



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

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Date: April 7, 2011
To: Interested Person
From: Rachel Whiteside, Land Use Services
503-823-7605 / Rachel.White@portlandoregon.gov

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

The Bureau of Development Services has approved a proposal in your neighborhood. The 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 11-107619 EN

GENERAL INFORMATION

Applicant: Steven L Pfeiffer,
Perkins Coie LLP
1120 NW Couch St, 10th Floor
Portland OR 97209-4128

Owner: Dr. Albert Starr
1792 SW Montgomery Dr
Portland, OR 97201

Site Address: 5050 SW PATTON RD

Legal Description: TL 2400 1.35 ACRES, SECTION 07 1S 1E; TL 2600 1.40 ACRES, SECTION 07 1S 1E; TL 2500 2.35 ACRES, SECTION 07 1S 1E

Tax Account No.: R991072780, R991073640, R991073750

State ID No.: 1S1E07AC 02400, 1S1E07AC 02600, 1S1E07AC 02500

Quarter Section: 3324

Neighborhood: Southwest Hills Residential League, contact Nancy Seton at 503-224-3840.

Business District: None

District Coalition: Southwest Neighborhoods Inc., contact Leonard Gard at 503-823-4592.

Plan District: None

Other Designations: Unincorporated Multnomah County Urban Pocket (R991072780 only)

Zoning: R20cp – Single-Dwelling Residential with Environmental Conservation (c) and Protection (p) Overlay Zones

Case Type: EN – Environmental Review

Procedure: Type II – an administrative decision with appeal to the Hearings Officer.

Proposal:

The applicant requests a modification to the environmental protection and conservation zone boundaries based upon a more site-specific study of significant resources on the site. The proposal includes changing approximately 32,550 square feet of the northwest corner of the site from environmental conservation to protection zoning due to the existence of an intermittent stream. A roughly 18,100 square foot portion of the site immediately west and north of the existing house is proposed to change from environmental protection to conservation zoning as this area contains many young, non-native trees and no hydrologic features. No change is proposed to the overall boundary of the environmental overlay.

Relevant Approval Criteria:

In order to be approved, this proposal must comply with the approval criteria of Title 33. The relevant criteria are **Section 33.430.250.D.3.**

FACTS

Description of the Site: The subject site consists of three lots with a total of just over 5 acres. The lot containing the existing house (TL 2400) is located within Unincorporated Multnomah County. The property is located on the north side of SW Patton Road, at the City of Portland boundary with Unincorporated Multnomah County. Generally, lots south of SW Patton Road are zoned R10 are smaller in size while lots north of Patton are zoned R20 and are larger and more irregular in shape. Homes in the immediate vicinity are typically large, sprawling estate-type development.

A perennial tributary to Fanno Creek flows to the south through Tax Lots 2500 and 2600. Except for the residence, the property is almost entirely forested with mature second growth trees dominated by Douglas fir on the higher elevations, and western red cedar and red alder on the lower elevations near the stream. Other trees include big leaf maple, non-native cherry, cottonwood, and English holly.

The understory along the stream is dominated by Himalayan blackberry, with Indian plum and salal. The drier portions of the property support sword fern and Oregon grape. English ivy is found in many areas of the site.

Zoning: The zoning designation on the site includes the R20 base zone, with Environmental Conservation ("c"), and Environmental Protection ("p") overlay zones (see zoning on Exhibit B.1).

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 the existing residential use; these provisions are not specifically addressed through this Environmental Review.

Environmental overlay zones protect environmental resources and functional values that have been identified by the City as providing benefits to the public. The environmental regulations encourage flexibility and innovation in site planning and provide for development that is carefully designed to be sensitive to the site's protected resources. They protect the most important environmental features and resources while allowing environmentally sensitive urban development where resources are less sensitive. The purpose of this land use review is to ensure compliance with the regulations of the environmental zones.

Environmental Resources: Environmental overlay zones protect environmental resources and functional values that have been identified by the City as providing benefits to the public. The environmental regulations encourage flexibility and innovation in site planning and provide for development that is carefully designed to be sensitive to the site's protected resources. They protect the most important environmental features and resources while allowing environmentally sensitive urban development where resources are less sensitive. The purpose of this land use review is to ensure compliance with the regulations of the environmental zones.

Two of the three parcels identified above are within the City of Portland (Tax Lots 2500 and 2600). The third parcel (TL 2400), which contains the existing house, is within unincorporated Multnomah county.

Environmental overlay zoning was applied to the two parcels within the City of Portland on January 19, 1994, as a result of City Council adoption of the *Fanno Creek and Tributaries Conservation Plan*. The natural resources in the area that includes all three parcels were first inventoried as part of the Fanno Creek plan. While the study area included the Fanno Creek watershed within the City of Portland and Multnomah County, the zoning regulations were only applied within the City of Portland limits.

The properties in question are within Resource Site 124 of the Fanno Creek plan. Resources identified within Site 124 include perennial and seasonal streams, palustrine wetlands, coniferous and deciduous forests, and urban landscapes. During on-site reconnaissance conducted in late summer of 1991, vegetation, wildlife habitat, streams and wetlands within the site were identified using the City's Wildlife Habitat Assessment form. The resources in the vicinity of the subject site were identified as highly significant and significant (Exhibit G.4).

According to the Fanno Creek plan document (pages 283-285), the environmental protection zone was generally applied to drainageways, streams, ponds, riparian areas, and forests dominated by native conifers within Site 124. The environmental conservation zone was generally applied to upland forests dominated by alder and maple and not adjoining riparian areas.

The natural resources within Resource Site 124 were inventoried a second time in 1996 as part of the Southwest Community Plan. The community plan process included an update of the City's existing natural resource inventories for areas within unincorporated Multnomah County that are within the City's Urban Services Boundary. The supplemental inventory information and recommended environmental overlay zones were not applied until January 2, 2002 as a result of adoption of the Multnomah County-Portland Unincorporated Urban Areas Functional Compliance Project.

Land Use History: City records indicate that prior land use reviews have been conducted for this site. Exhibit G.2 in the application case file provides a complete summary of all these land use reviews. None of those land use reviews have direct bearing on the current proposal.

Agency and Neighborhood Review: A Notice of Proposal in your Neighborhood was mailed on February 24, 2011.

1. Agency Review: Several Bureaus and agencies have responded to this proposal. Exhibits E contain additional details. 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

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

Findings: The applicant requested modification of the Environmental Conservation and Protection overlay zones based upon a site-specific study that identifies the "significant natural resources" on the subject property. This request does not propose to alter the location of the

transition area or outside boundary of the environmental zone. To be approved, the applicant must meet the requirements of Paragraph D.3.

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

Findings: The 5.1-acre site, composed of three tax lots, lies north of SW Patton Road. A general description of the resources on the site is found on page 2 of this report. A description of the significant and highly significant resources identified in the Fanno Creek plan are listed on pages 2-3.

A portion of the existing environmental protection overlay zone adjacent to the house is dominated by non-native cherry trees and big leaf maples, with an understory of English ivy. Few conifers exist in this area. The tributary to Fanno Creek is located a distance of approximately 90 to 240 feet from the mapped environmental protection zone boundary and no other hydrologic features exist in this portion of the property. For these reasons, the applicant proposes to alter the boundary between the environmental protection and conservation zones to place roughly 18,100 square feet of this area into the environmental conservation zone.

The portion of the environmental conservation zone in the northwest corner of TL 2500 is dominated by a mature stand of Douglas fir, western red cedar, and one grand fir. A total of 50 conifers with a diameter greater than six inches exist in this area. Additionally, this area contains an intermittent stream that connects to the tributary bisecting the site. The location of the stream was identified using GPS and is shown on Exhibit C. For these reasons, the applicant proposes to alter the boundary between the environmental conservation and protection zones to place approximately 32,550 square feet of this area into the environmental protection zone.

Biologists from Pacific Habitat Services (PHS) conducted site visits in June, September, and December 2010. During the site visits observations of wildlife use, plant communities, landforms, and hydrologic features were noted. A professional survey of all trees greater than six inches in diameter was conducted adjacent to the existing house on TL 2400 and portions of TL 2500 and TL 2600.

PHS concludes that although portions of the three tax lots are dominated by invasive species (e.g. blackberry and ivy), the site provides good habitat for a variety of wildlife. Nesting and roosting opportunities exist for songbirds and snags provide habitat cavity for nesters. Wildlife species are likely dominated by typical urban species (e.g. raccoon and squirrels), but more rural species (e.g. coyote and deer) use the property as a travel corridor.

As stated previously, according to the Fanno Creek plan document, the environmental protection overlay zone was generally applied to drainageways, streams, ponds, riparian areas, and forests dominated by conifers within Resource Site 124. The environmental conservation zone was generally applied to upland forests dominated by alder and maple, and not adjoining riparian areas. Based upon the site survey conducted by PHS, the existing conditions of a portion of the environmental protections zone near the existing house and the environmental conservation zone in the northwest corner of TL 2500 do not conform to these descriptions.

The applicant's proposal continues to include the location of both the significant and highly significant resources and functional values on the site, plus 25 feet of transition area. Therefore, *this criterion is met.*

DEVELOPMENT STANDARDS

Unless specifically required in the approval criteria listed above, this proposal does not have to meet the development standards in order to be approved during this review process. The plans submitted for a building or zoning permit must demonstrate that all development standards of Title 33 can be met, or have received an Adjustment or Modification via a land use review prior to the approval of a building or zoning permit.

CONCLUSIONS

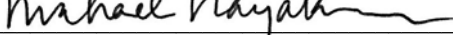
The applicant proposed an environmental zone boundary modification based on the location of existing significant resources and existing development on private property. Based upon the site survey conducted by PHS, the existing conditions of a portion of the environmental protections zone near the existing house and the environmental conservation zone in the northwest corner of TL 2500 do not conform to the descriptions of significant and highly significant resources in the Fanno Creek plan document. The revised proposal accurately reflects the location of both the significant and highly significant resources on the site.

ADMINISTRATIVE DECISION

Approval of an Environmental Review to:

- Modify the environmental conservation overlay zone, to include portions of Tax Lots 2400, 2500, and 2600 in conformance with Exhibits B.2 and C;
- Modify the environmental protection overlay zone to include the northwest corner of Tax Lot 2500 in conformance with Exhibits B.2 and C.

Staff Planner: Rachel Whiteside

Decision rendered by:  **on April 4, 2011.**

By authority of the Director of the Bureau of Development Services

Decision mailed: April 7, 2011

About this Decision. This land use decision is **not a permit** for development. Permits may be required prior to any work. Contact the Development Services Center at 503-823-7310 for information about permits.

Procedural Information. The application for this land use review was submitted on January 26, 2011, and was determined to be complete on February 22, 2011.

Zoning Code Section 33.700.080 states that Land Use Review applications are reviewed under the regulations in effect at the time the application was submitted, provided that the application is complete at the time of submittal, or complete within 180 days. Therefore this application was reviewed against the Zoning Code in effect on January 26, 2011.

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 requested that the 120-day review period be extended by 14 days, as stated with Exhibit A.3. Unless further extended by the applicant, **the 120 days will expire on: July 6, 2011.**

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 April 21, 2011** 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. There is no fee for ONI recognized organizations appealing a land use decision for property within the organization’s boundaries. The vote to appeal must be in accordance with the organization’s bylaws. Assistance in filing the appeal and information on fee waivers is available from BDS in the Development Services Center. Please see the appeal form for additional information.

The file and all evidence on this case are available for your review by appointment only. Please 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 **April 22, 2011 – (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. Zone Change and Comprehensive Plan Map Amendment approvals do not expire.

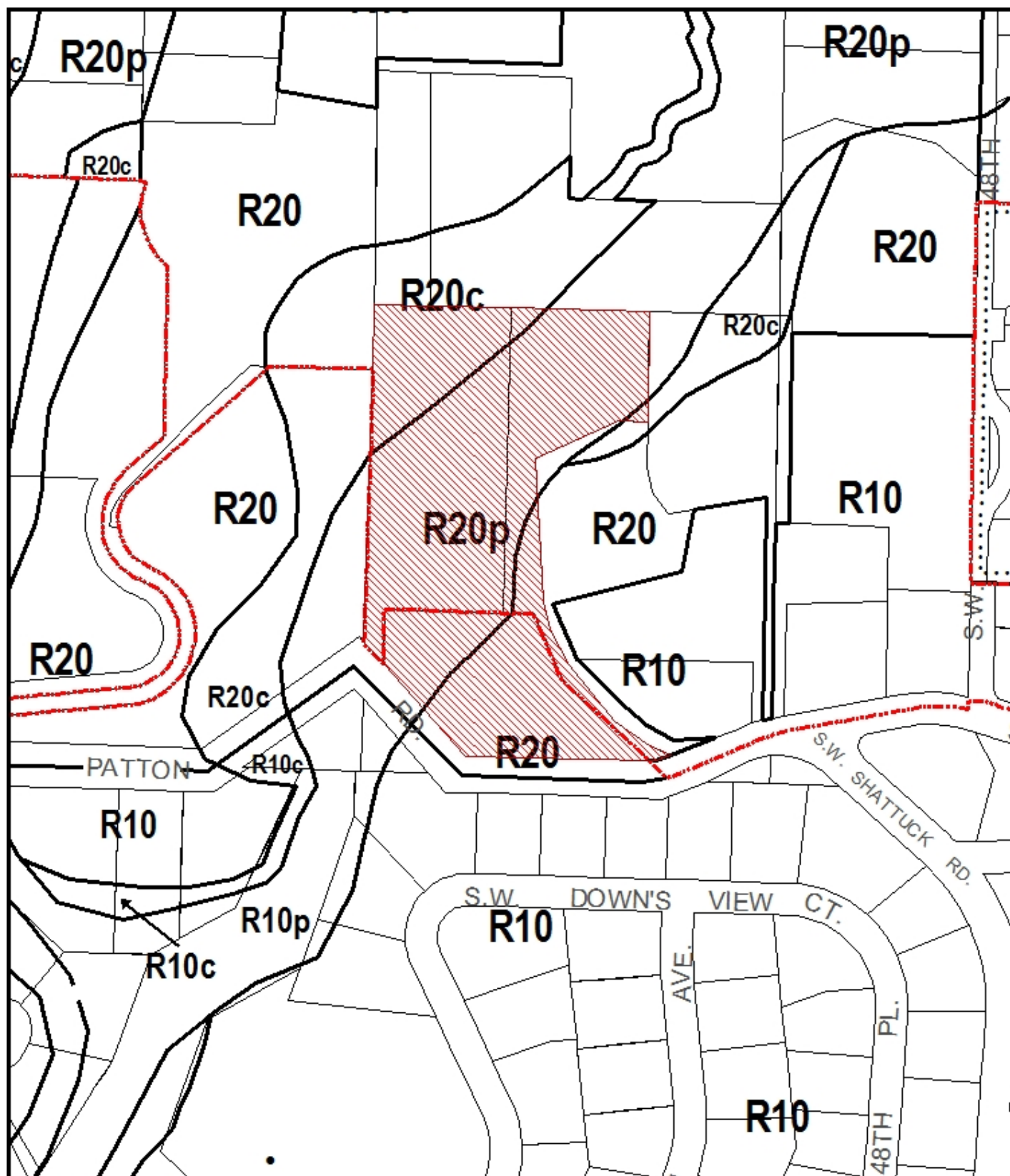
Applying for your permits. A building permit, occupancy permit, or development permit may be required before carrying out an approved project. At the time they apply for a permit, permittees must demonstrate compliance with:

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

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
 - 1. Original Narrative
 - 2. Response to Incomplete Letter, dated February 17, 2011
 - 3. Extension of the 120-day review period
- B. Zoning Maps (attached)
 - 1. Existing Zoning
 - 2. Zoning Proposed
- C. Site Plan (attached)
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Bureau of Environmental Services
 - 2. Bureau of Transportation Engineering and Development Review
 - 3. Valley View Water District
 - 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 Received
- G. Other:
 - 1. Original LU Application
 - 2. Site History Research
 - 3. Incomplete Letter, sent February 10, 2011
 - 4. Planning Bureau Memo from IQ 05-108770



**ZONING
EXISTING**

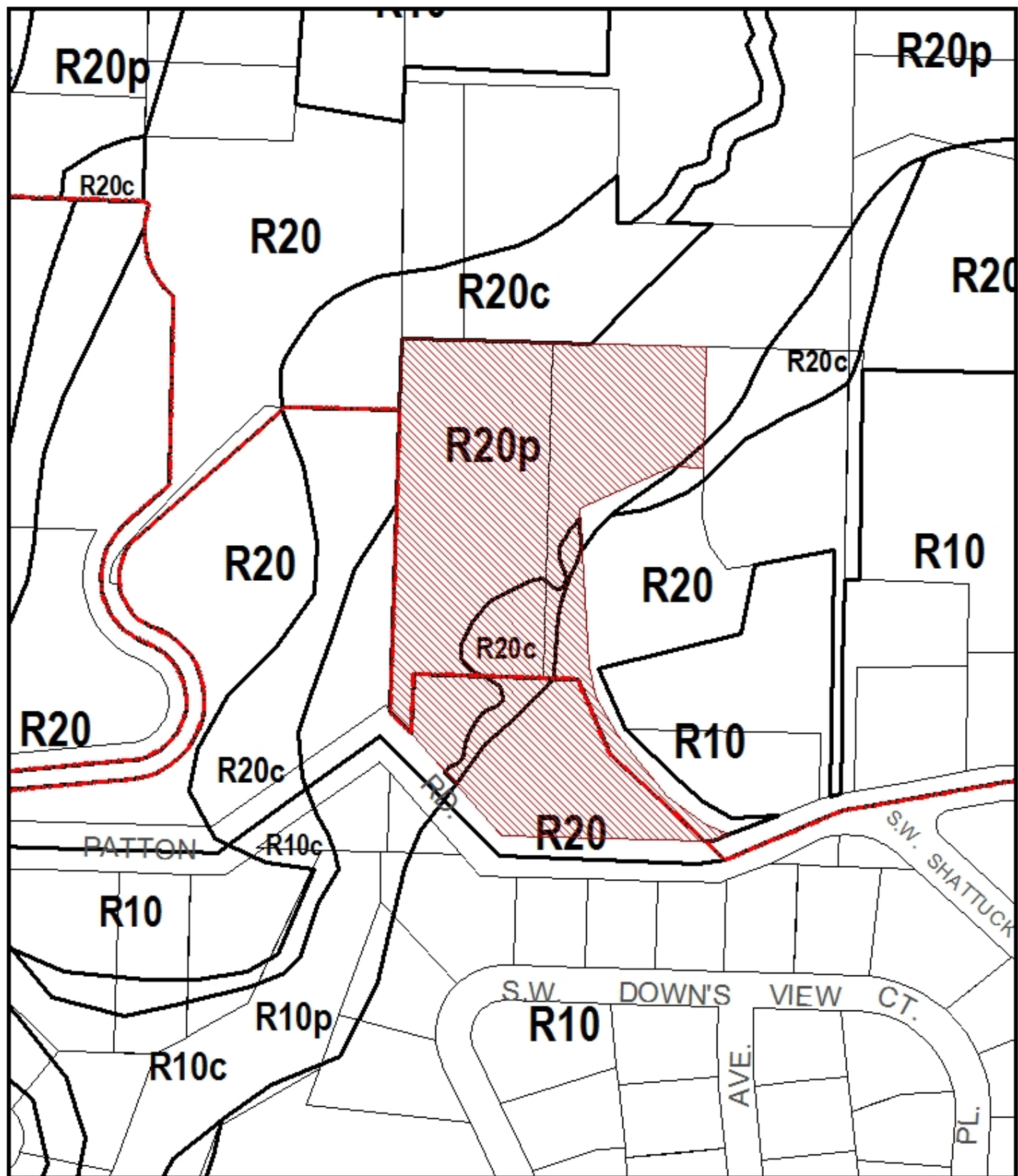


Site



NORTH

File No.	<u>LU 11-107619 EN</u>
1/4 Section	<u>3324</u>
Scale	<u>1 inch = 200 feet</u>
State_Id	<u>1S1E07AC 2600</u>
Exhibit	<u>B</u> (Feb 22, 2011)



ZONING
PROPOSED



File No.	LU 11-107619 EN
1/4 Section	3324
Scale	1 inch = 182 feet
State_Id	1S1E07AC 2600
Exhibit	B (Feb 22, 2011)

