



City of Portland, Oregon
Bureau of Development Services
Land Use Services
FROM CONCEPT TO CONSTRUCTION

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Date: January 13, 2012
To: Interested Person
From: Kathy Harnden, 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 11-199866 ZE UNINCORPORATED MULTNOMAH COUNTY

GENERAL INFORMATION

Applicant: Robert H. McCall
1808 SW Laurel St.
Portland, OR 97201

Owners: Dinah H. Hutchinson & Robert H. McCall
1808 SW Laurel St.
Portland, OR 97201

Site Address: 4900 SW HUMPHREY BLVD

Legal Description: LOT 1, PARTITION PLAT 1991-59, LOT 1; TL 700 1.00 ACRES,
SECTION 07 1S 1E, TL 700 1.00 ACRES

Tax Account No.: R649713500, R991073420

State ID No.: 1S1E07AA 00600, 1S1E07AA 00700

Quarter Section: 3224

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; Potential Landslide Hazard Area;
20 Percent Slope Area

Zoning: R20c – Residential 20,000 base zone, a low density residential zone
with the Environmental Conservation (c) overlay

Case Type: ZE – Zone Map Error Correction

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

Proposal:

A Zoning Map error, related to the placement of the Environmental Conservation overlay zone, exists on this property. This property is included in the intergovernmental agreement (IGA) between Multnomah County and Portland. The IGA gives Portland the authority to provide zoning and other urban services to portions of Multnomah County that are within the Urban Growth Boundary and Portland's Urban Services Boundary. The IGA was adopted and went into effect on January 1, 2002.

The natural resources in the area that includes this property were inventoried as part of the *Multnomah County-Portland Unincorporated Urban Areas Functional Plan Compliance Project* in 1992. The natural resource inventory work that was conducted for the Multnomah County pockets project included mapping based on aerial photographs and field reconnaissance. The subject property was identified as having significant natural resources due to the forest vegetation that existed on the site at that time. However, resource overlay zones did not take effect until 2001. The property owners state that the forest resource that had existed on the site during the resource inventory was legally removed from the site in 1999. A review of 2000 aerial maps for the property confirms that all of the forest vegetation on the property was clear cut between 1999 and 2000.

The Bureau of Planning (BOP) researched the inventory documents and verified that the trees were removed prior to adoption of the protection plan. The BOP concurs that the Environmental Conservation overlay zone is now incorrectly depicted on the zone map. The zone error correction will result in a re-drawing of the environmental zone boundary, moving it toward the south end of the property (see Exhibits B, Proposed Zone Boundary and Existing Zone Boundary).

Therefore, at the request of the BOP and the property owner, the Director of the Bureau of Development Services initiated this Zone Map error correction procedure to modify the boundary of the environmental conservation overlay zone on the site to reflect the location of existing forests on adjacent properties.

To relocate an Environmental Conservation overlay zone boundary, the City must initiate and approve a Type II land use review.

Relevant Approval Criteria:

To be approved, this proposal must comply with the approval criteria of Title 33. The relevant approval criteria are found in Section 33.855.070 A – C (Corrections to the Official Zoning Maps).

ANALYSIS

Site and Vicinity: This 2.4-acre site is located in Resource Site 124 of the *Fanno Creek and Tributaries Conservation Plan* within unincorporated Multnomah County and is composed of two lots, with a house located on the east lot, outside the environmental zone. The house is accessed from SW Humphrey Boulevard, which forms the site's north boundary. The site slopes downward to the west with slopes varying between 9 and 23 percent. The steeper slopes are located on the west side of the property, beyond the house site, which is located near the lower center portion of the site.

The property was once heavily forested, but was legally clear-cut in 1999, prior to enactment of the Compliance Project in 2001. Currently, there are only scattered trees in the northwest and northeast corners, and a few along the east property line of the site. There are no wetlands or creek headwaters on the site, although the site and other surrounding properties contribute to a creek that begins approximately 200 feet west of the southwest corner of the property. The headwaters of another creek begin approximately 500 feet southeast of the property.

The surrounding properties are similarly sized, with those to the west being long and narrow, and those to the south and east being more squarish. Properties to the north of SW Humphrey are somewhat smaller, averaging around 27,000 square feet. Almost all of the properties in the area are developed with single dwellings and most have very little forest canopy. Historic air photos indicate that the vegetation pattern in the area has changed very little in the past 15 years.

Zoning: The site is zoned R20c. 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; but these provisions are not specifically addressed through this Environmental Review.

Environmental overlay zones protect environmental resources and functional values that have been identified by the City as providing benefits to the public. The environmental regulations encourage flexibility and innovation in site planning and provide for development that is carefully designed to preserve the site's protected resources. They protect the most important environmental features and resources while allowing environmentally sensitive urban development where resources are less significant. The "c" overlay refers to the Environmental Conservation zone, which is applicable to this review. The analysis about the conservation zone on this site is discussed below.

Land Use History: City records indicate there is one previous land use review for this site.

MUP 90-200517 – Land division dividing Lot 370 into two lots (existing Lots: 1S1E07AA 600 and 700).

Agency Review: A "Notice of Proposal in Your Neighborhood" was mailed **December 19, 2011**. The following Bureaus responded with no issues or concerns:

- Bureau of Environmental Services
- Water Bureau

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on December 19, 2011. No replies were received from either the Neighborhood Association or notified property owners in response to the proposal.

ZONING CODE APPROVAL CRITERIA

33.855.070. Corrections to the Official Zoning Maps.

The Director of BDS may initiate and approve a review following the Type II procedure for the types of discretionary corrections to the Official Zoning Maps listed below.

Nondiscretionary corrections to the Official Zoning Maps may be initiated by the Director of Planning as described in Section 1.01.037 of the Portland City Code.

Findings: Following a request by the property owner, the BOP investigated a possible zone map error and determined that a mapping error had occurred on the subject property. BOP provided a copy of its report (Ex. A.1) to the Bureau of Development Services (BDS). Subsequently, the Director of BDS initiated this review to correct the error in the official zone map by more accurately portraying the location of upland forest resources on the subject property.

33.855.070.A. Mapping errors. The correction may be made for mapping errors such as:

1. **A map line that was intended to follow a topographical feature does not do so. Topographical features include the tops and bottoms of hillsides, the banks of water bodies, and center lines of creeks or drainage ditches.**

Findings: The request for the zoning map error correction is not based on topographical features. Therefore, *this criterion does not apply.*

2. **There is a discrepancy between maps and on balance, there is sufficient evidence of legislative intent for where the line should be located.**

Findings: The natural resource inventory for the *Fanno Creek and Tributaries Conservation Plan* identified forest habitat on the property, and the plan ultimately recommended application of the environmental conservation zone to overlay the forested area on this site. The *Fanno Creek Plan* describes forests as providing erosion control and “a range of habitats for a diverse population of indigenous wildlife.”

The property was inventoried as part of the *Multnomah County-Portland Unincorporated Urban Areas Functional Plan Compliance Project* (Compliance Project). It was identified as having significant natural resources due to the forest vegetation that covered the site, and was recommended for the conservation zone overlay, rather than the protection overlay, because it was not adjacent to any streams. The recommendation was based on 1996 aerial photography and field reconnaissance. The conservation zoning for this site went into effect on January 1, 2002.

However, prior to the effective date of the proposed zoning, the property owner legally clear-cut the entire forested area on the site in 1999. The property owner testified during hearings leading up to the adoption of the environmental studies areas to the effect that he had clear-cut the site and that the trees that made the site appropriate for the resource conservation overlay no longer existed. However, the site remained in the Inventory and was approved as a resource conservation overlay site in 2001, even though the reason for its being a resource site, the forest, had been removed.

As proof that the forest resource was removed prior to adoption in October 2001, of the Compliance Project, the owner submitted a copy of his Oregon Department of Forestry (ODF) notification for a clear-cut harvest on the subject property issued July 19, 1999. This notification confirmed that trees were allowed to be harvested on the site between July 20 and December 31, 1999, at least 9 months prior to adoption of the Compliance Project. The site was not replanted.

BOP staff reviewed the current proposal to remove the environmental overlay from the site. BOP determined that there is a discrepancy between the early maps that showed the site as containing a forest resource and the on-site observations and historic records that show the forest resource was removed prior to adoption of the Compliance Project that created the environmental zoning on the site. BOP staff also determined that the adjacent property to the south still contains a heavily forested area. Therefore, the recommended overlay zone change includes a small amount of conservation resource and transition areas along the southern edge of the site.

With approval of the proposed zone map which moves the environmental zone boundary to the west property line and close to the southern edge of the property, as shown on the Proposed Zoning Map, *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 Bureau of Planning recommends that a zoning map error correction be approved based on the facts that:

1. The legislative record clearly indicates that forest vegetation was the precipitating factor for the conservation overlay mapping;
2. The property owner legally removed all of the forest resource prior to adoption of the Multnomah County-Portland Unincorporated Urban Areas Functional Plan Compliance Project in 2001; and
3. The removal of forest vegetation occurred prior to adoption and implementation of the environmental conservation overlay zone on the property.

The Bureau of Development Services has reviewed the BOP recommendation and, based on the findings supplied by BOP that provide a historic timeline of the events surrounding the adoption of the environmental zone that includes this property, concurs that the forest resource was legally removed from the site prior to its adoption into the *Multnomah County-Portland Unincorporated Urban Areas Functional Plan Compliance* project in October, 2001.

Therefore, this proposal should be approved.

ADMINISTRATIVE DECISION

Approval of a zoning map error correction regarding the relocation of the environmental conservation zone, in conformance with the Proposed Zoning Map designated as Exhibit B.2.

Staff Planner: Kathy Harnden

Decision rendered by:



on January 11, 2012.

By authority of the Director of the Bureau of Development Services

Decision mailed: January 13, 2012

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 December 9, 2011, and was determined to be complete on **December 16, 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 December 9, 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 did not waive or extend the 120-day review period. Unless extended by the applicant, **the 120 days will expire on: April 15, 2012.**

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 January 27, 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.

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 **January 30, 2012 – (the first business day following the last day to appeal)**.
- A building or zoning permit will be issued only after the final decision is recorded.

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

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

For further information on recording, please call the County Recorder at 503-988-3034
For further information on your recording documents please call the Bureau of Development Services Land Use Services Division at 503-823-0625.

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

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

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

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

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

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
- B. Zoning Maps
 - 1. Existing Zoning Map (attached)
 - 2. Proposed Zoning Map (attached)
- C. Plans/Drawings (None)

D. Notification information:

1. Mailing list
2. Mailed notice

E. Agency Responses:

1. Bureau of Environmental Services
2. Site Development Review Section of BDS

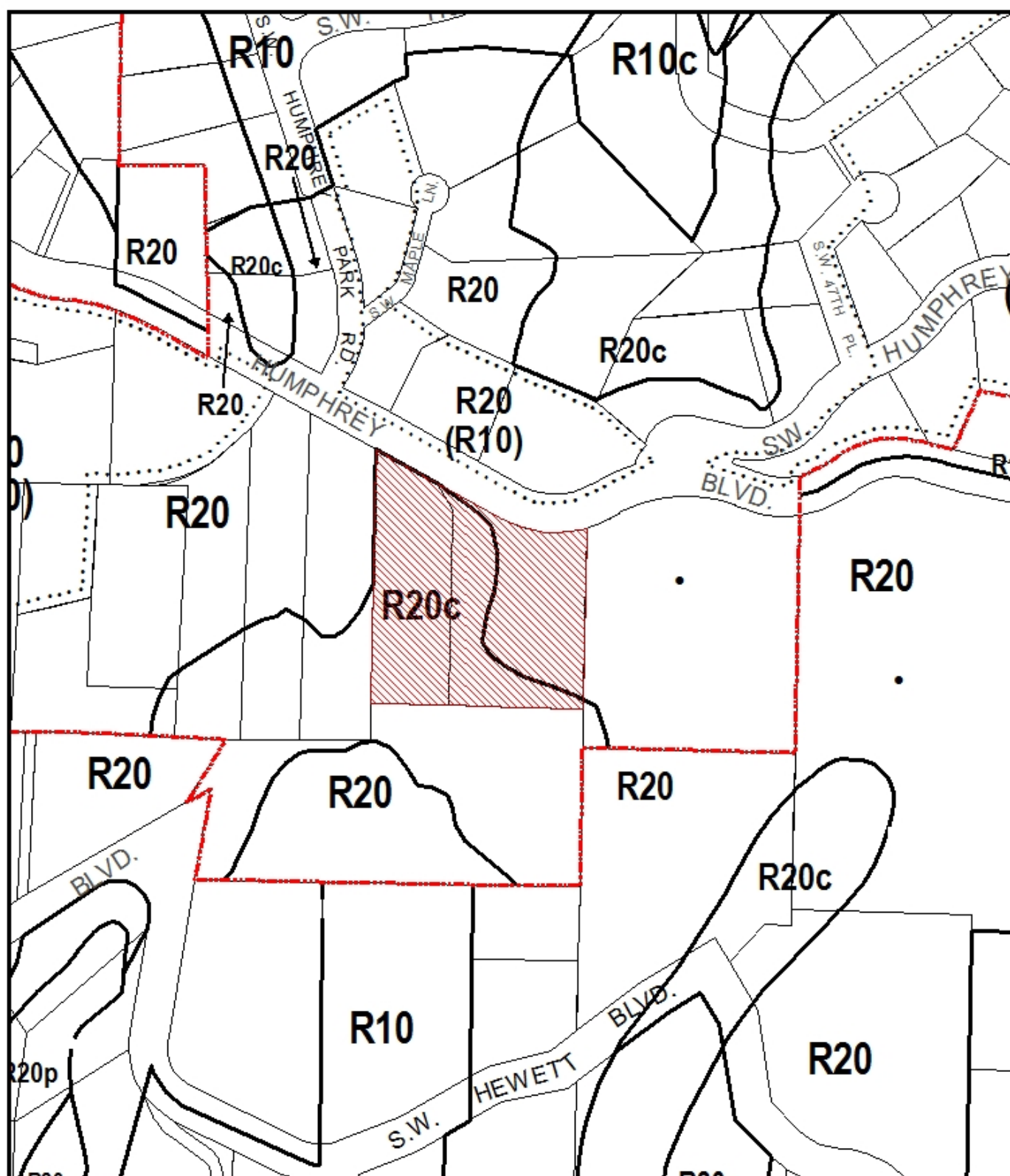
F. Correspondence

1. Simone Goldfeder, January 2, 2012, with concerns regarding the timing of this proposal and a newly issued building permit for the site
2. Staff response to 1/2/12 Goldfeder letter, dated 1/3/12

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
EXISTING**



Site

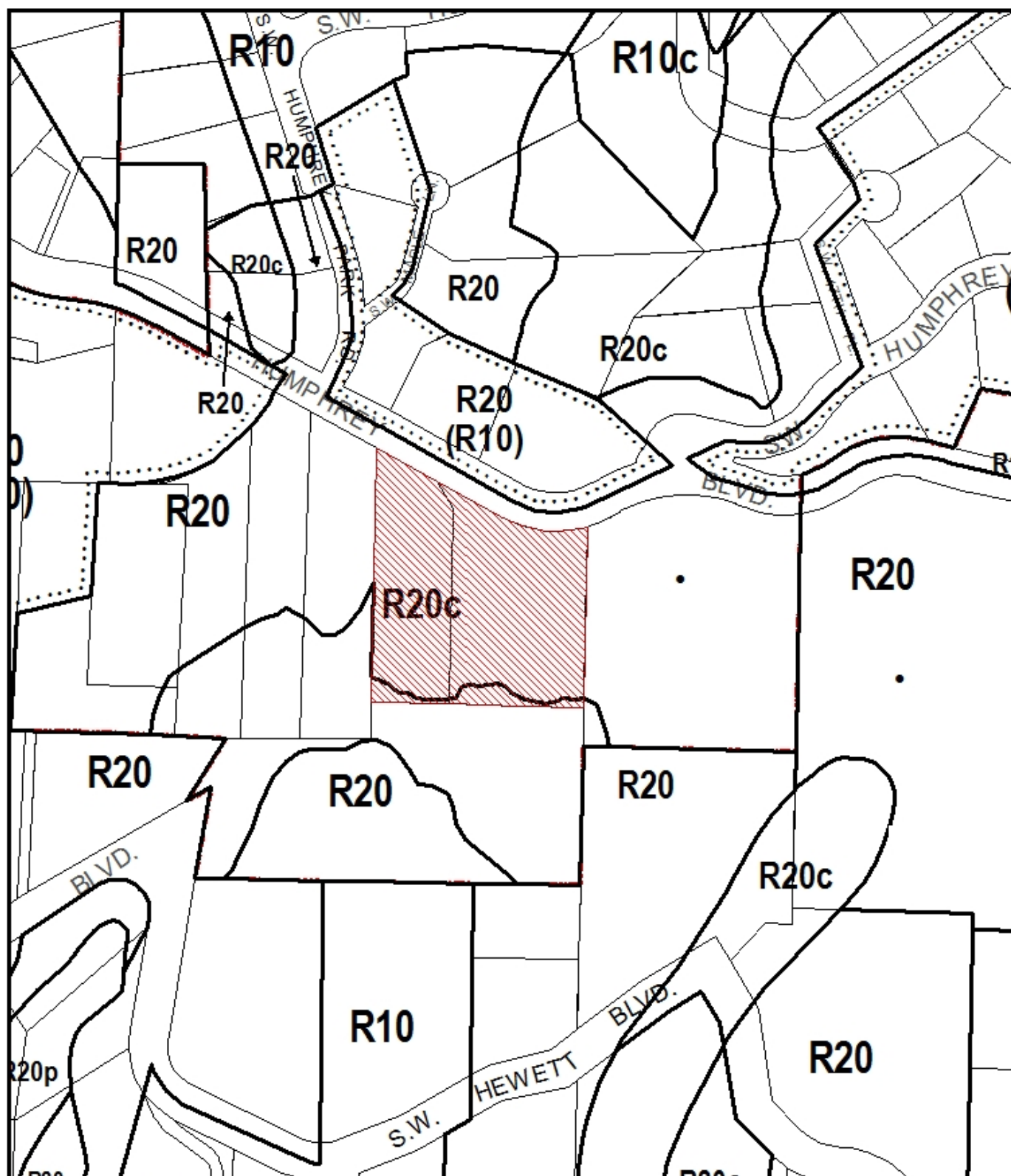


Historic Landmark



NORTH

File No.	<u>LU 11-199866 ZE</u>
1/4 Section	<u>3224,3324</u>
Scale	<u>1 inch = 200 feet</u>
State_Id	<u>1S1E07AA 600</u>
Exhibit	<u>B</u> (Dec 13,2011)



**ZONING
PROPOSED**



Site

Historic Landmark

File No.	LU 11-199866 ZE
1/4 Section	3224,3324
Scale	1 inch = 200 feet
State_Id	1S1E07AA 600
Exhibit	B (Dec 13,2011)