series of eight Issues:

(A complete description of the Design Guidelines and their applicability is provided in pages 45-81 in the *Willamette Greenway Plan*.)

Issue A. Relationship of Structures to the Greenway Setback Area: This issue “applies to all but river-dependent and river-related industrial use applications for Greenway Approval, when the Greenway Trail is shown on the property in the *Willamette Greenway Plan*.” These guidelines call for complementary design and orientation of structures so that the greenway setback area is enhanced:

Issue B. Public Access: This issue “applies to all but river-dependent and river-related industrial use applications for Greenway Approval, when the Greenway Trail is shown on the property in the *Willamette Greenway Plan*.” These guidelines call for integration of the Greenway Trail into new development, as well as the provision of features such as view points, plazas, or view corridors:

Issue C. Natural Riverbank and Riparian Habitat: This issue “applies to situations where the river bank is in a natural state, or has significant wildlife habitat, as determined by the wildlife habitat inventory.” These guidelines call for the preservation and enhancement of natural banks and areas with riparian habitat:

Issue D. Riverbank Stabilization Treatments: This Issue “applies to all applications for Greenway Approval.” This guideline promotes bank treatments for upland developments that enhance the appearance of the riverbank, promote public access to the river, and incorporate the use of vegetation where possible:

Issue F. Alignment of Greenway Trail: This issue “applies to all applications for Greenway Approval with the Greenway Trail shown on the property in the *Willamette Greenway Plan*.” These guidelines provide direction for the proper alignment of the greenway trail, including special consideration for existing habitat protection and physical features in the area of the proposed alignment.

Issue G. Viewpoints: This issue “applies to all applications for Greenway Approval with a public viewpoint shown on the property in the *Willamette Greenway Plan* and for all applications proposing to locate a viewpoint on the property. These guidelines provide direction about the features and design of viewpoints, as required at specific locations.

Issue H. View Corridors: This issue “applies to all applications for Greenway Approval with a view corridor shown on the property in the *Willamette Greenway Plan*”. These guidelines provide guidance in protecting view corridors to the river and adjacent neighborhoods.

Findings: The *Willamette Greenway Plan* does include a designated viewpoint or a view corridor on the project site. Additionally, there is no Greenway Trail designation within proximity to the proposed development.

All proposed activities, alterations to existing development, and ground disturbance occur landward of the greenway setback. As described on page 2 of this report, the existing riverbank is not in a natural state and the project does not propose to impact the bank. For these reasons issues A, B, C, D, F, G and H do not apply.

Issue E. Landscape Treatments: This Issue “applies to all applications for Greenway Approval which are subject to the landscape requirements of the Greenway chapter of Title 33 Planning and Zoning of the Portland Municipal Code.” This Issue calls for landscaping treatments that create a balance between the needs of both human and wildlife populations in the Greenway Setback area or riverward of the Greenway Setback.

Findings: The applicant proposes to remove all vines and invasive plant species within the work area for the pump station rehabilitation. The removal of invasive and non-native species from the project work area results in an improvement to the overall appearance condition of the site.

The landscape standard (33.440.230) applies to all new development and alterations to existing development that exceed \$131,150 in value. The value of the proposed work is \$65,000, therefore compliance with the standard is not required with this review. To ensure that any plantings used in the completion of the project are native and contribute to the appearance and condition of the site, a condition of approval requiring all vegetation planted be native and listed on the Portland Plant List. *Therefore with a condition requiring all new vegetation be native and listed on the Portland Plant List, this Issue is met.*

Summary of Issue Findings: The design guidelines in Issues A, B, C, D, F, G and H are not applicable and those in Issue E is met with one condition. Therefore, this criterion is met.

B. River frontage lots in the River Industrial zone.

Findings: The site does not have a River Industrial designation, so this criterion does not apply.

C. Development within the River Natural zone. The applicant must show that the proposed development, excavation, or fill within the River Natural zone will not have significant detrimental environmental impacts on the wildlife, wildlife habitat, and scenic qualities of the lands zoned River Natural. The criteria apply to the construction and long-range impacts of the proposal and to any proposed mitigation measures. Excavations and fills are prohibited except in conjunction with approved development or for the purpose of wildlife habitat enhancement, riverbank enhancement, or mitigating significant riverbank erosion.

D. Development on land within 50 feet of the River Natural zone. The applicant must show that the proposed development or fill on land within 50 feet of the River Natural zone will not have a significant detrimental environmental impact on the land in the River Natural zone.

Findings: This project is not in or within 50 feet of the River Natural zone; therefore this criterion does not apply.

E. Development within the greenway setback. The applicant must show that the proposed development or fill within the greenway setback will not have a significant detrimental environmental impact on Rank I and II wildlife habitat areas on the riverbank. Habitat rankings are found in the *Lower Willamette River Wildlife Habitat Inventory*.

Findings: As discussed on Page 3 of this report, the site is not ranked as a Rank I or II resource in the *Lower Willamette River Wildlife Habitat Inventory*, therefore, this criterion does not apply.

F. Development riverward of the greenway setback. The applicant must show that the proposed development or fill riverward of the greenway setback will comply with all of the following criteria:

1. The proposal will not result in the significant loss of biological productivity in the river;
2. The riverbank will be protected from wave and wake damage;
3. The proposal will not:
 - a. Restrict boat access to adjacent properties;
 - b. Interfere with the commercial navigational use of the river, including transiting, turning, passing, and berthing movements;
 - c. Interfere with fishing use of the river;
 - d. Significantly add to recreational boating congestion; and
4. The request will not significantly interfere with beaches that are open to the public.

Findings: There is no proposed development within or riverward of the greenway setback, therefore this criterion does not apply.

G. Development within the River Water Quality overlay zone setback. If the proposal includes development, exterior alterations, excavations, or fills in the River Water Quality overlay zone setback the following approval criteria must be met.

H. Mitigation or remediation plans. Where a mitigation or remediation plan is required by the approval criteria of this chapter, the applicant's mitigation or remediation plan must demonstrate that the mitigation will occur on-site or as close to it as possible; that the applicant owns the mitigation site; and that the mitigation plan contains a construction timetable as well as monitoring and maintenance plans.

Findings: Because there is no development, exterior alteration, excavation, or fill within a River Water Quality overlay proposed, a mitigation plan is not required by this review. Therefore criteria G and H do not apply.

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 requests approval of a Greenway review for the renovations to the existing pump station, trellis removal, new fence and accessory structures. The applicant has demonstrated compliance with the Issues and Guidelines of the *Willamette Greenway Plan* as well as meeting the relevant approval criteria for the Greenway review.

ADMINISTRATIVE DECISION

Approval of renovation of the Elk Rock Pump Station, per the approved site plans, Exhibits C-2, C-5, C-7, and C-8, signed and dated September 21, 2009, subject to the following conditions:

- A. As part of the building permit application submittal, each of the 4 required site plans and any additional drawings must reflect the information and design approved by this land use review as indicated in Exhibits C.1-C.9. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 09-149125 GW. No field changes allowed."
- B. All plantings must be native plants listed on the Portland Plant List.

Staff Planner: Kim Freeman

Decision rendered by:  **on (September 21, 2009.)**
By authority of the Director of the Bureau of Development Services

Decision mailed: September 23, 2009

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 August 6, 2009, and was determined to be complete on August 20, 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 August 6, 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. In this case, the applicant did not waive or extend the 120-day review period.

Some of the information contained in this report was provided by the applicant.

As required by Section 33.800.060 of the Portland Zoning Code, the burden of proof is on the applicant to show that the approval criteria are met. The Bureau of Development Services has independently reviewed the information submitted by the applicant and has included this information only where the Bureau of Development Services has determined the information satisfactorily demonstrates compliance with the applicable approval criteria. This report is the decision of the Bureau of Development Services with input from other City and public agencies.

Conditions of Approval. If approved, this project may be subject to a number of specific conditions, listed above. Compliance with the applicable conditions of approval must be documented in all related permit applications. Plans and drawings submitted during the permitting process must illustrate how applicable conditions of approval are met. Any project elements that are specifically required by conditions of approval must be shown on the plans, and labeled as such.

These conditions of approval run with the land, unless modified by future land use reviews. As used in the conditions, the term "applicant" includes the applicant for this land use review, any person undertaking development pursuant to this land use review, the proprietor of the use or development approved by this land use review, and the current owner and future owners of the property subject to this land use review.

Appealing this decision. This decision may be appealed to the Hearings Officer, which will hold a public hearing. Appeals must be filed **by 4:30 PM on October 7, 2009** at 1900 SW Fourth Ave. Appeals can be filed Tuesday through Friday on the first floor of the Development Services Center until 3 p.m. After 3 p.m. and Mondays, 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.

Appeal fee waivers. Multnomah County may cover the appeal fees for their recognized associations. An appeal filed by a recognized association must be submitted to the City with either the appropriate fee or the attached form signed by the County. Contact Multnomah County at 503-988-3043, 1600 SE 190th, Portland, OR 97233.

The file and all evidence on this case are available for your review by appointment only. Please call the Request Line at our office, 1900 SW Fourth Avenue, Suite 5000, phone 503-823-7617, to schedule an appointment. I can provide some information over the phone. Copies of all information in the file can be obtained for a fee equal to the cost of services. Additional information about the City of Portland, city bureaus, and a digital copy of the Portland Zoning Code is available on the internet at www.portlandonline.com.

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 **October 8, 2009 – (the 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:

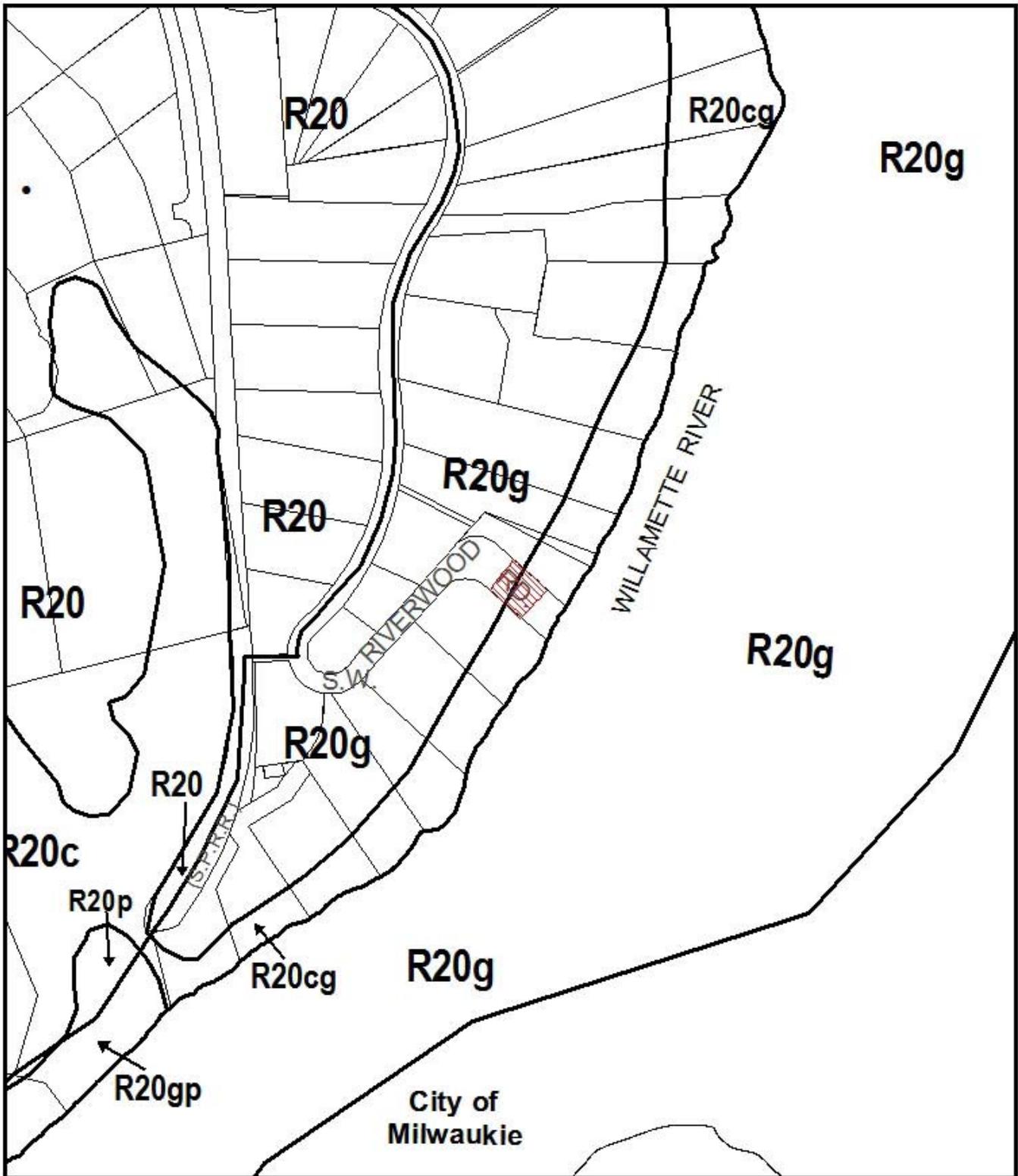
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations of the City.

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Vicinity Map
 - 2. Site Plan (attached)
 - 3. Erosion Control Details
 - 4. Demolition Details
 - 5. Proposed Development Site Plan (attached)
 - 6. Structural Notes
 - 7. Fence Section and Details (attached)
 - 8. Building Elevations (attached)
 - 9. Existing Conditions
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Bureau of Environmental Services
 - 2. Multnomah County Land Use and Transportation Program
 - 3. Water Bureau
 - 4. Fire Bureau
 - 5. Site Development Review Section of BDS
 - 6. Bureau of Parks, Forestry Division
 - 7. Life Safety Review Section of BDS
- F. Correspondence: (None)
- G. Other:
 - 1. Original LU Application
 - 2. Site History Research

The Bureau of Development Services is committed to providing equal access to information and hearings. Please notify us no less than five business days prior to the event if you need special accommodations. Call 503-823-7300 (TTY 503-823-6868).



ZONING

 Site

This site lies within:
Multnomah County
Unincorporated Pockets



NORTH

File No.	<u>LU 09-149125 GW</u>
1/4 Section	<u>4132,4232</u>
Scale	<u>1 inch = 200 feet</u>
State_Id	<u>Right of Way</u>
Exhibit	<u>B (Aug 24,2009)</u>

