



THE BUREAU OF
**PLANNING &
SUSTAINABILITY**

DATE: August 16, 2023
TO: Mayor Wheeler and Council Commissioners
FROM: Jeff Caudill, Floodplain Resilience Plan Project Manager
Patricia Diefenderfer, Chief Planner
SUBJECT: Floodplain Resilience Plan Proposed Amendments

City Council will hold a public hearing on the Floodplain Resilience Plan Recommended Draft on August 30, 2023. This memo describes amendments that have been identified through discussions with Commissioner Rubio's office and other City bureaus since the Planning and Sustainability Commission recommended the plan to City Council in November of 2022.

The proposed amendments are summarized in Table 1 below. The first three amendments are substantive and amend the zoning code to add flexibility for future development and upgrades to existing utilities in the floodplain. The remaining amendments (4 through 7) are more technical in nature and include a clarifying code amendment to the approval criteria for modifications to the River Environmental overlay zone and a few updates to the "Overview of Recommendations" and "Implementation" sections of the Recommended Draft.

The amendments will be introduced by the commissioner in charge. We suggest Council vote on the amendments as a group, unless there is a desire to vote on the substantive amendments individually.

How to Read these Amendments

Each amendment is prefaced by a short description of the intended effect of the change. ~~Strikethrough~~ and underline are used to show potential changes to the current code. Text **shading** is used for informational purposes to highlight where potential code amendments differ from the Recommended Draft code language.



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Table 1. Summary of Proposed Zoning Code Amendments

#	Amendment Name	Amendment Summary	Page
Substantive Amendments			
1	Extend expiration timeline for land use approvals for multiple building projects	Increase the expiration period from 3 years to 7 years for land use approvals for multiple building projects, including phased development.	5
2	Allow minor changes to a River Review to be approved through a Type Ix Procedure	Allow an approved River Review to remain vested in the code in place at the time of approval when minor changes are made to the project. Mitigation will still be required for any impacts resulting from the change but will be approved through a Type Ix review instead of a Type II review.	6
3	Maintain exemption for replacement and allow, in some cases, the expansion of utilities already located in the floodplain	Maintain the current allowance in the Environmental Zones chapter (33.430) for replacement of existing basic utilities located in the floodplain, as long as the utility size or the area it covers is not increased. Amend the River Overlay Zones chapter (33.475) to allow for the expansion of pump stations already located in the development setback of the Willamette River as long as the expansion does not move the development closer to the river.	9
Technical Amendments			
4	Clarify approval criteria for proposed modifications to the River Environmental overlay zone	Amend the approval criteria in 33.865.100.B.3. to ensure that the riparian buffer area and all land within 100 feet of top of bank in the Willamette River South Reach are included within the River Environmental overlay zone boundary whenever a modification to the boundary is proposed. This amendment addresses an oversight in the River Plan/South Reach zoning code updates.	12
5	Update section "C. Restoration Projects and Mitigation Banks" to depict current status	Update language to reflect changes to the status of restoration projects and mitigation bank efforts since the release of the Discussion Draft.	15



#	Amendment Name	Amendment Summary	Page
6	Update Action Plan to depict current information	These amendments update the Floodplain Resilience Plan Action Plan in Chapter VI, Implementation, to better depict current information for two actions: MM-1 and RG-1.	18
7	Add zoning quarter section maps into the Recommended Draft to show the proposed overlay zone changes	Add zoning quarter section maps of into Chapter VI of the Recommended Draft (as section D) to show in more detail existing zoning designations and the proposed modifications to the Environmental Conservation and River Environmental overlay zones that are shown in Map 1 (see pg 36), Map 2 (see pg 37), Map 3 (see pg 40) and Map 6 (see pg 45) of the Recommended Draft. These maps allow for a comparison between existing zoning and the overlay zones in areas where changes are proposed. No changes to the proposed zoning are a part of this amendment.	19





Amendment #1 – Extend Expiration Timeline for Land Use Approvals for Multiple Building Projects

Currently, the expiration timeline for land use approvals of projects that include multiple buildings, including phased developments, is three years. If a project is unable to receive City permits for all proposed development within three years, an additional land use review must be completed, resulting in additional costs and, potentially, application of new requirements that have come into effect since the original land use approval. Completion of these larger, often more complex, projects within three years is challenging. This amendment extends the expiration period an additional four years, to a total of seven years.

Amend 33.730.130.B.4.a

33.730 Quasi-Judicial Procedures

730

33.730.130 Expiration of an Approval

A. [No change]

B. When approved decisions expire.

1.-3. [No change]

4. Multiple developments

- a. Generally. Where a site has received approval for multiple developments, and a City permit is not issued for all development within 37 years of the date of the final decision, the approval does not expire but no additional development may occur without another review. All conditions of approval continue to apply. Examples of multiple developments include phased development and multi-building proposals. Multiple developments does not include the phased permitting of a single building or multi-building projects with a single primary structure.

5.-12. [No change]

C.-D. [No change]

Add 33.730.130.B.4.a Commentary

33.730.130.B.4.a.

This amendment extends the expiration date for land use approvals for projects with multiple developments to 7 years. Achieving permits for all development within the existing three-year window is challenging. This amendment provides additional flexibility for projects with multiple developments that may be constructed over a longer timeframe.



Amendment #2 – Allow Minor Changes to a River Review to be Approved Through a Type Ix Procedure

These amendments add an allowance for administrative and minor changes to be made to an approved River Review while still allowing the development to be vested in the code in effect at the time of the original approval. Any new impacts on natural resources resulting from minor changes still must be mitigated. Any additional actions needed to mitigate these impacts will be identified and approved through a Type Ix procedure, rather than a Type II.

Major changes to the approved River Review, as defined in the proposed 33.865.300.A, will continue to be processed through a Type II procedure, as required by current regulations, and will be evaluated based on the regulations in effect on the date the application for a major change is filed.

Amend 33.865 Table of Contents and chapter headings

33.865 River Review

865

Sections:

General

33.865.010 Purpose

River Review

33.865.020 When River Review is Required

33.865.030 Procedure

33.865.040 Supplemental Application Requirements

33.865.100 Approval Criteria

33.865.110 Modification of Site-Related Development Standards

33.865.120 Corrections to Violations of the River Environmental Overlay Zone Regulations

33.865.200 Use of Performance Guarantees

33.865.210 Special Evaluations by a Trained Professional

Changes to an Approved River Review

33.865.300 When a River Review can be changed

33.865.310 Types of Changes

33.865.320 Review Procedures

33.865.330 Regulations that Apply at the Time of an Application for Changes to a River Review

33.865.340 Regulations that Apply After Approval

General

33.865.010 [No change]

River Review

33.865.020-040 [No change]



Add new “Changes to An Approved River Review” section to 33.865**Changes to an Approved River Review****33.865.300 When a River Review can be changed**

River review can be changed as allowed below if:

- A. The original River Review has not expired; and**
- B. City permits for all aspects of the approved project have not received final approval.**

33.865.310 Types of Changes

There are three types of changes: major, minor, and administrative.

- A. Major change.** A major change is one that will have significant impacts on the development or on the site. Major changes include:
 - 1. An increase in total disturbance area of more than 10 percent;
 - 2. An increase of more than 10 percent in the amount of medium or high ranked resource area affected;
 - 3. More than a combined total diameter of 24 inches of additional tree removal; or
 - 4. A reduction of more than 5 percent in any quantity, dimension or area identified in an approved mitigation plan or narrative.
- B. Minor change.** A minor change is a change that is neither major nor administrative.
- C. Administrative change.** An administrative change is a change to an element of a River Review that:
 - 1. Is consistent with all conditions of the River Review approval;
 - 2. Meets all development standards not modified by the River Review;
 - 3. Does not change any quantity, dimension, or area identified in the approved plans or narrative other than disturbance area or a mitigation plan or narrative by more than 5 percent;
 - 4. Does not increase the approved temporary or permanent disturbance area;
 - 5. Does not decrease any quantity, dimension or area identified in an approved mitigation plan or narrative; and
 - 6. Does not result in additional tree removal.

33.865.320 Review Procedures

Requests for changes to an approved River Review are processed as follows:

- A. Major changes.** Major changes are processed through a Type II procedure:
- B. Minor changes.** Minor changes are processed through a Type Ix procedure.
- C. Administrative changes.** Administrative changes are allowed without a land use review.



33.865.330 Regulations that Apply at the Time of an Application for Changes to a River Review

- A. Minor change to an approved River Review.** An application for a minor change to a River Review will be processed based on the regulations in effect on the date the original River Review was filed with the City if the original River Review has not expired.
- B. Major change to an approved River Review.** An application for a major change to a River Review will be processed based on the regulations in effect on the date the application is filed with the City as described in 33.700.080.A.1.

33.865.340 Regulations that Apply After Approval

- A. Minor change to an approved River Review.** Applications for building permits for development approved by a minor change to an approved River Review decision are subject only to the regulations in effect on the date the original River Review application was filed with the City if the original River Review has not expired. When a land use review other than River Review, such as design review, is also required for the development and a minor change to an approved River Review has been approved, development approved by the additional land use review is also subject only to the regulations in effect on the date the additional land use review was filed with the City if the additional land use review has not expired.
- B. Major change to an approved River Review.** Applications for building permits for development approved by a major change to an approved River Review decision that has not expired are subject to the regulations in effect on the date the application for a major change review was filed with the City, as specified in 33.700.080.A.1.

Add Commentary for “Changes to An Approved River Review” section**Changes to an Approved River Review**

These amendments add a “Changes to an Approved River Review” section to this chapter. The amendments establish a pathway to make minor changes to an approved River Review while maintaining the vesting of regulations that were in place at the time of the land use approval. The amendments establish three types of changes (see 33.865.310): administrative, minor and major. As described in 33.865.320.C., administrative changes are allowed without a land use review. A change that is not administrative but do not exceed the thresholds of a “major change” (see 33.865.310.A) are defined as a “minor change.” Minor changes are processed through a Type 1x procedure (see 33.865.320.B.) according to the regulations in effect on the date the original River Review was filed (see 33.865.330.A.). A major change is processed through a Type II procedure (see 33.865.320.A.) according to the regulations in effect on the date the original River Review was filed (see 33.865.330.B.)



Amendment #3 – Maintain Exemption for Replacement and Allow, in Some Cases, the Expansion of Utilities Already Located in the Floodplain

The Floodplain Resilience Plan Recommended Draft code amendments removes, for existing structures in the floodplain, an exemption that allows structures to be replaced without meeting City requirements, as long as the coverage or utility size does not increase. The removal of the exemption for structures in the floodplain aims to require applicants to evaluate the location of the structure and reduce, to the extent possible, the amount of development in the floodplain. However, basic utilities are generally placed in locations that have been selected as the best location for the service provided and are not easily relocated. Therefore, the amendment to 33.430 will continue to allow utilities located in the floodplain and in an Environmental overlay zone to be replaced without requiring City approval as long as the replacement does not expand the coverage or utility size. This amendment will allow upgrades to these important facilities, while avoiding unnecessary review and reducing costs.

Similarly, there are a small number of sewer pump stations located within the 50-foot development setback along the Willamette River. These pump stations were constructed before the establishment of the development setback and are now considered nonconforming development. Many of them are scheduled for renovation or expansion in the coming years. The amendment to 33.475.250.D.3 will allow these existing pump stations to be expanded to meet future demand without requiring a Greenway Goal Exception. The expansion cannot move the pump station closer to the river.

Amend 33.430.080.D.1

33.430 Environmental Zones

430

33.430.080 Items Exempt From These Regulations

The following items, unless prohibited by Section 33.430.090, below, are exempt from the regulations of this chapter. Other City regulations such as Title 10, Erosion Control, and Title 11, Trees, must still be met.

A.-C. [No change]

D. Existing development, operations, and improvements, including the following activities:

1. Maintenance, repair, and replacement of existing structures, exterior improvements, roads, public trails, public rest points, public view areas, public interpretative facilities, and utilities. Except for the replacement of structures associated with a Basic Utility use, Replacement is not exempt within the combined flood hazard area. Replacement is also not exempt whenever coverage or utility size is increased;



Amend 33.430.D.1 Commentary**33.430.080.D.1**

This amendment removes the exemption for replacement of existing structures within the combined flood hazard area, except for replacement of basic utilities. In general, t This change will ensure that the impacts of these activities are adequately mitigated, either by meeting the development standards or going through an environmental review. The continuation of the exemption for basic utilities recognizes that these utilities have been specifically located to provide service to the area and, in most cases, it is unlikely that these facilities can be moved out of the combined flood hazard area and still provide these needed services. If utility size or coverage is expanded, these replacements will be required to meet the requirements of this chapter.

Amend 33.475.250.D.3**33.475 River Overlay Zones****475****33.475.250 Nonconforming Uses and Development**

Nonconforming uses and development in the River General overlay zone are subject to the regulations and reviews of Chapter 33.258, Nonconforming Situations. The additional regulations stated below apply to development within or riverward of the river setback that is not river-dependent or river-related:

A.-C. [No change]

D. The development may be expanded, but, except as allowed below, not within or riverward of the river setback. Expansion includes adding additional floor area;

1. [No change]

2. An existing seawall located in the river setback may be expanded for structural reinforcement only, and when the following are met:

- a. The thickness of the seawall may be increased up to 1 foot. The thickness is measured from the riverward face of the seawall to the landward face of the seawall. Tiebacks may be added in addition to the allowed increase in thickness if no permanent disturbance area associated with the tiebacks is proposed;
- b. The height and length of the seawall may not be increased;
- c. Temporary disturbance area located within and riverward of the river setback must be replanted to meet the relevant subarea standards of Table 475-1, and temporary disturbance located landward of the river setback is replanted to meet the subarea 3 standard of Table 475-1;
- d. Vegetation removal is allowed as specified in 33.475.440.K.; and
- e. Mitigation is required as specified in 33.475.440.L.; and



3. An existing pump station structure located within or riverward of the river setback may be expanded; however, the footprint of the existing structure may not be expanded closer to the river.

Amend 33.475.250.D.3 Commentary

33.475.250.D.3

This amendment allows existing pump station facilities that are within or riverward of the river setback to expand as long as the expansion does not move the structure closer to the river. This amendment will allow existing, nonconforming pump stations that were built near the river prior to the establishment of the river setback to be upgraded to meet current and future capacity needs. Placement of new pump stations in the river setback is not allowed without a Greenway Goal Exception.



Amendment #4 – Clarify Approval Criteria for Proposed Modifications to the River Environmental Overlay Zone

Amendments to 33.865 clarify requirements for the modification of River Environmental overlay zone boundaries code section. These amendments ensure that the River Environmental overlay zone always includes (1) the riparian buffer area and (2) the area within 100 feet of top of bank in the Willamette River South Reach (as directed in the River Plan/South Reach).

Additionally, an amendment to 33.865.100.A.1.d.(1) removes the reference to the “resource area” of the River Environmental overlay zone because it is not necessary. The intent of the criterion is to ensure that alternatives consider, to the extent possible, the placement of development outside the overlay zone.

Amend 33.865.100

33.865.100 Approval Criteria.

Requests for a River Review will be approved if the review body finds that the applicant has shown that all applicable approval criteria have been met.

A. Development within the River Environmental overlay zone. The applicant's supplemental narrative must demonstrate that all of the following are met:

1. Land divisions, Property Line Adjustments, and Planned Developments:
 - a.-c. [No change from Recommended Draft]
 - d. River-dependent and river-related development, rights-of-way, driveways, walkways, outfalls, and utilities;:
 - (1) The location, design, and construction method of any outfall or utility proposed within the River Environmental overlay zone has the least significant detrimental impact to the identified resources and functional values of other practicable alternatives including alternatives outside ~~the resource area of~~ the River Environmental overlay zone;
 - (2)-(3) [No change from Recommended Draft]
 - e. [No change from Recommended Draft]

2.-3. [No change from Recommended Draft]

B. Modification of River Environmental overlay zone boundaries. Modifications of River Environmental overlay 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 B.1 or B.2 are met. For modification of River Environmental zone boundaries based on a more detailed site specific environmental study that confirms the location of natural resource features identified in the adopted Natural Resources Inventory, the applicant's impact evaluation must demonstrate that Paragraph B.3 is met:

- 1.-2. [No change from Recommended Draft]
3. Modification of River Environmental overlay zone boundaries based on a more detailed site-specific environmental study. The River Environmental overlay zone line location may be modified



to more accurately reflect the location of natural resources and functional values on the site. All of the following must be met:

- a. The modified River Environmental overlay zone boundary must include all natural resource features that receive a high or medium rank using the methodology within the adopted Natural Resources Inventory; ~~and~~
- b. The modified River Environmental overlay zone boundary must ~~include: be located no closer than~~
 - (1) Within the Willamette River Central Reach, all land within and riverward of 50 feet from the top of bank of a river, stream, drainageway, wetland or other water body.
 - (2) Within the Willamette River South Reach, all land within and riverward of 100 feet from the top of bank of a river, stream, drainageway, wetland or other water body; and
- c. The modified River Environmental overlay zone boundary must include the riparian buffer area shown on Map 475-6.
- e. ~~The modified River Environmental overlay zone boundary must include all mapped floodplain (100-year floodplain and 1996 Flood Inundation Area).~~

Amend 33.865.100.A.1.d.(1) Commentary

33.865.100.A.1.e(1)

This amendment removes the reference to "resource area" because the intent of this criterion is to ensure that alternatives consider the placement of proposed development outside of the River Environmental overlay zone. The River Environmental overlay zone applies to identified resource areas so, in this case, the reference to resource area is not necessary.

Amend 33.865.100.B.3.d Commentary

33.865.100.B.3.b. and c.

These amendments update the approval criteria for a modification to the River Environmental overlay zone boundary. The amendments codify the requirement that the River Environmental overlay must apply at least to the land within 100 feet of top of bank in the Willamette River South Reach, a minimum that was adopted in the River Plan/South Reach but was inadvertently left out of the code amendments of that plan. This amendment remedies that oversight. The amendments also establish a requirement that all land within the riparian buffer area must be included in the River Environmental overlay zone boundary. This is necessary because many of the requirements of the riparian buffer area are implemented through the River Environmental overlay zone. This is criterion that should have been incorporated into this subsection as a part of the River Plan/South Reach but was not included at the time.

Additionally, the amendments remove the requirement that all mapped floodplains be included in the River Environmental. As a part of this plan, the application of the River Environmental overlay



zone to developed floodplains was determined to be unnecessary. Undeveloped floodplains are categorized as high- or medium-ranked resources so will already be within the River Environmental overlay zone, per 33.865.100.B.3.a.



Amendment #5 – Update Section “C. Restoration Projects and Mitigation Banks” to Depict Current Status

Since the release of the Proposed Draft in August 2022 there have been updates to the City’s work on restoration projects and mitigation banks. This amendment updates language in Section C of Chapter V in the Floodplain Resilience Plan to reflect changes and captures the City’s current approach to this work.

C. Restoration Projects and Mitigation Banks

To ensure that ~~In order for the City can to~~ achieve the habitat mitigation directives of the FEMA BiOp and fulfill City Council direction to contribute to the recovery of ~~the ESA-listed species,~~ a combination of regulatory updates (including those proposed in this plan) will need to be combined with and restoration and mitigation banking programs are needed. An underlying assumption of the City’s overall program – and FEMA’s guidance – is that regulatory changes alone will not provide adequate protections or improvement in habitat over time. Therefore, a key component of the City’s overall strategy is to achieve long-term preservation and protection of floodplain habitat by strengthening existing floodplain restoration programs and expanding options for mitigation banking to offset development impacts in the floodplain.

The Bureau of Environmental Services plays the primary role in floodplain restoration in the city. The Bureau designs and completes restoration projects throughout the city to help protect watershed health, manage stormwater, support salmon recovery, reduce flooding and improve habitat for plants, fish and wildlife species, including those that are considered threatened or endangered. Restoration work strives to repair the damage done to our environment and natural systems (like rivers and streams) by human development and activities, and protect people, property and city assets from flooding, especially in the face of climate change.

The Bureau of Environmental Services ~~frequently~~ restores in-stream habitat and floodplains, focusing on floodplains that ~~are at a high risk for small-scale, but frequently flooding and~~ areas with high potential habitat for salmon spawning and rearing. Healthy, connected floodplains protect people, property, water quality and habitat from fast moving, ~~polluted~~ stormwater runoff, while also providing safe places for refuge for fish and other aquatic life to seek refuge during a floods, and allow for Floodplains also provide infiltration that cleans and cools the water ~~while also and~~ replenishing groundwater that provides an important sources of stream flows during the hot, dry summer months. Typical floodplain habitat improvements ~~include, but are not limited to,~~ may provide a variety of functions, including restored connections between waterbodies and ~~reconnecting rivers and streams to existing or newly~~ restored habitat and ~~removing;~~ removal of fish passage barriers; ~~re-created~~ or enhanced riparian wetlands and other pollutant reduction techniques; ~~and providing complex in-water enhancements,~~ such as spawning and rearing grounds, shallow water habitat, and shady, vegetated, slow-moving off-channel areas, and ~~which offer~~ cold water refugia for fish as they rear, migrate and spawn in and



through Portland. These projects are often voluntary efforts to meet the bureau's charter, mission, and values and are guided by regulatory priorities, watershed and asset management plans and ~~other the~~ bureau's other watershed priorities. Because these projects are mostly voluntary, the City cannot provide assurances to FEMA that the projects will continue to happen over time.

Providing ~~increased~~ certainty on future restoration projects is necessary to achieve consistency with the FEMA BiOp and Draft Implementation Plan – and the Endangered Species Act, more generally. To do that, the City ~~must propose~~ institutionalizing how restoration sites for Portland's ~~13~~ protected salmon and steelhead species will be identified, acquired and restored, which is currently proposed through strengthening the City's charter. ~~Adequate funding~~ Ongoing investment must be provided for acquisition and restoration of these sites ~~and to ensure that the habitat benefits of the restoration program are quantified as a contributor to the City's overall FEMA BiOp compliance strategy,~~ which are currently, this work is captured by included in BES' new Portfolio structure and process and in the City's Mitigation Action Plan.

In addition to continuing a floodplain restoration program, it is important to ~~increase~~ the availability of both private and (potentially) public mitigation banks as an option for off-site mitigation of development impacts ~~is an important step in providing~~. This will provide additional flexibility in meeting expanded or increased mitigation requirements. Mitigation banks can be a more effective option than on-site mitigation or other off-site options because they focus mitigation investments into larger ~~mitigation/restoration~~ projects designed and managed by professionals with long term stewardship obligations, ~~as compared to on-site mitigation or other off-site options~~.

Mitigation banks may provide credits ~~for~~ to offset habitat impacts and/or flood storage losses. Currently, there are three ~~two~~ established mitigation banks within the City of Portland: the Linnton Mill restoration, and the Harborton habitat restoration sites, ~~and the Alder Creek restoration project.~~ Harborton ~~and Alder Creek are~~ is currently only available for impacts identified through a Natural Resource Damage Assessment (NRDA) process ~~at this time. These private banks can be~~ The Linton Mill bank has been approved by the U.S. Army Corps of Engineers to sell credits under the Clean Water Act's Section 404 permit system and by the Oregon Department of State Lands to sell credits under the Removal/Fill permits program. ~~The Linnton Mill restoration is slated to provide credits to offset private development. Owners of the Linnton Mill restoration site have applied for approval to sell credits for impacts related to Section 404 permits also been approved to sell cut/fill credits under Portland City Code Title 24. Neither Linnton Mill or Harborton are approved to sell federal Endangered Species Act credits or credits to meet Portland's Zoning Code requirements.~~

Because mitigation banks are typically large-scale, self-financed, and are intended to support regulatory market demands, effective planning and financing of mitigation banks can be complex and may sometimes benefit from or require a jurisdictional partner for feasibility.



City of Portland staff have been working with NMFS' representatives of the Portland Harbor Trustee Council to develop an approach where ~~these~~ existing mitigation banks will be able to sell flood storage credits to support future changes to the City's Building Code (Title 24), Chapter 24.50 requirements for fill and structures placed in the floodplain. An accounting methodology for these credits has been developed by NMFS and it is expected that future projects will be able to utilize them to meet City compensatory excavation (cut) mitigation requirements. The details of this process will be addressed as the Chapter 24.50 update project moves forward.

Proposed Updates

Though the availability of mitigation banks is currently limited, updates were made to the Zoning Code as a part of the *River Plan / South Reach* to allow for the use of mitigation banks for development impacts to existing habitat areas (in 33.475, River Overlay Zones, and 33.865, River Review). Similar updates for the Environmental overlay zone will be a part of the Economic Opportunities Analysis Zoning Code update package and are anticipated to allow for the use of mitigation banks, as well.

The City is currently ~~working on the development of~~ developing a potential pilot mitigation bank at the east end of the Hawthorne Bridge, in a riverfront area (~~referred to as Eastbank Crescent~~). The pilot mitigation bank is about 2.7 acres and will be initiated as a part of the OMSI Master Plan development and will be used, in part, to support the creation of an urban-scale mixed use neighborhood in the Central City. An inter-bureau Finance Working Group ~~was has been~~ established to evaluate different funding options and bank development structures that could be used by the City for the Eastbank Crescent mitigation bank. The Finance Working Group released its report on potential finance mechanisms and a public governance structure to City bureau leaders in March 2023. ~~is expected to provide recommendations on how the City should move forward by the end of 2022.~~

The addition of this mitigation bank will be an important component of the City's successful implementation of the FEMA BiOp guidance, by providing another off-site option for meeting habitat and compensatory excavation (cut) mitigation requirements. As a part of this effort, the City is also partnering with OMSI, Tribal Partners, and state agencies to identify barriers and opportunities for developing a robust mitigation banking program to expand restoration opportunities within the city limits.

Specific actions proposed to implement these changes for restoration and mitigation sites can be found in the Action Plan in Chapter VI., A. Action Plan (see page 61).



Amendment #6 – Update Action Plan to Depict Current Information

These amendments update the Action Plan in Chapter VI, Implementation, to better depict current information for two actions. MM-1 is updated to recognize that working with FEMA on the development of a new estimate of the 100-year floodplain is a City priority and will be coordinated across a number of bureaus, including the bureaus of Development Services, Environmental Services, and Planning and Sustainability. Amendments to RG-1 update the description of the Chapter 24.50 updates to represent what is currently proposed in the Bureau of Development Services' BDS Chapter 24.50 project and clarify that Bureau of Development Services is the lead on that project.

#	ACTION	ADOPT WITH PLAN	NEXT 5 YEARS	6-20 YEARS	ONGOING	LEAD	PARTNER(S)
MAPPING AND MODELING							
MM-1	Floodplain map update by FEMA. Work with other governmental entities with jurisdiction along the Willamette River to advocate for the prioritization of FEMA's adoption of a new 100-year floodplain extent using the outcomes of the U.S. Army Corps of Engineers (as a part of the Oregon Silver Jackets Team) 2022 Willamette River modeling effort.		✓			<u>BDS</u> BPS <u>BES</u>	FEMA OGR Metro Other Lower Willamette River jurisdictions
REGULATORY UPDATES							
RG-1	<p>Title 24, Chapter 24.50. Amend Title 24, Chapter 24.50, Flood Hazard Areas, to incorporate FEMA's compensatory excavation (cut) guidance included in the FEMA BiOp and Draft Implementation Plan. Updates are expected to include the following:</p> <ul style="list-style-type: none"> Add a definition for "flood displacement" to require compensatory excavation (cut) for the placement of fill (i.e., soil) and structures in the floodplain. Currently, excavation is required only for placement of fill. Increase compensatory excavation (cut) requirements for the high hazard area (2:1), riparian buffer area <u>50-foot setback area</u> (1.5:1) and undeveloped remainder of the FEMA 100-year floodplain (1.5:1). <u>Developed floodplains will still be subject to balanced cut/fill requirements (1:1).</u> Allow for the use of mitigation bank credits to satisfy compensatory excavation (cut) requirements and define a process for tracking mitigation bank credits over time. 		✓			BDS <u>BPS</u> <u>BDS</u> BES Port Public Private	



Amendment #7 – Add Zoning Quarter Section Maps

This amendment adds the existing and proposed zoning quarter section maps into Chapter VI, Implementation, as Section D., Overlay Zone Map Amendments by Quarter Section.

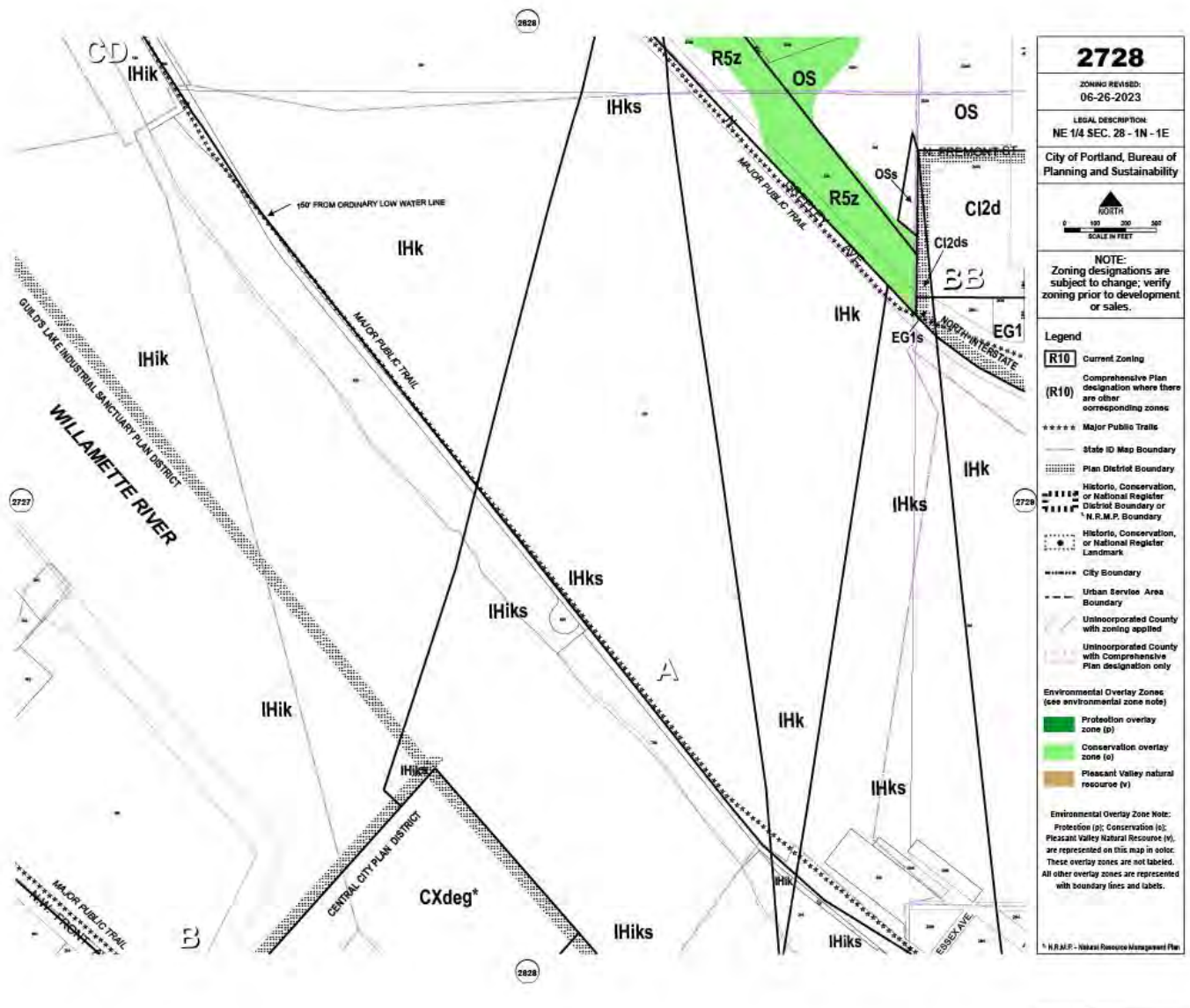
Amend Table of Contents

VI. Implementation

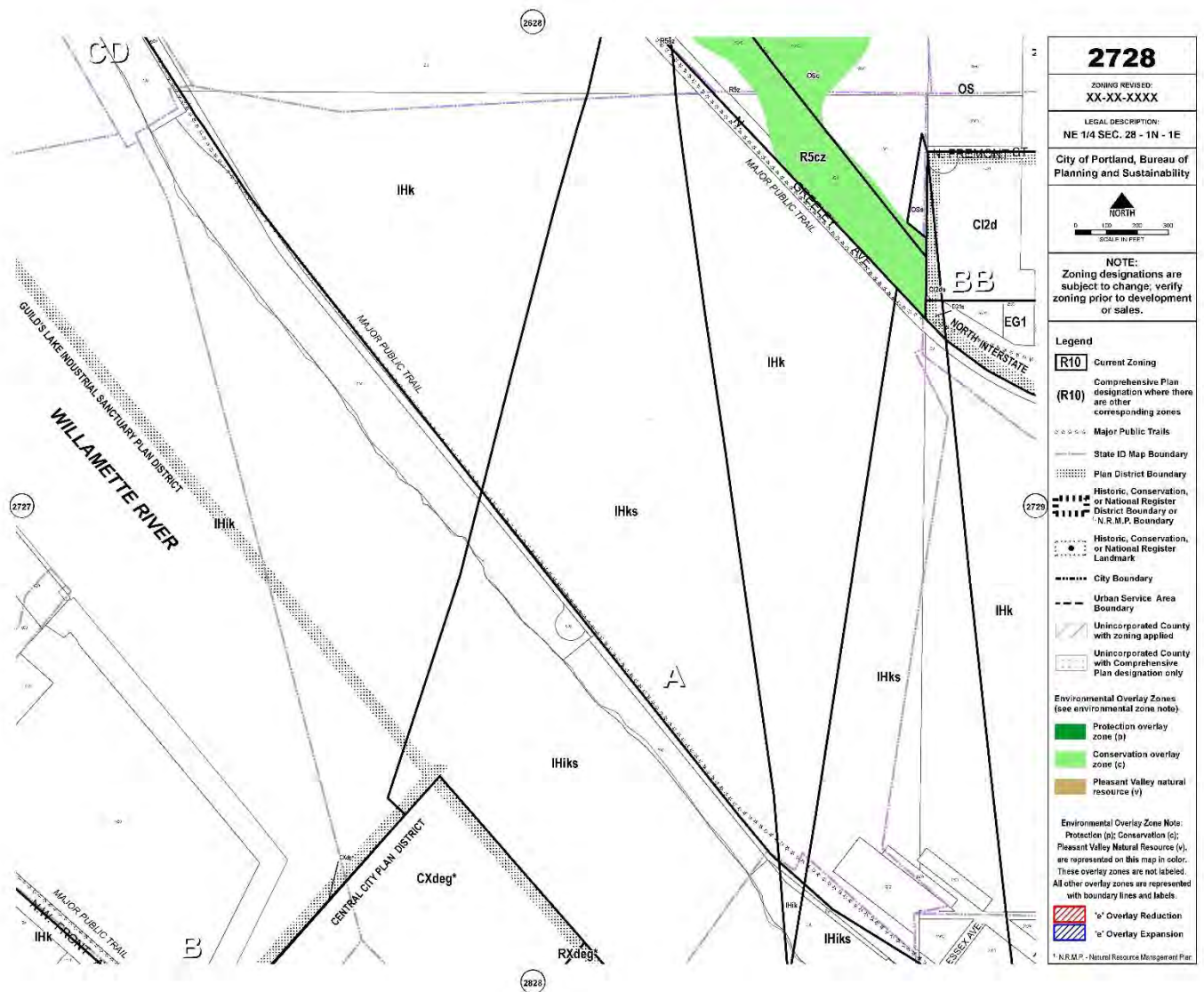
- A. Action Plan
- B . Updates to Applicable Natural Resource Protection Plans
- C. Zoning Code Amendments
- D. Overlay Zone Map Amendments by Quarter Section



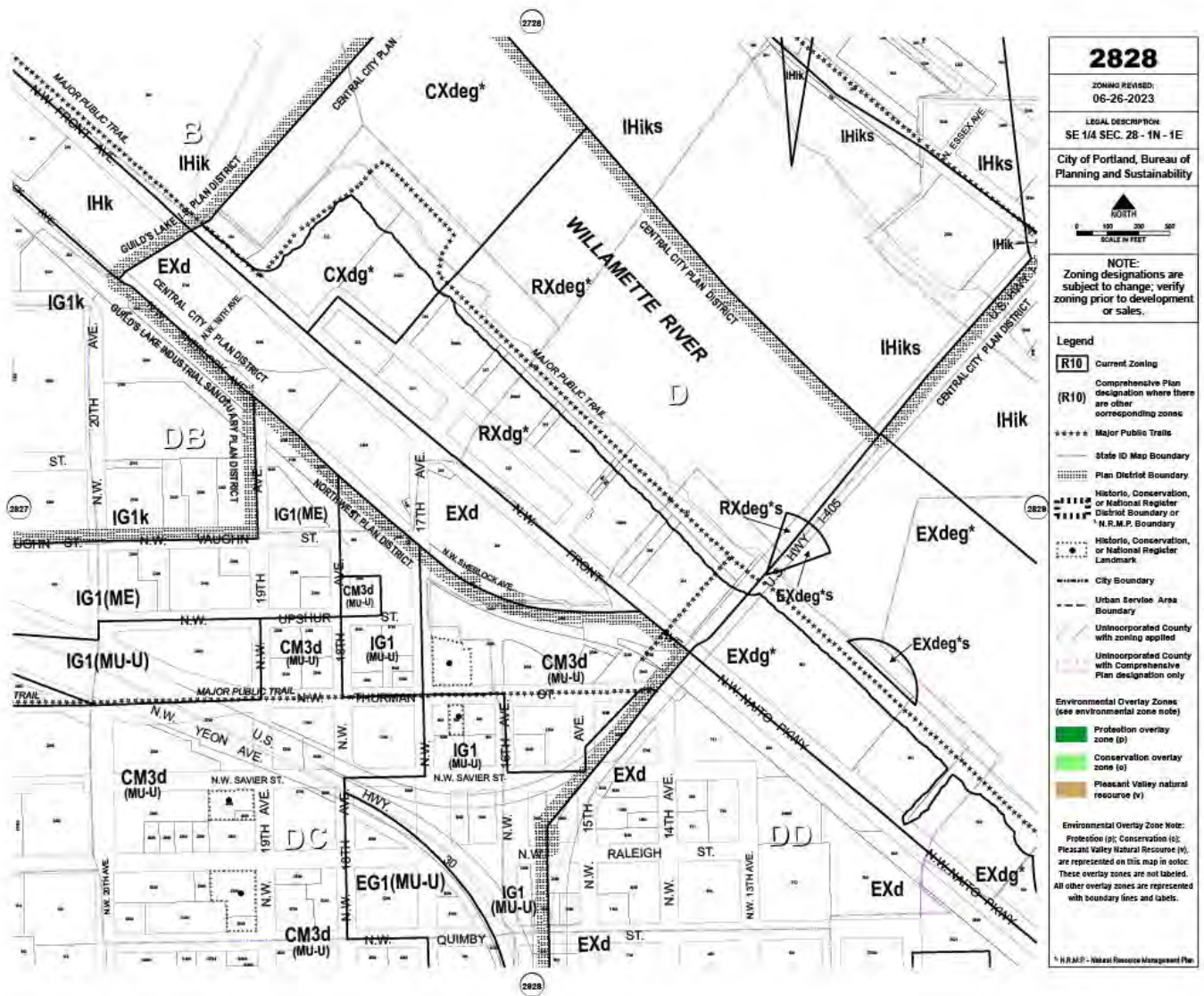
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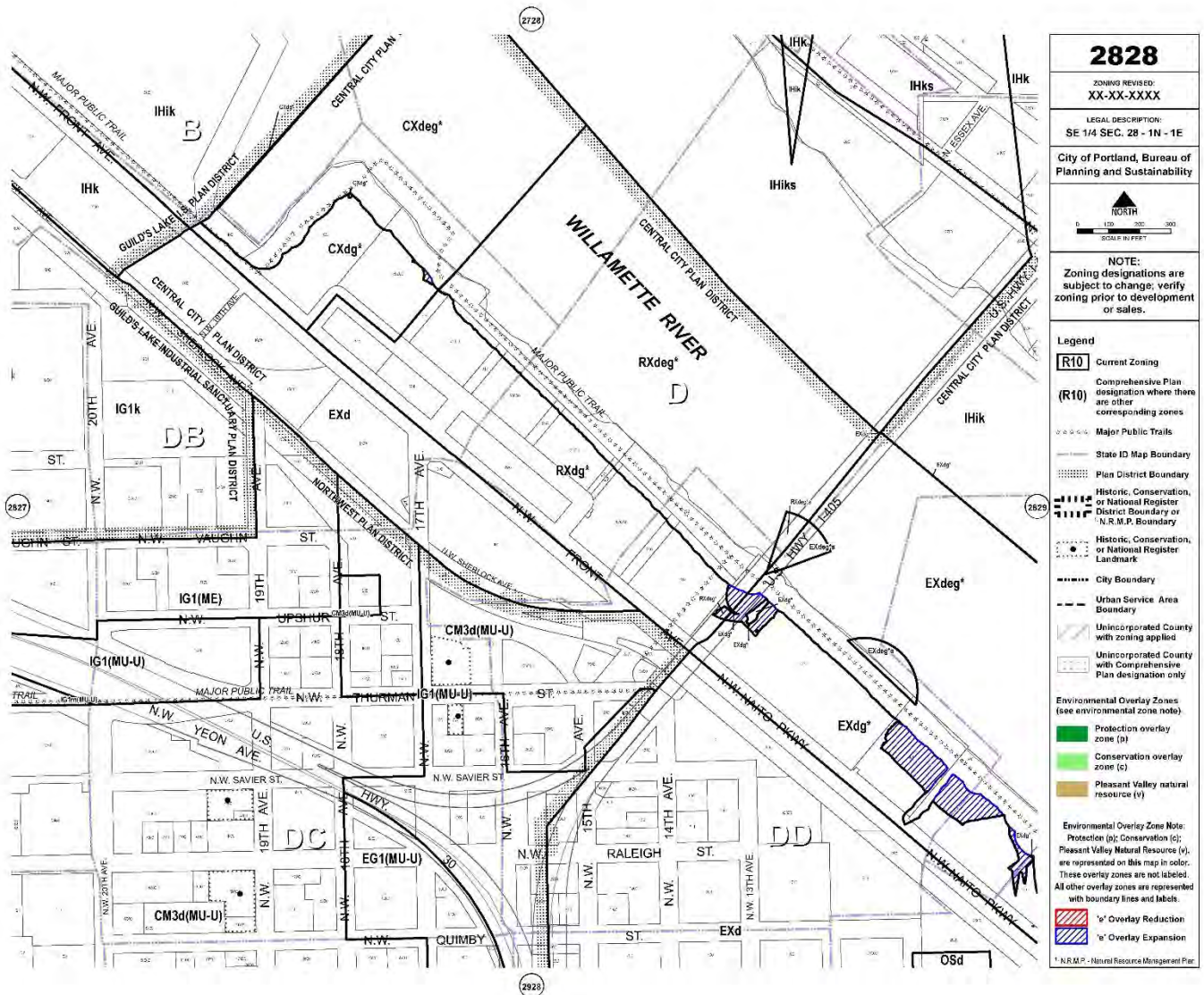
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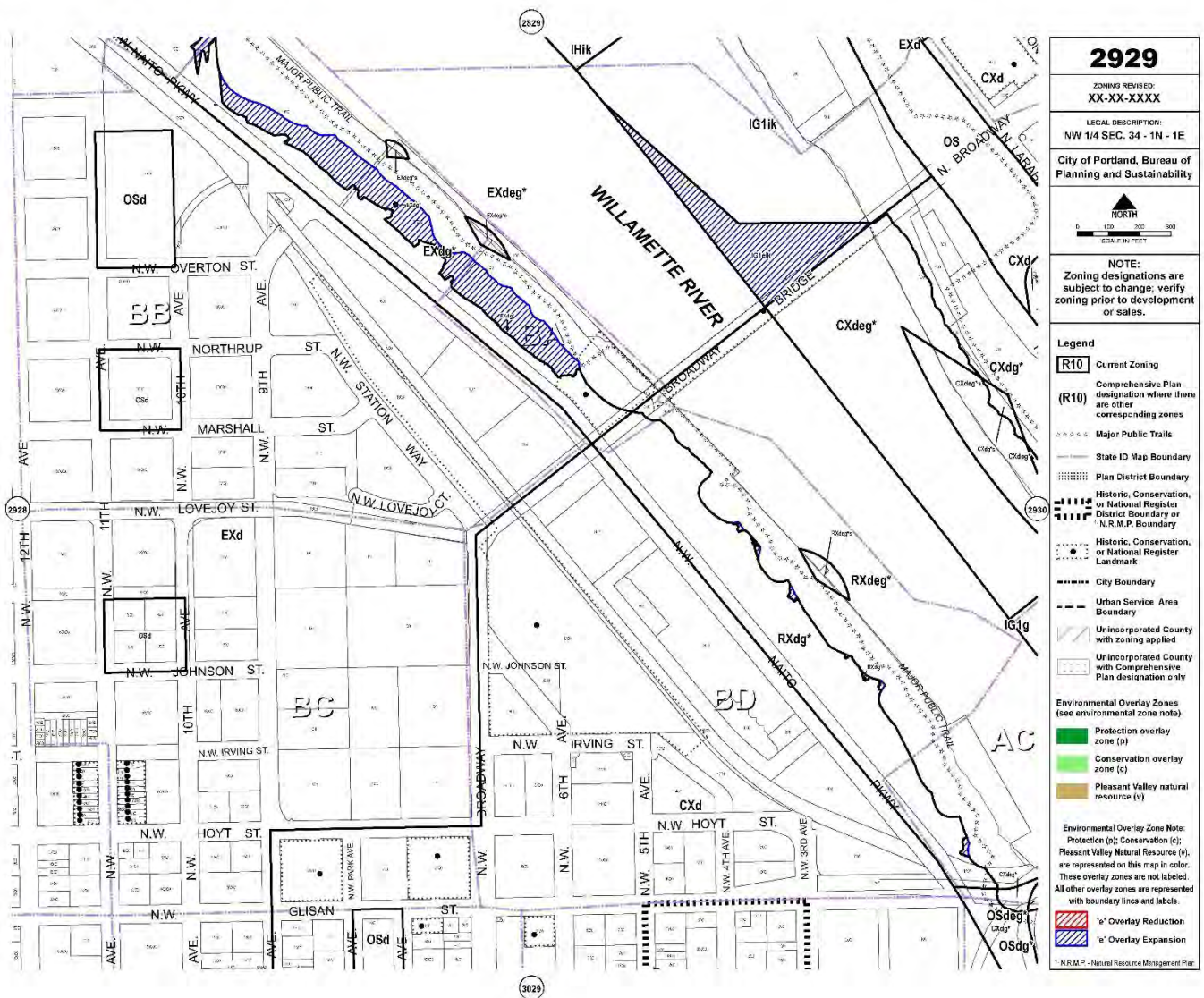
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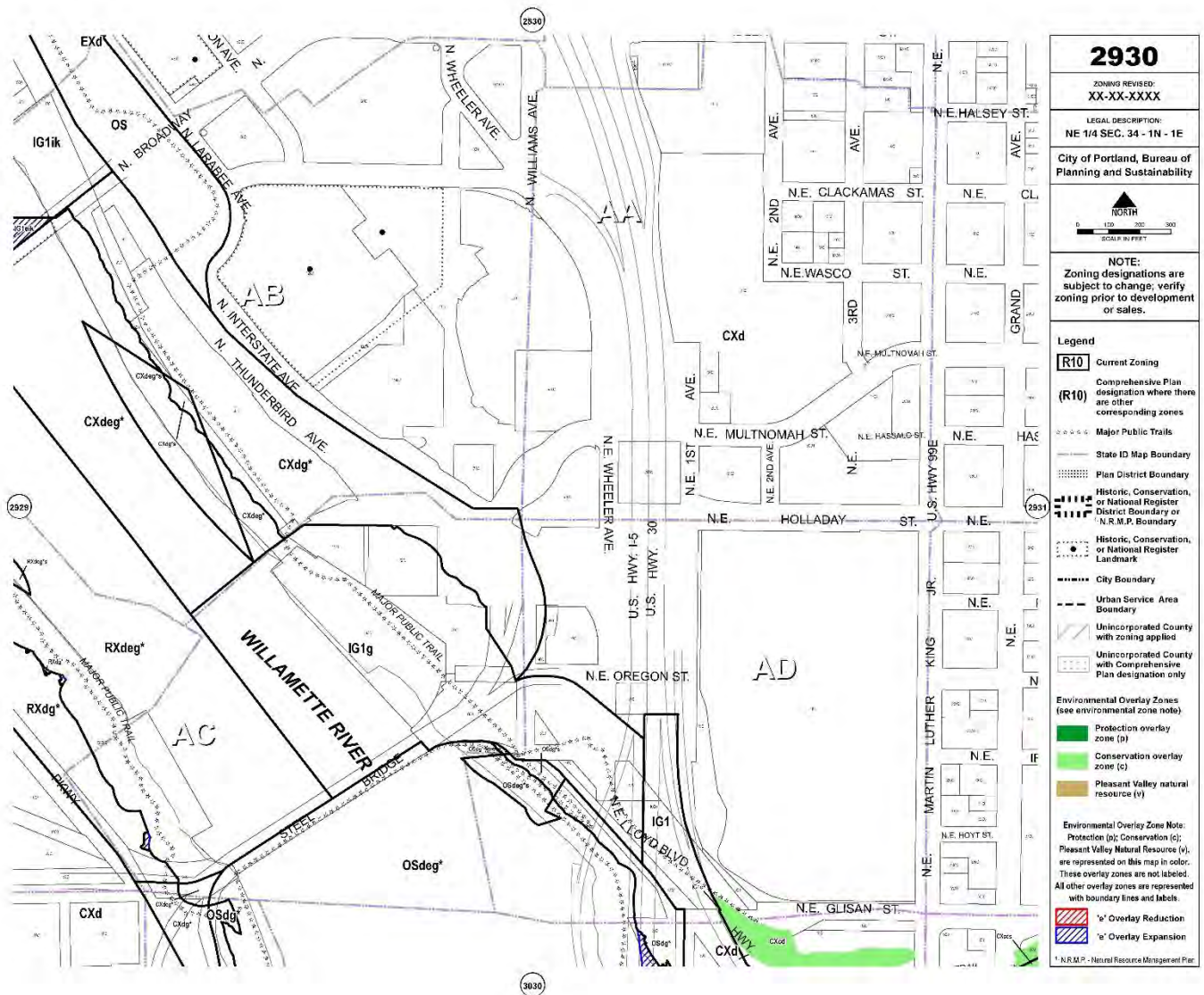
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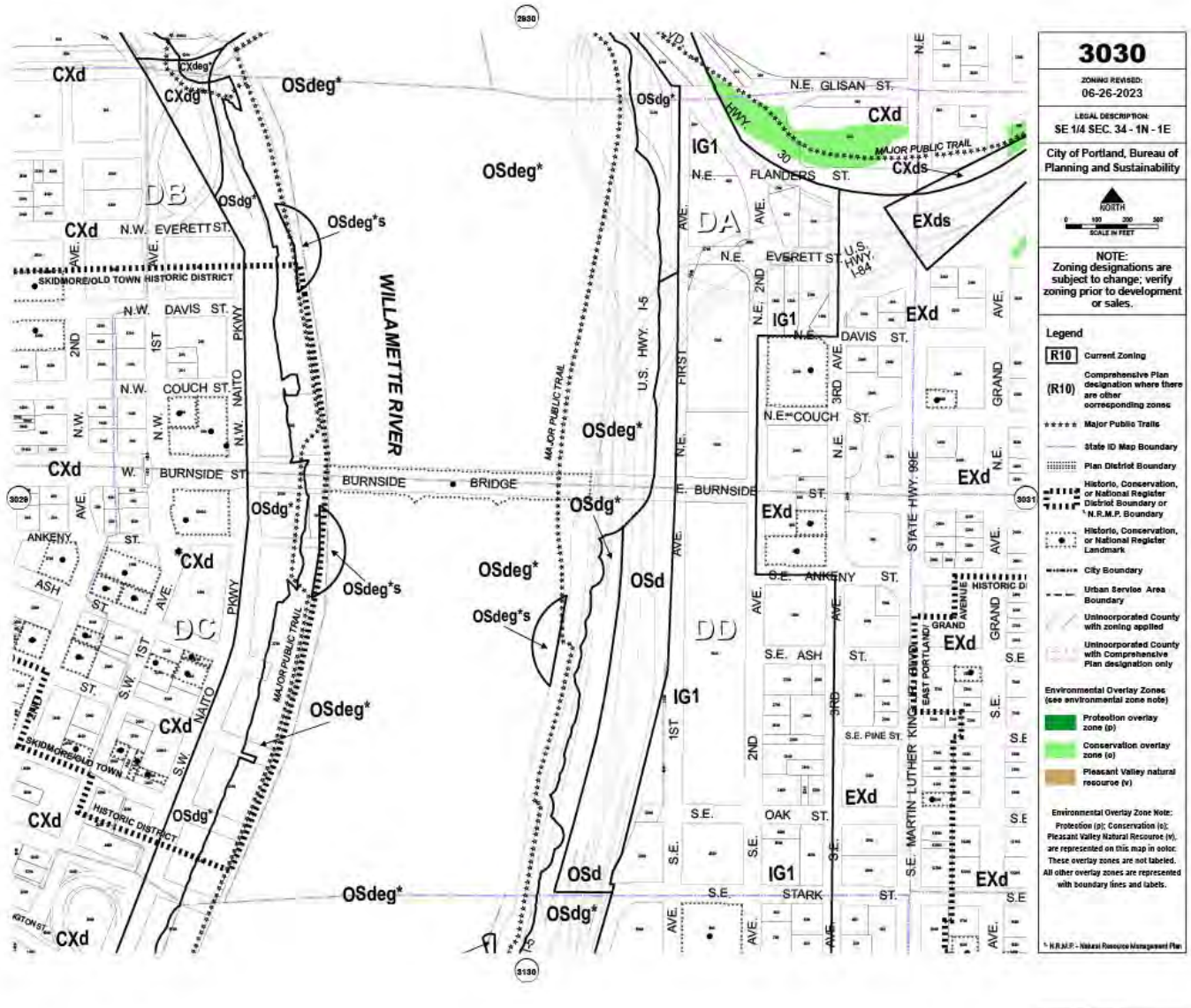
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Proposed Quarter Section Map: 2930



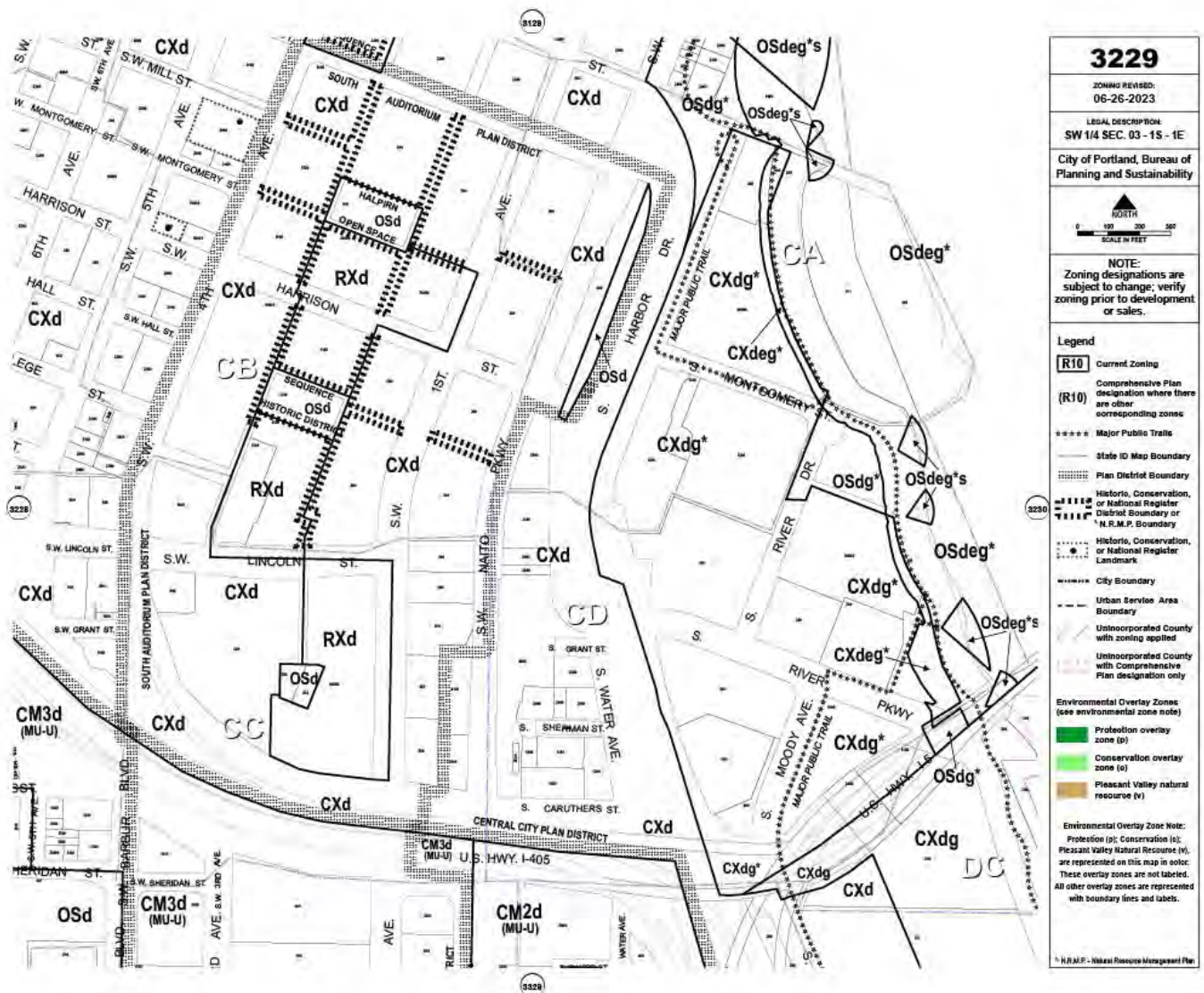
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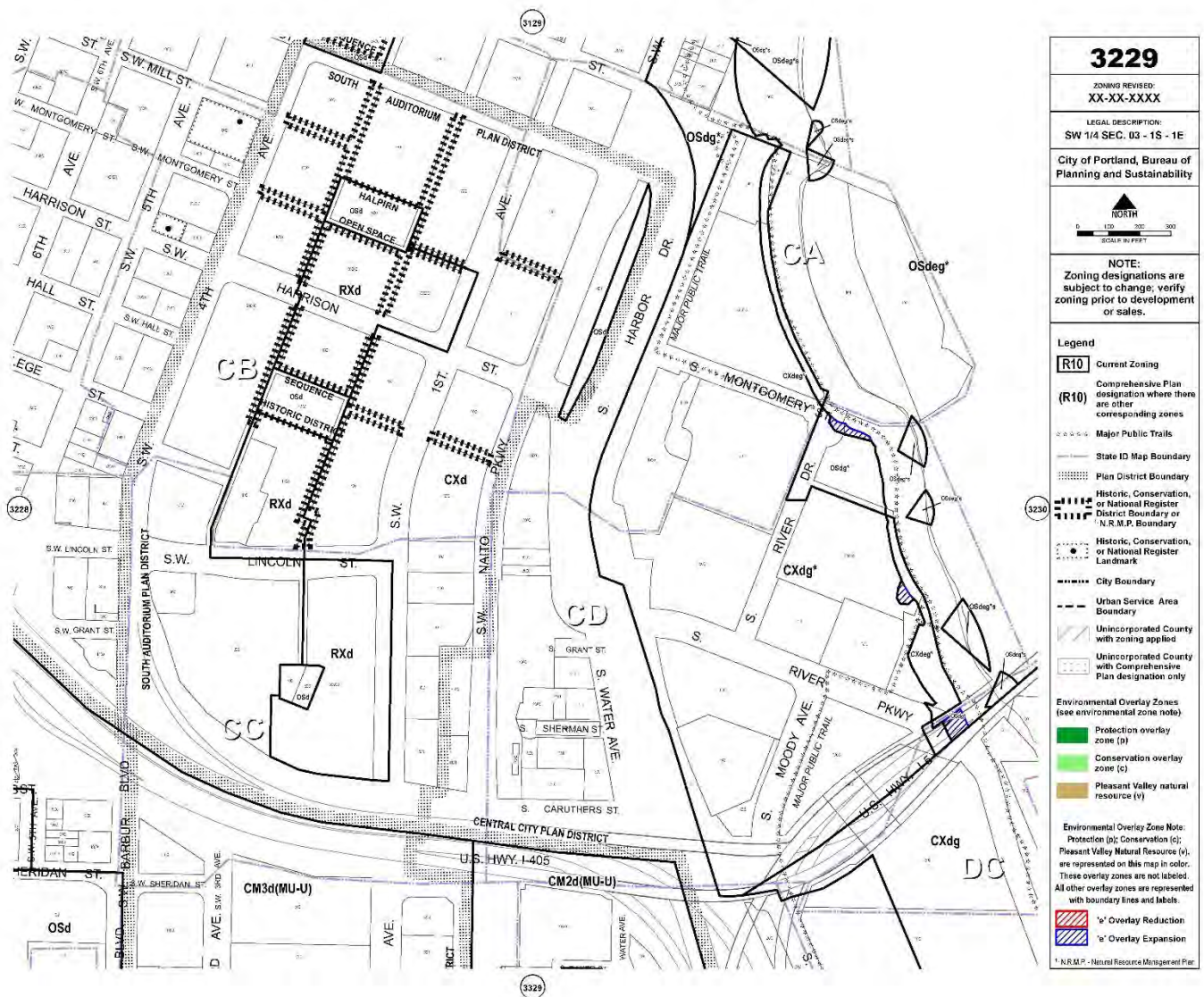
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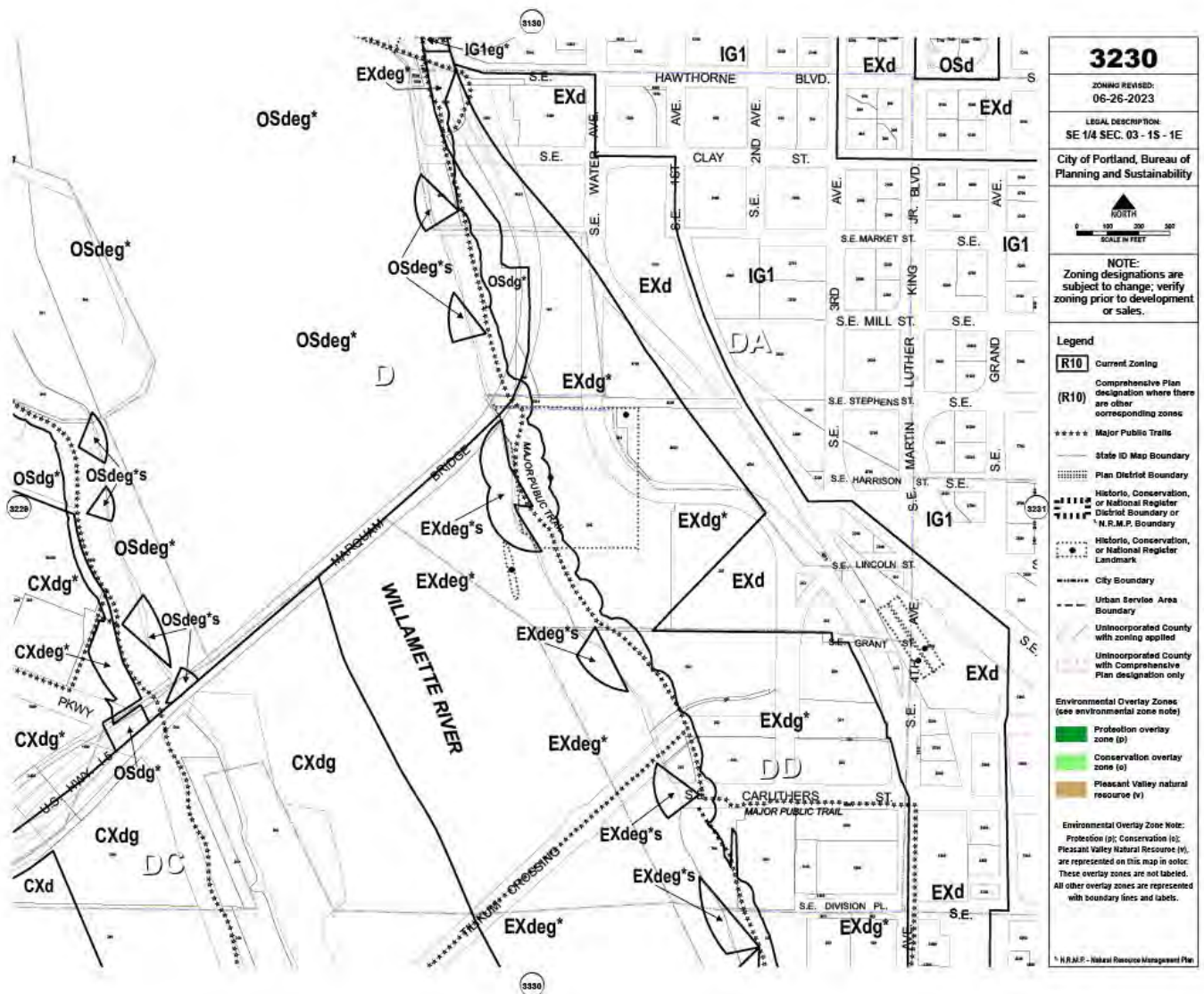
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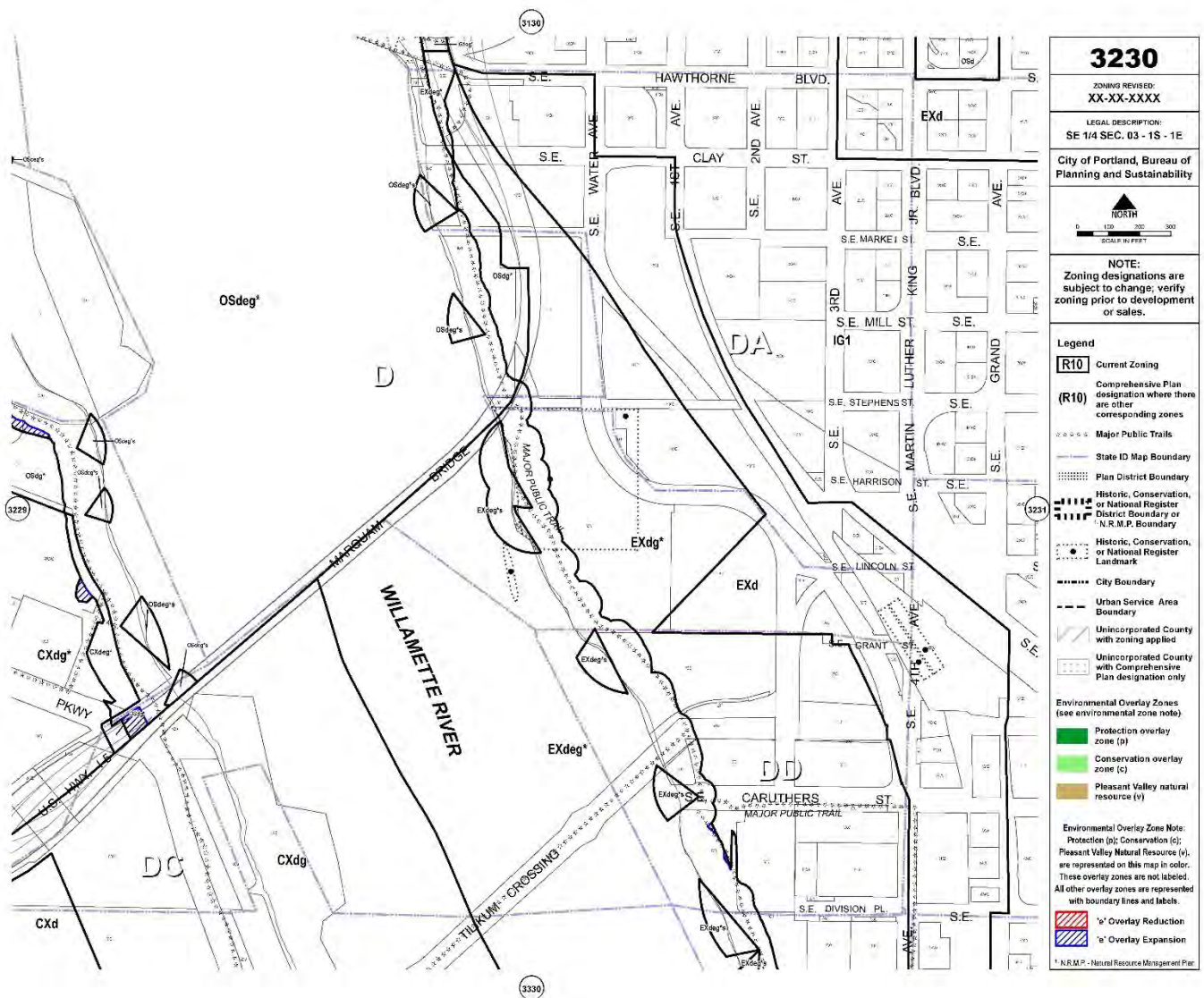
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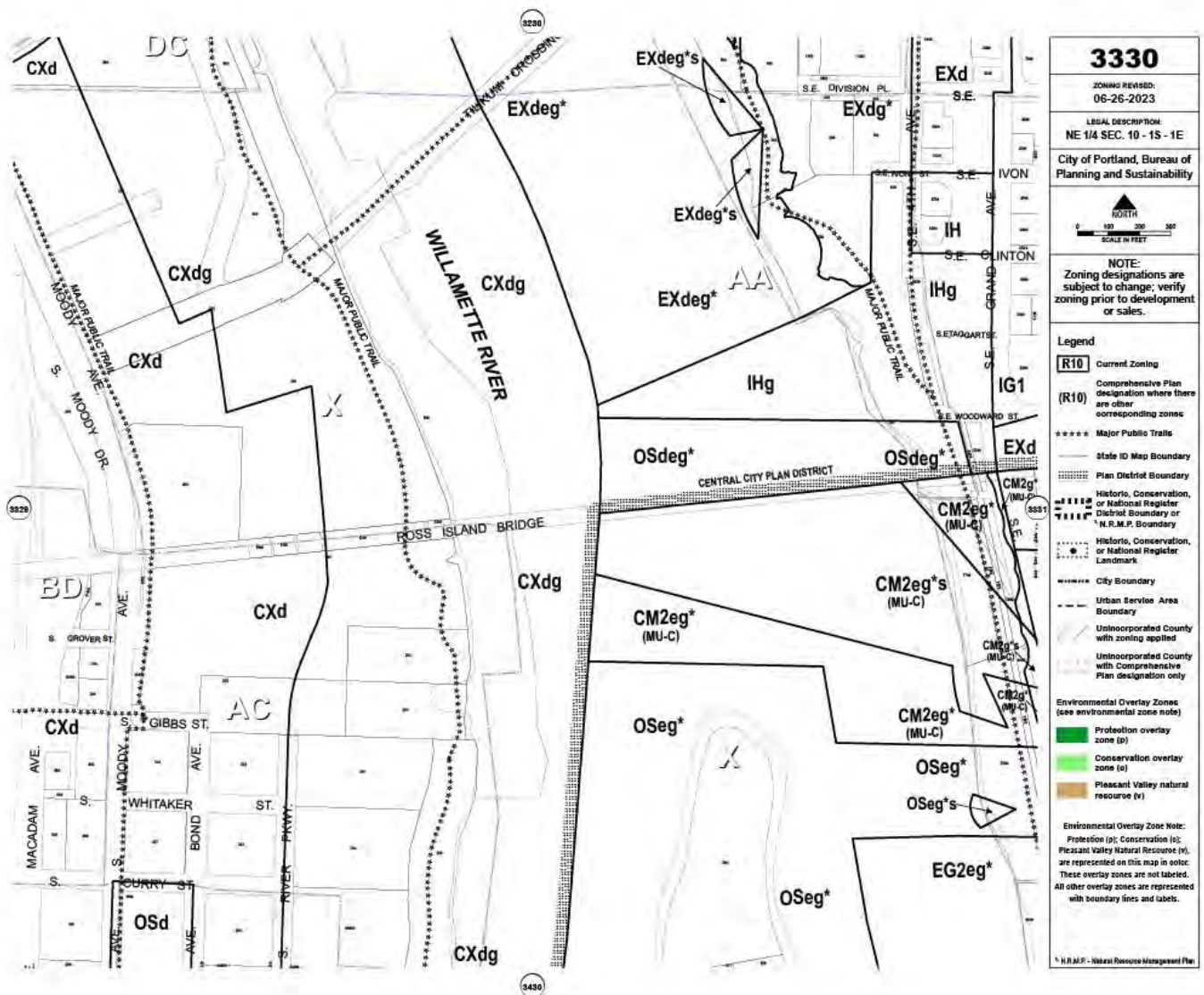
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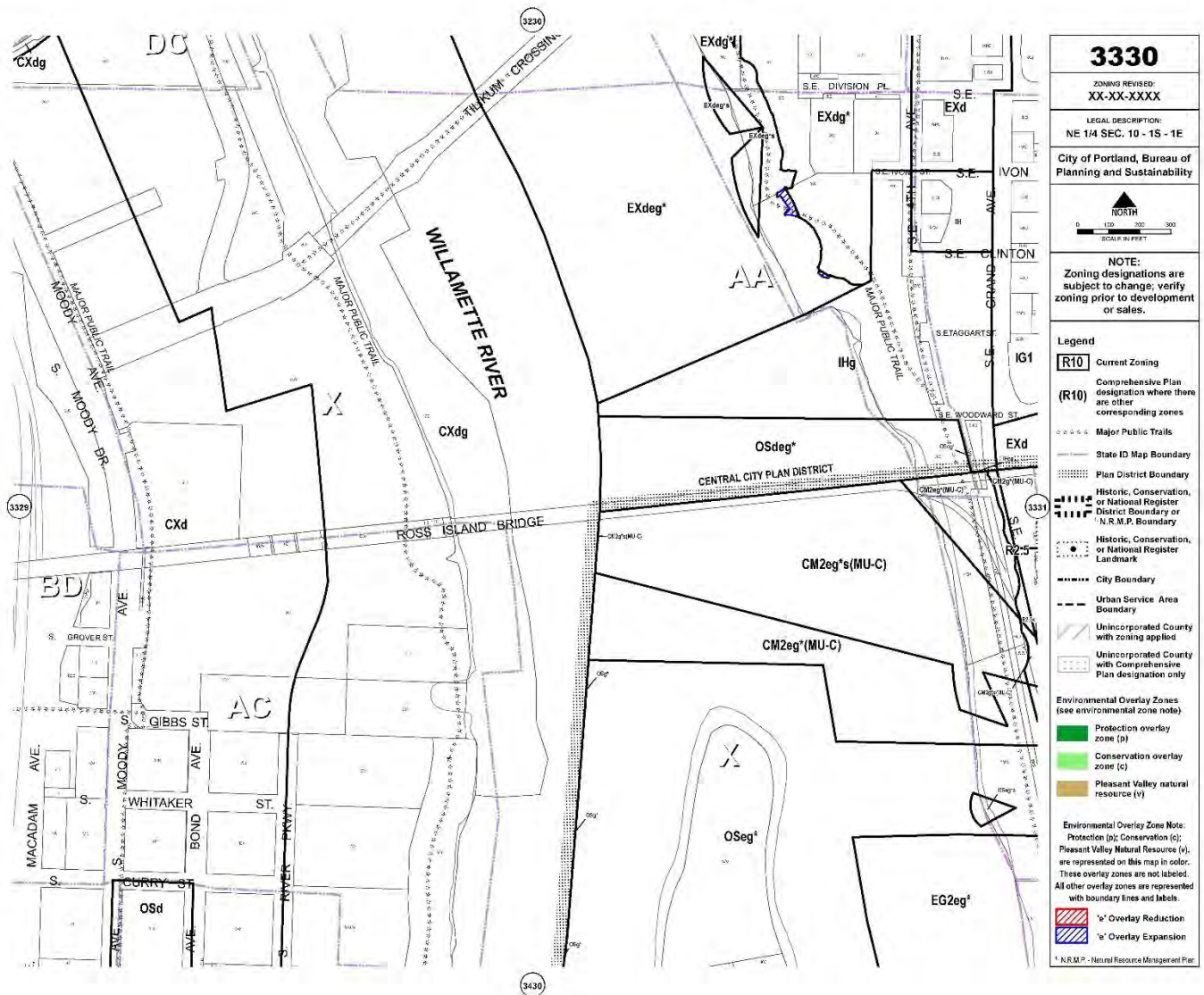
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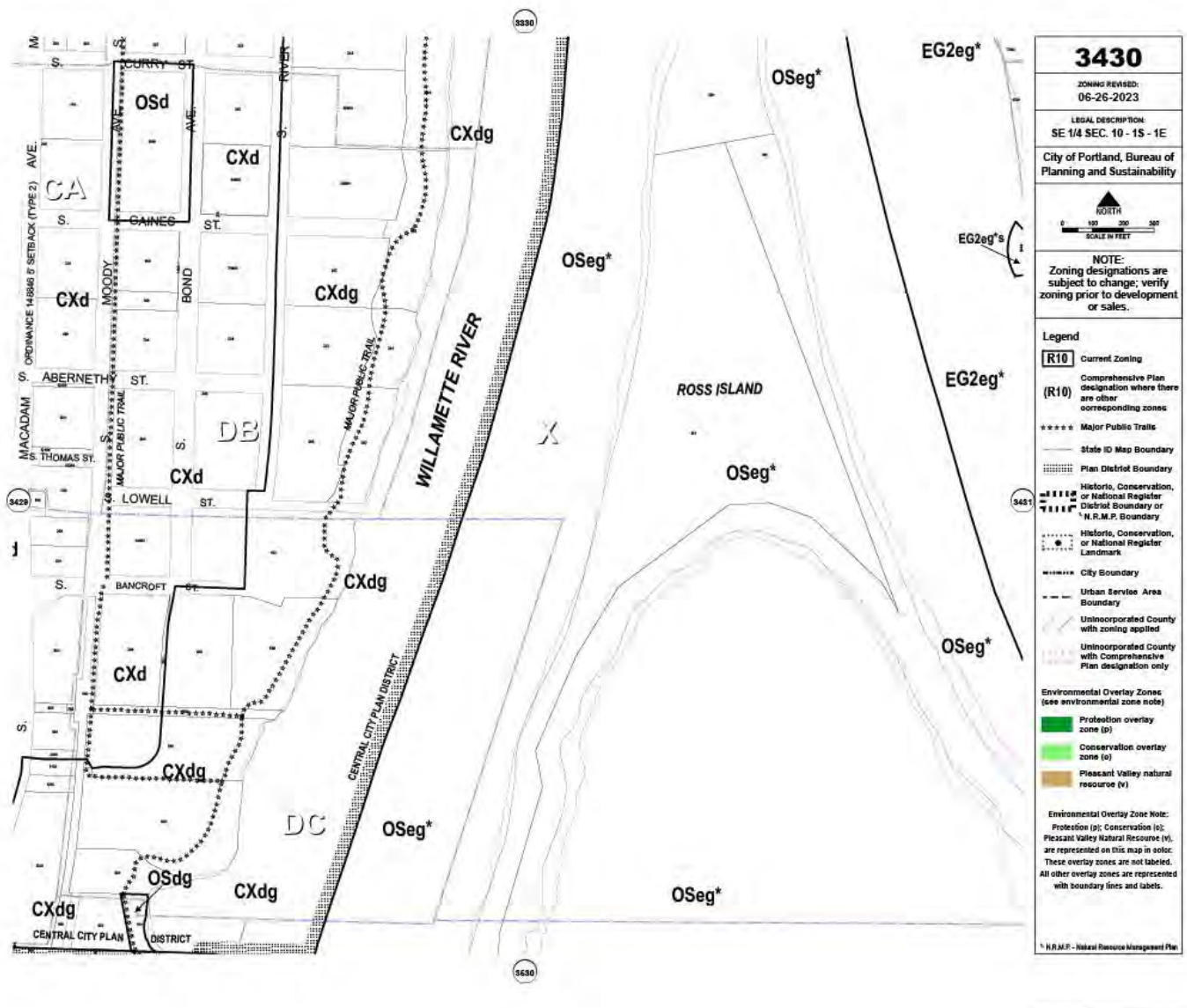
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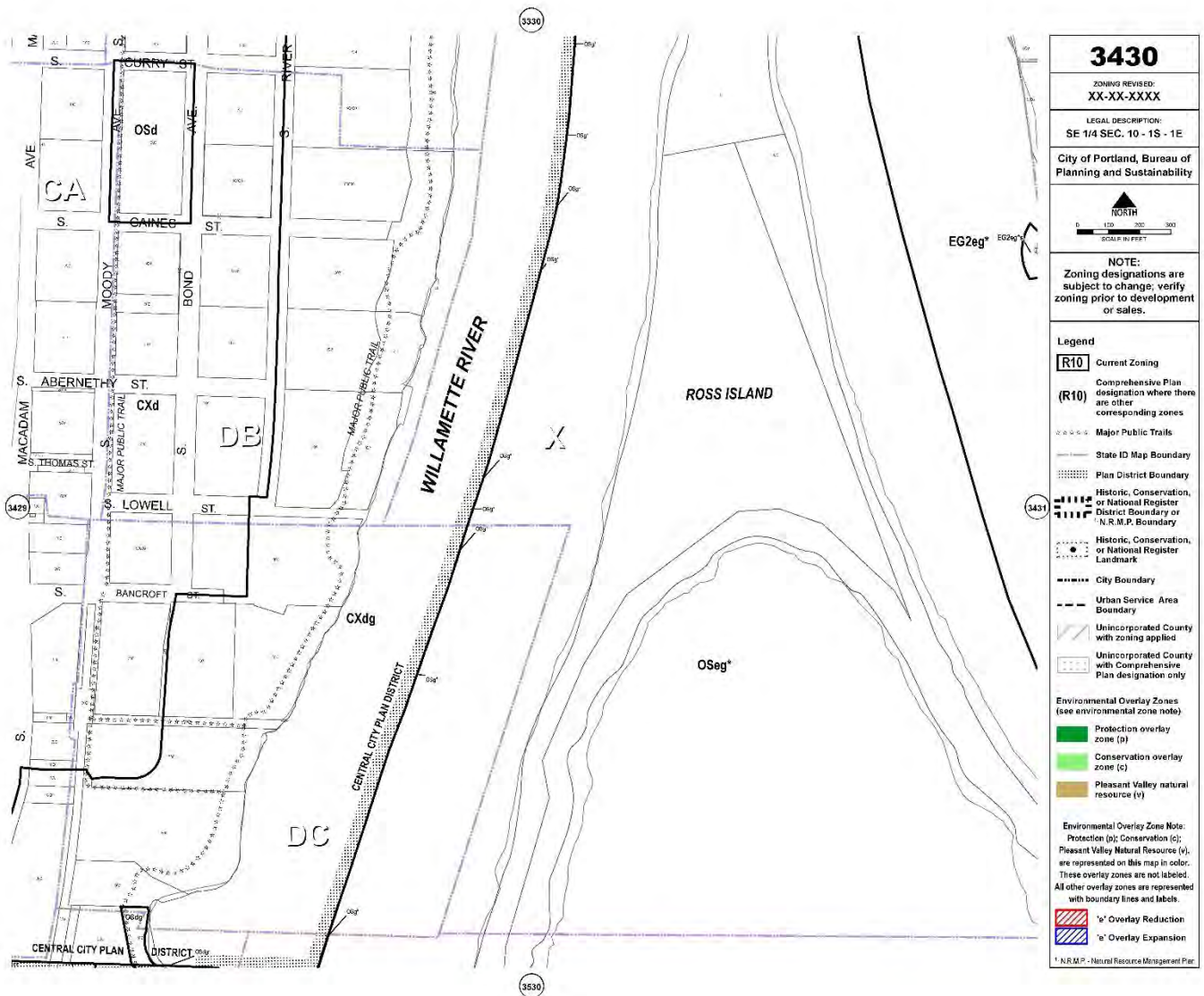
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Existing Quarter Section Map: 3430



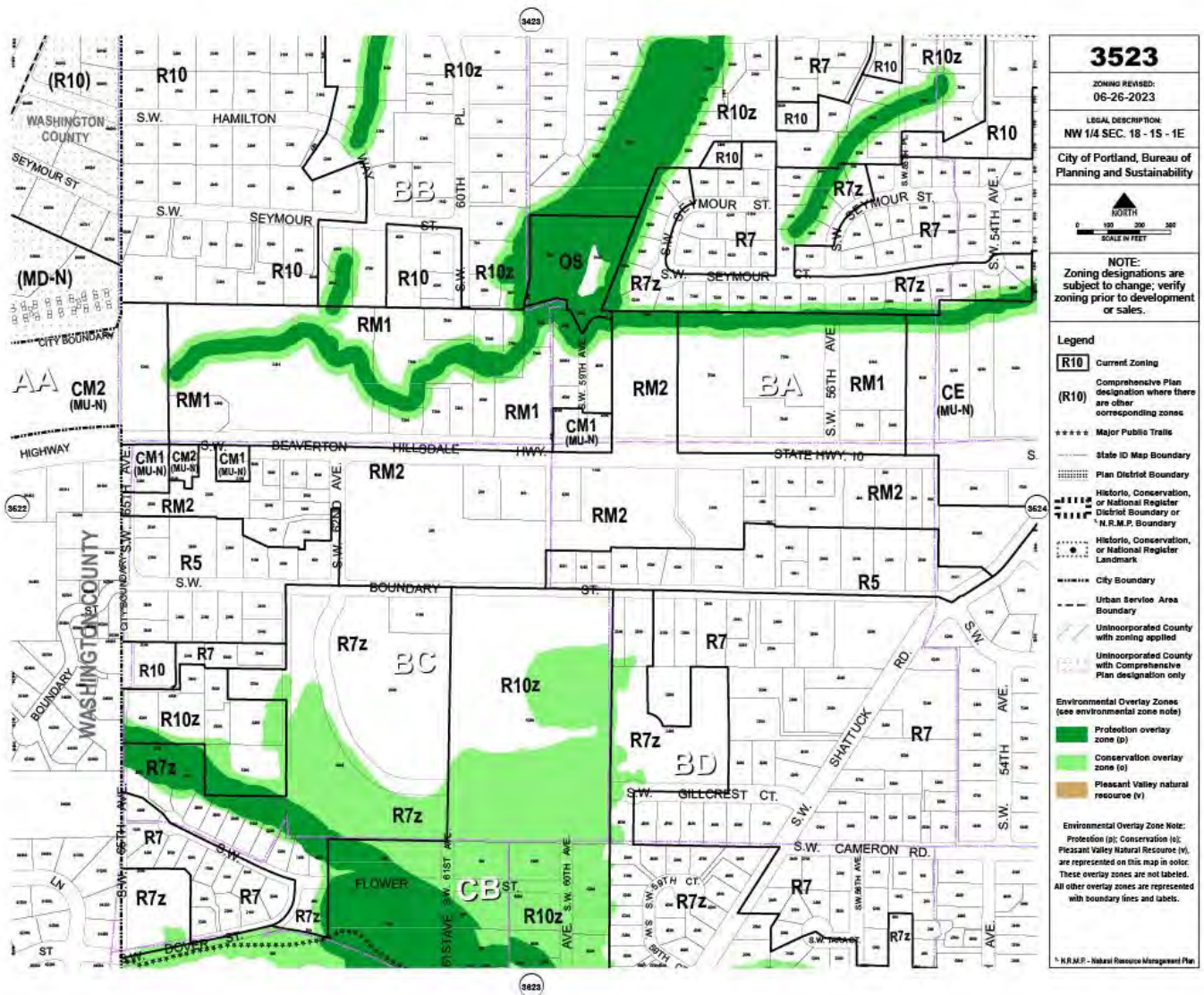
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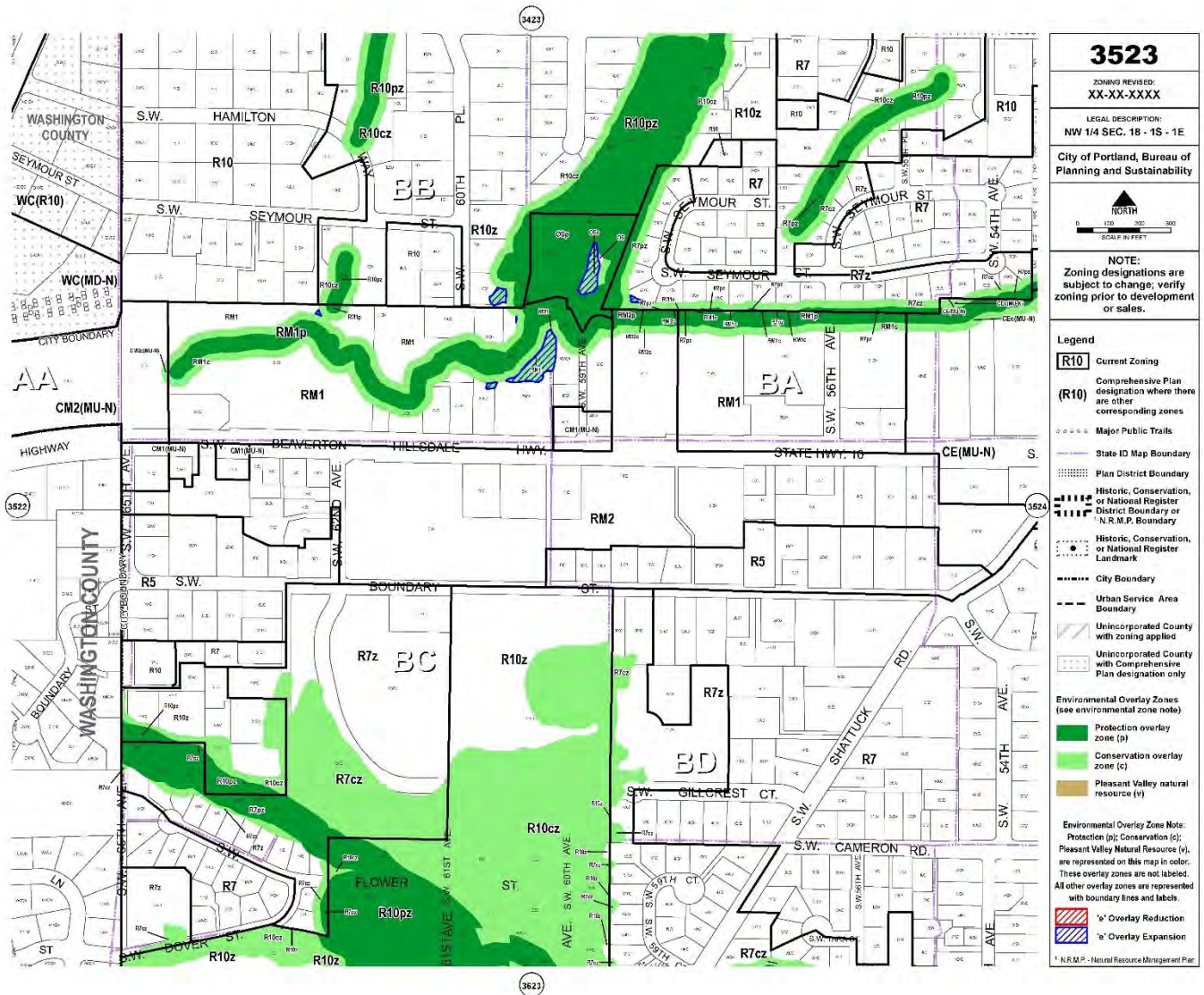
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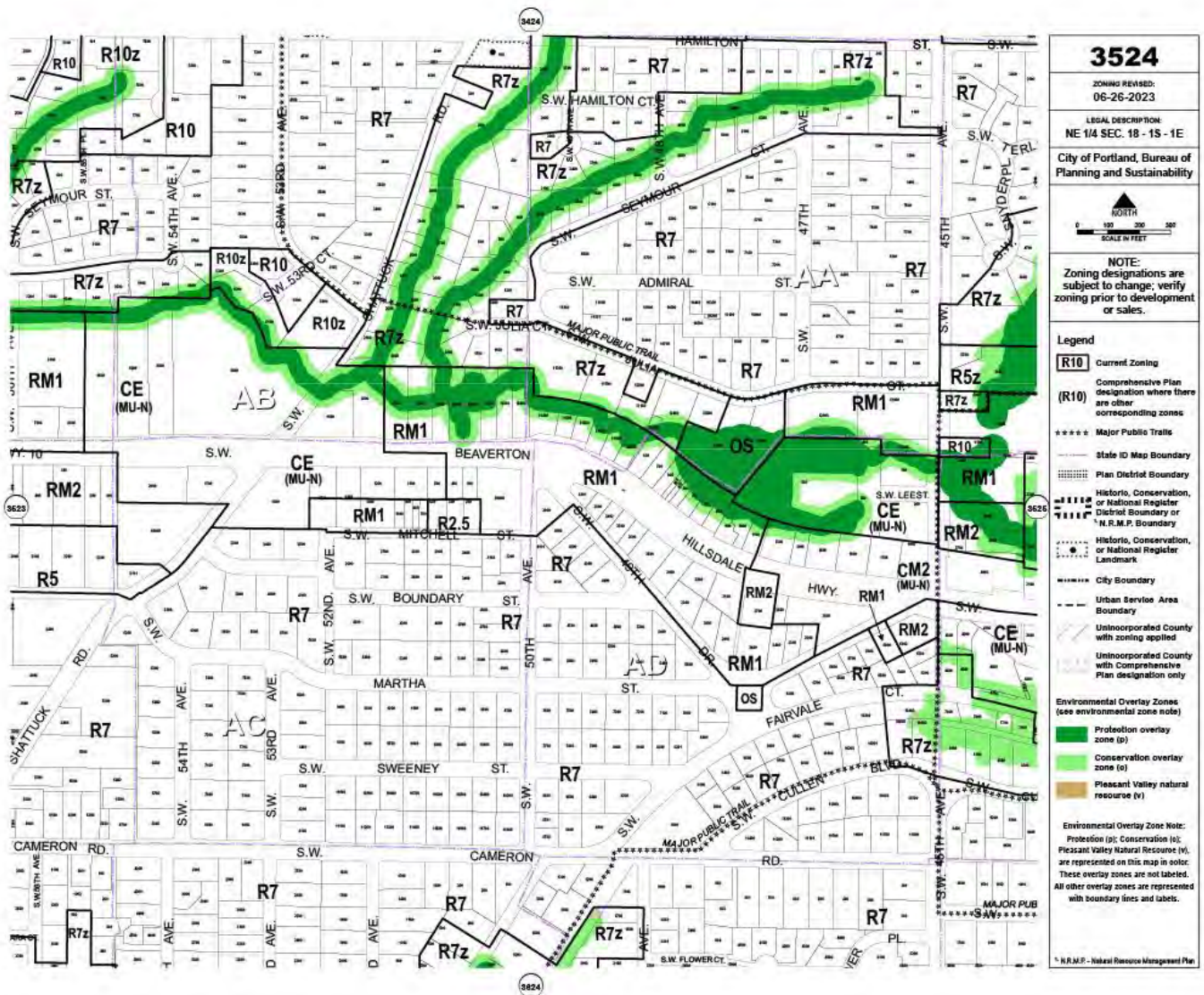
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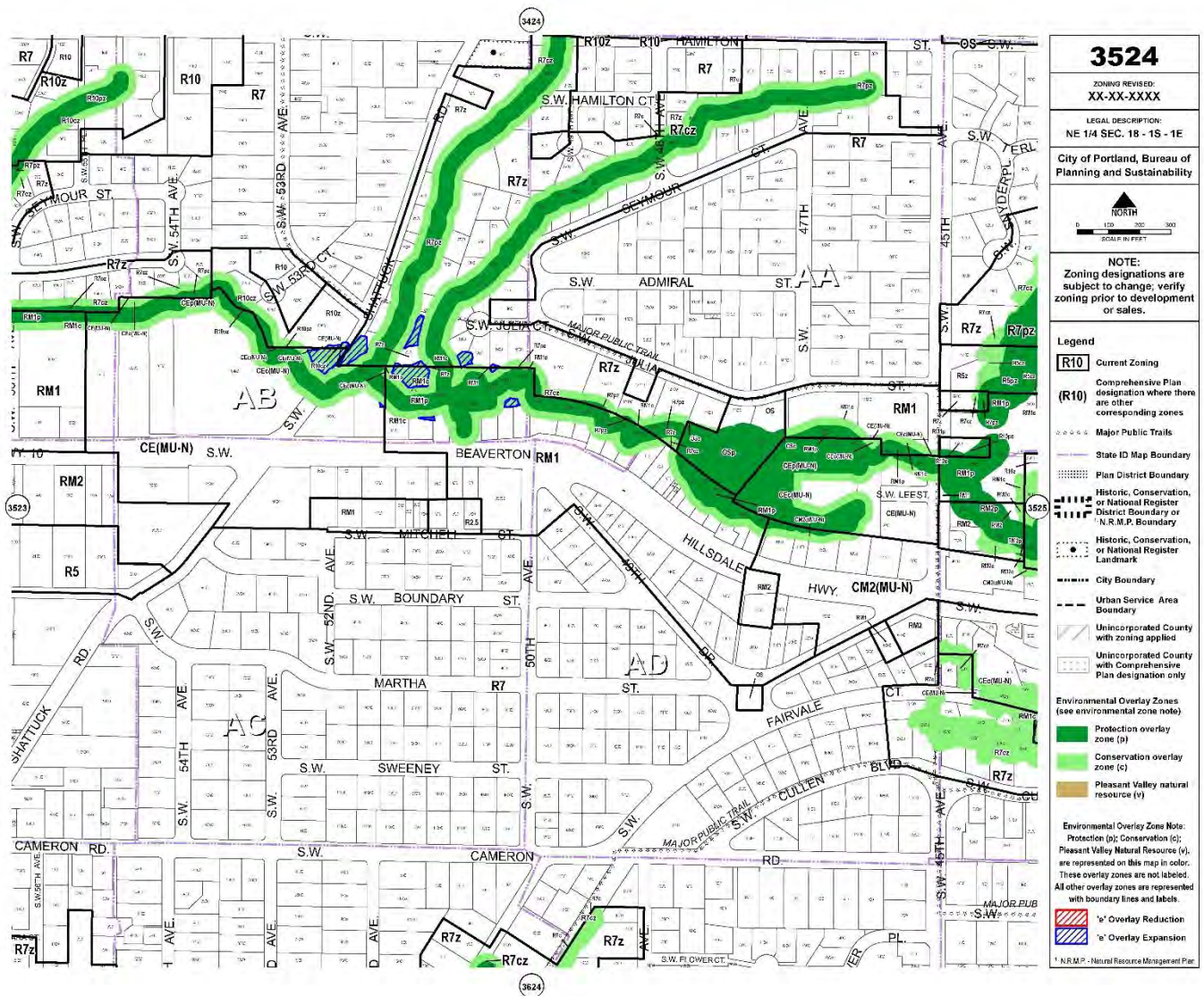
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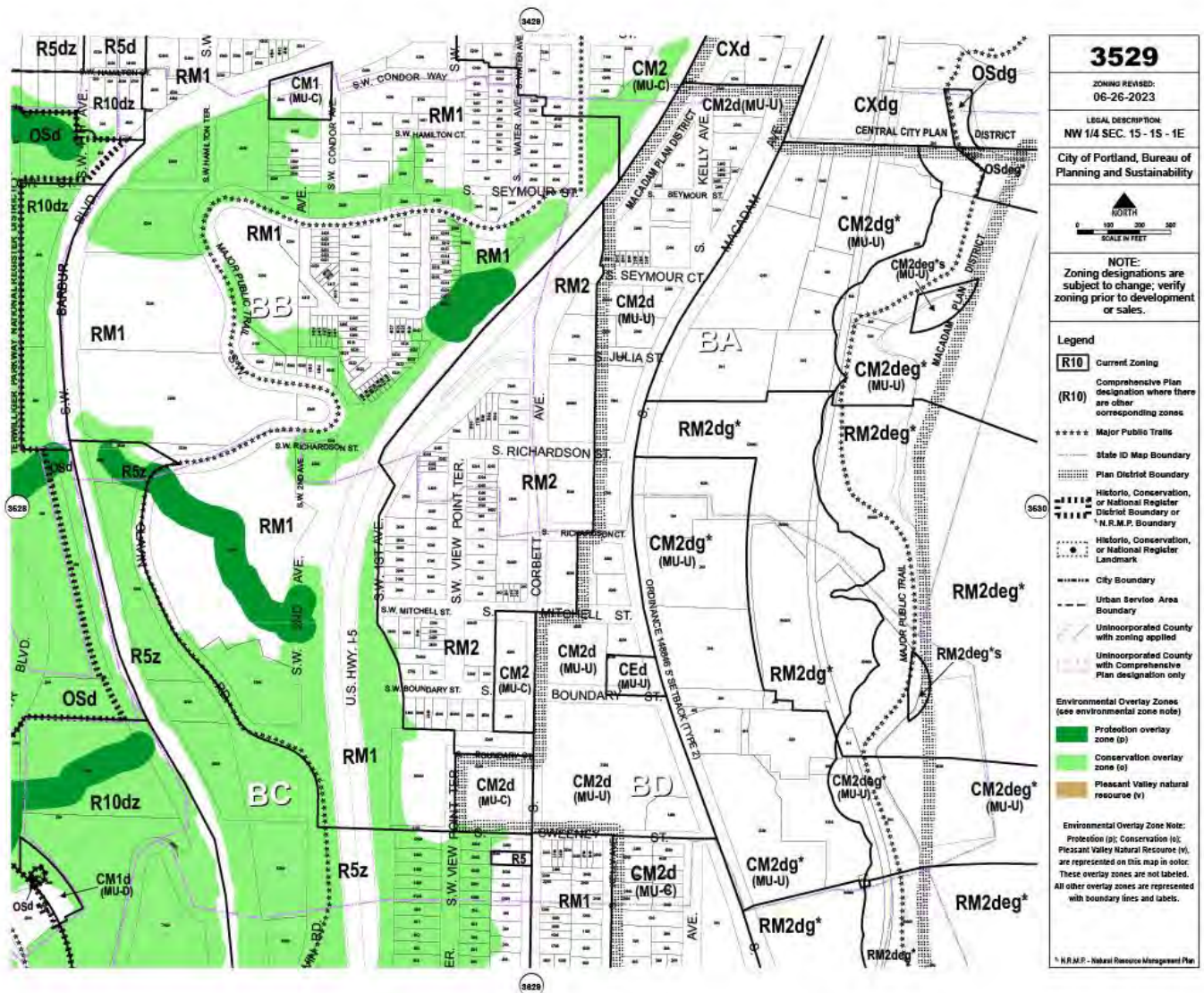
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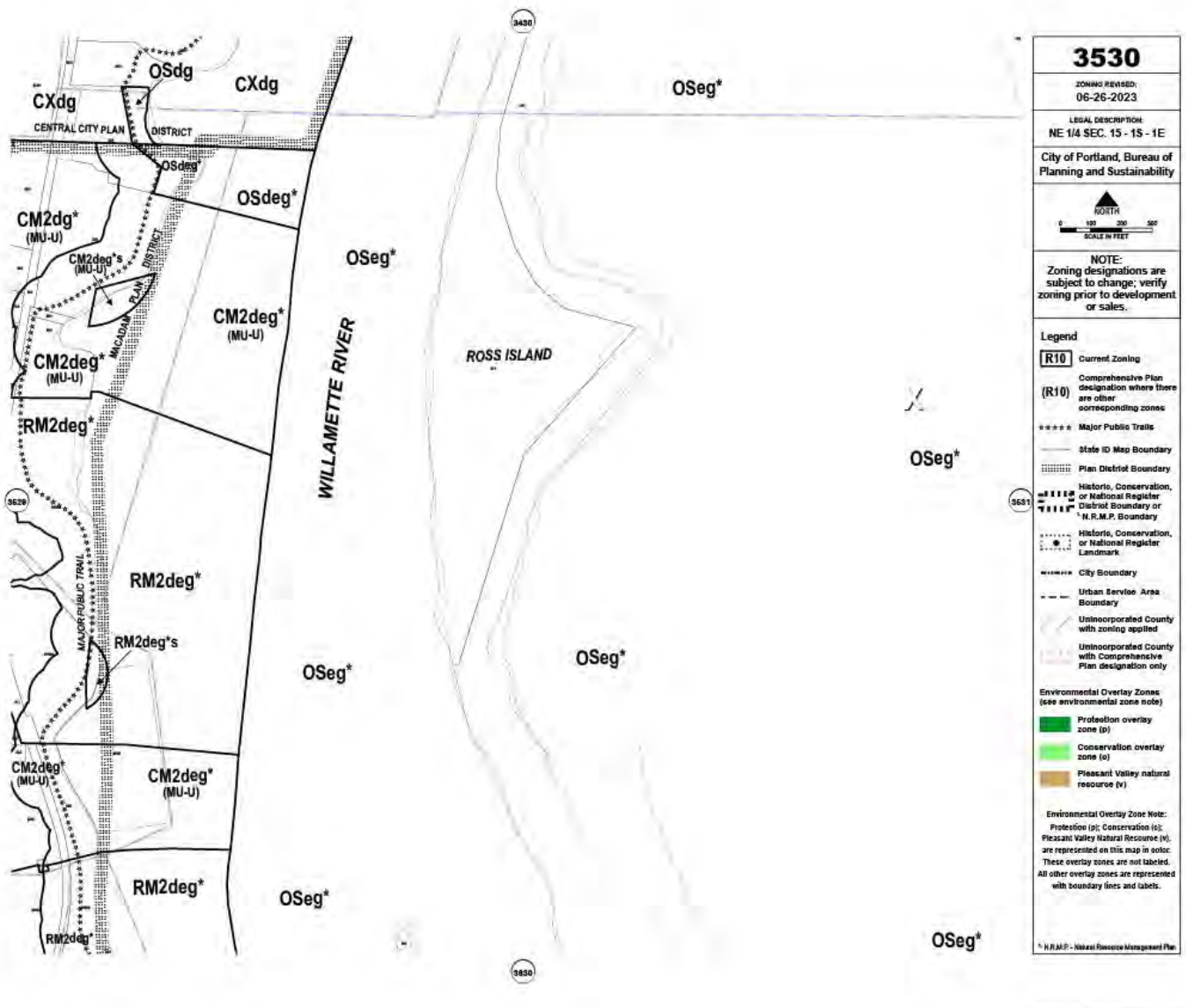
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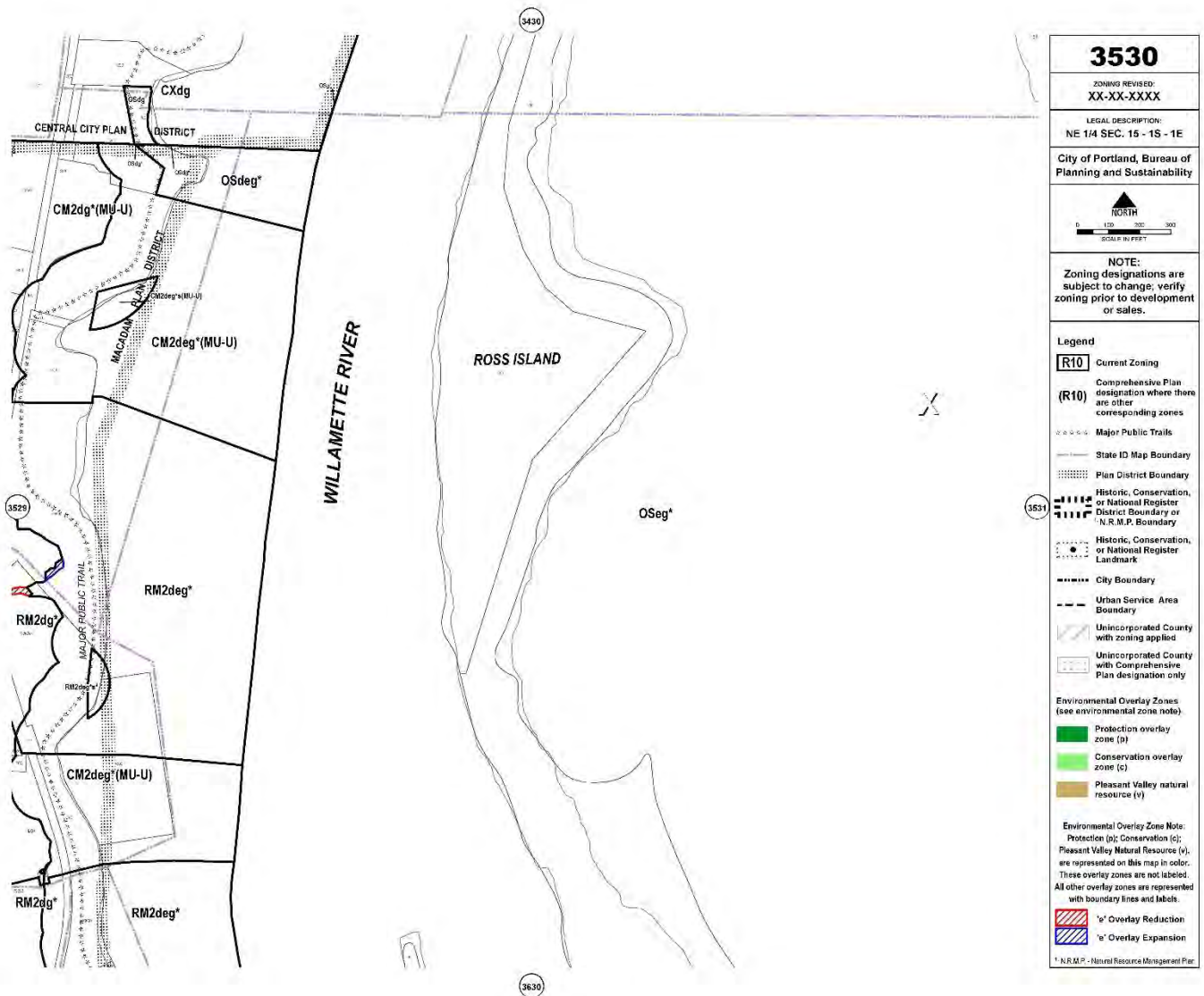
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Existing Quarter Section Map: 3530



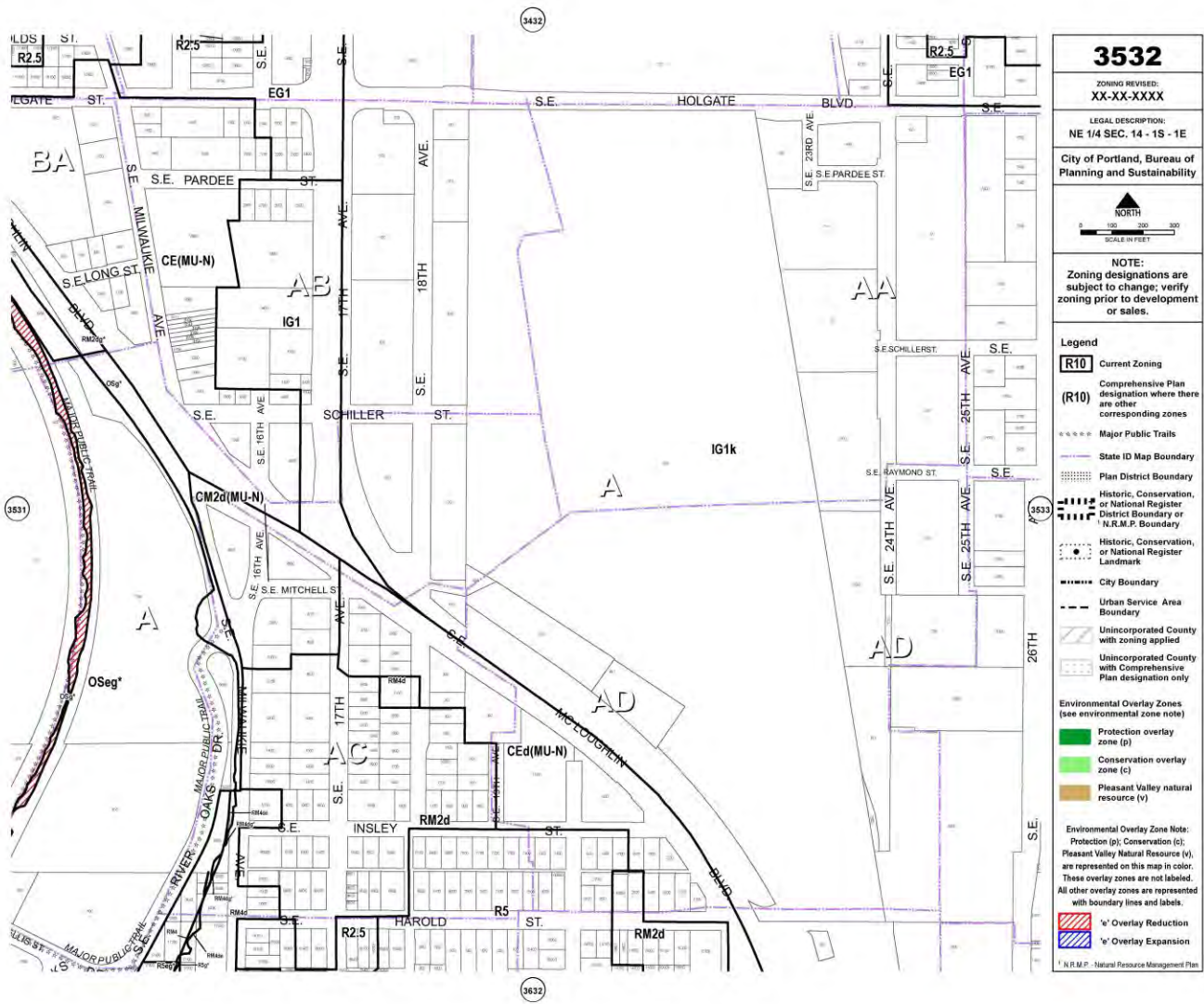
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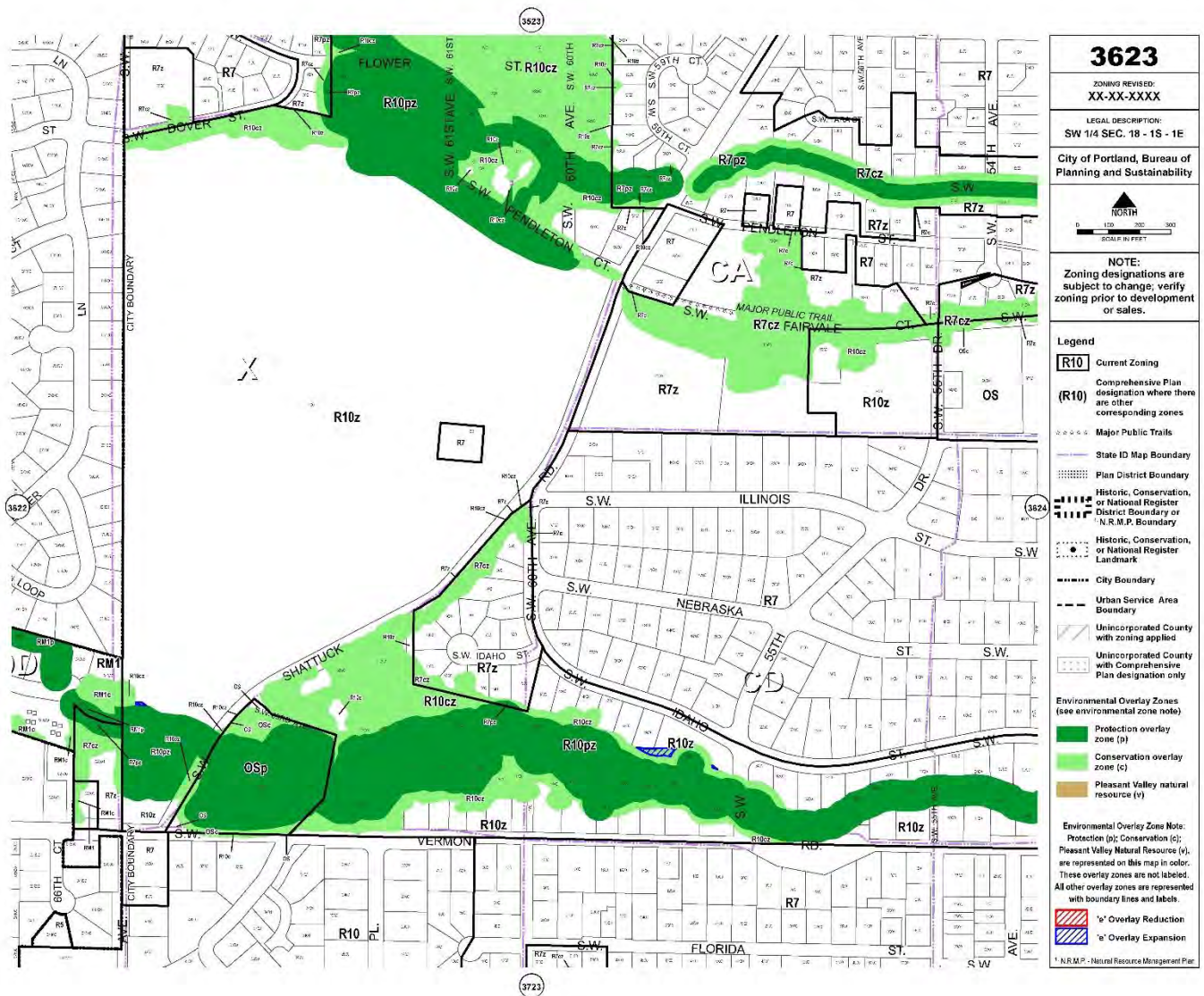
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Proposed Quarter Section Map: 3532



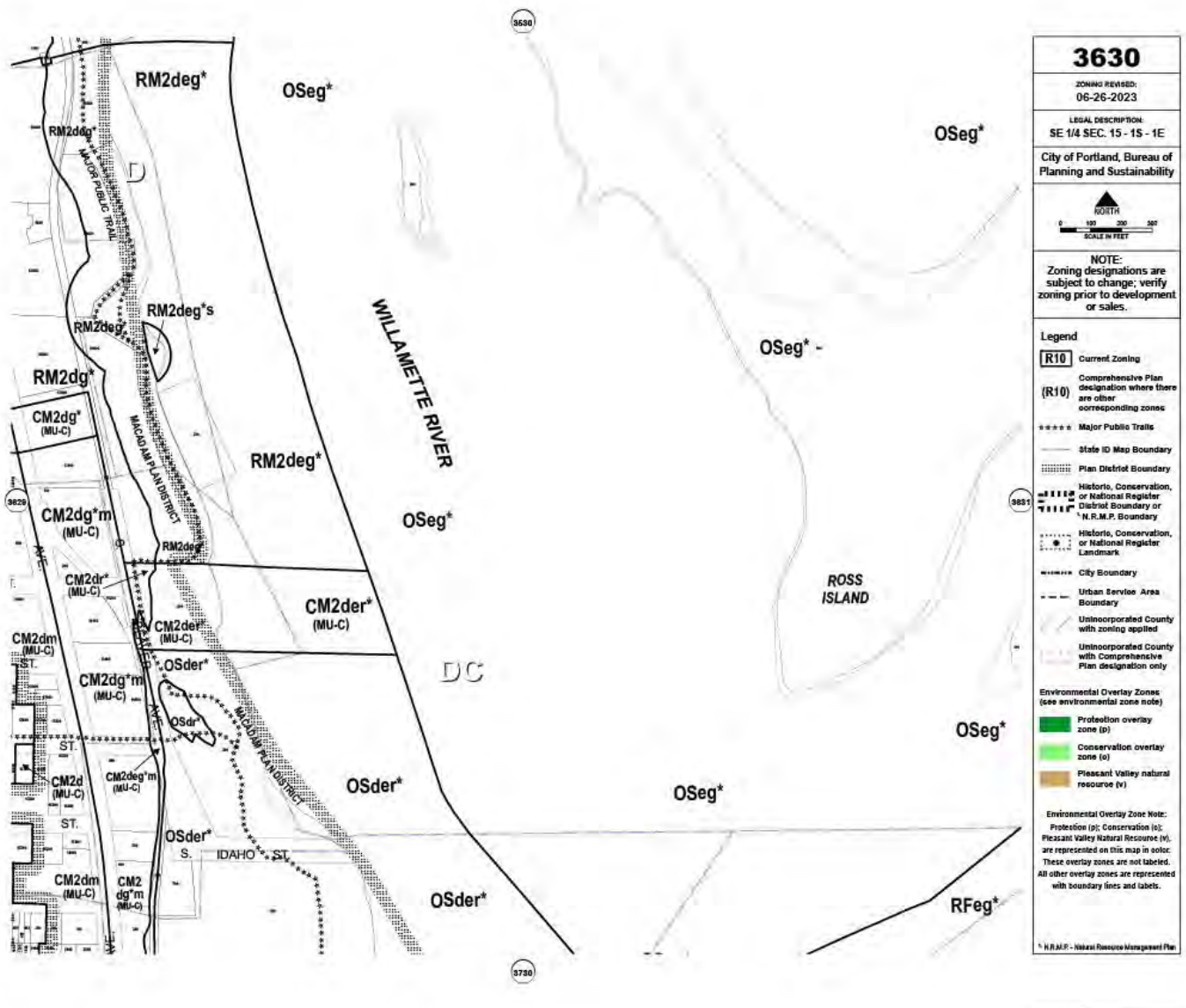
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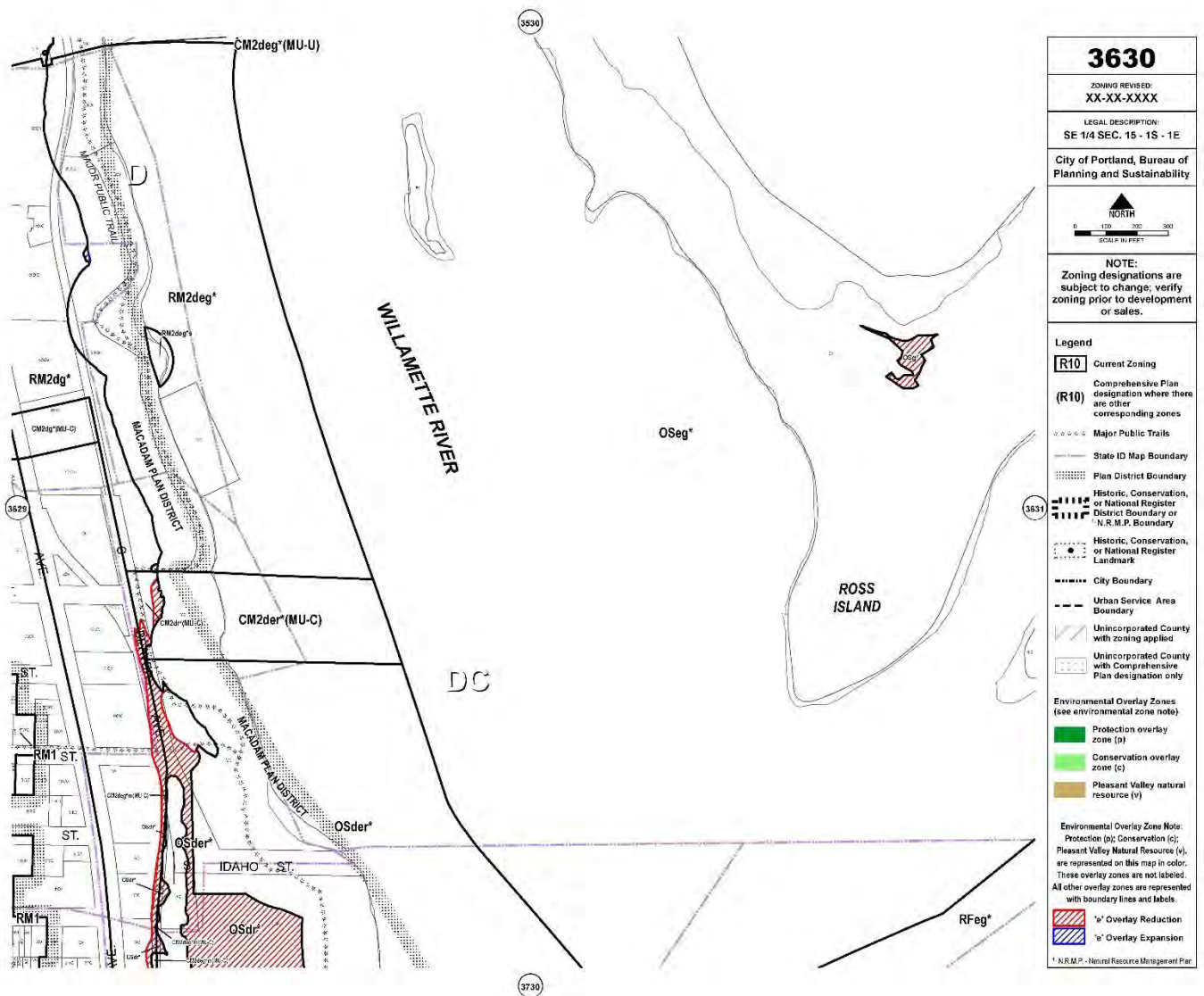
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Proposed Quarter Section Map: 3630



Proposed Quarter Section Map: 3631



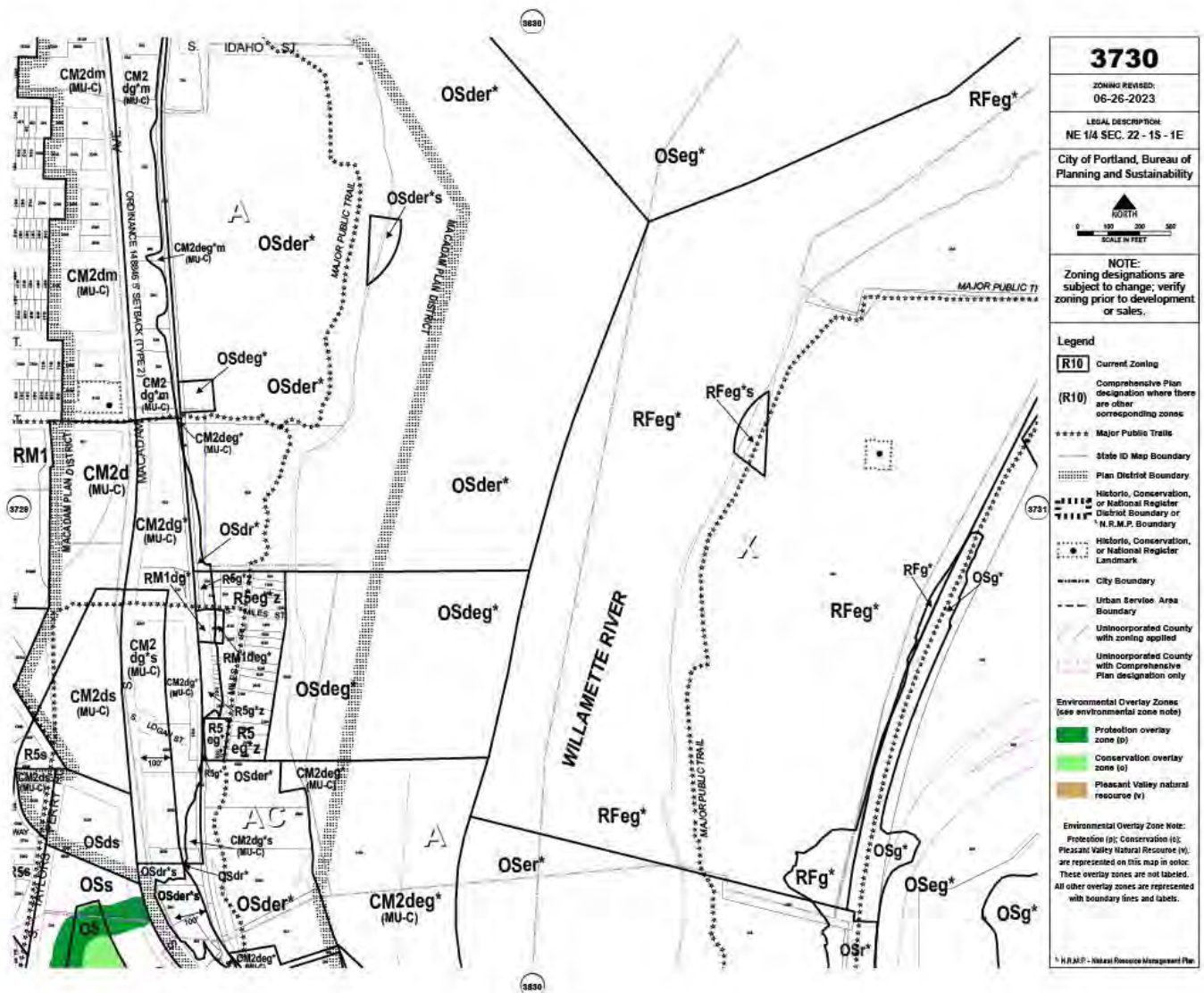
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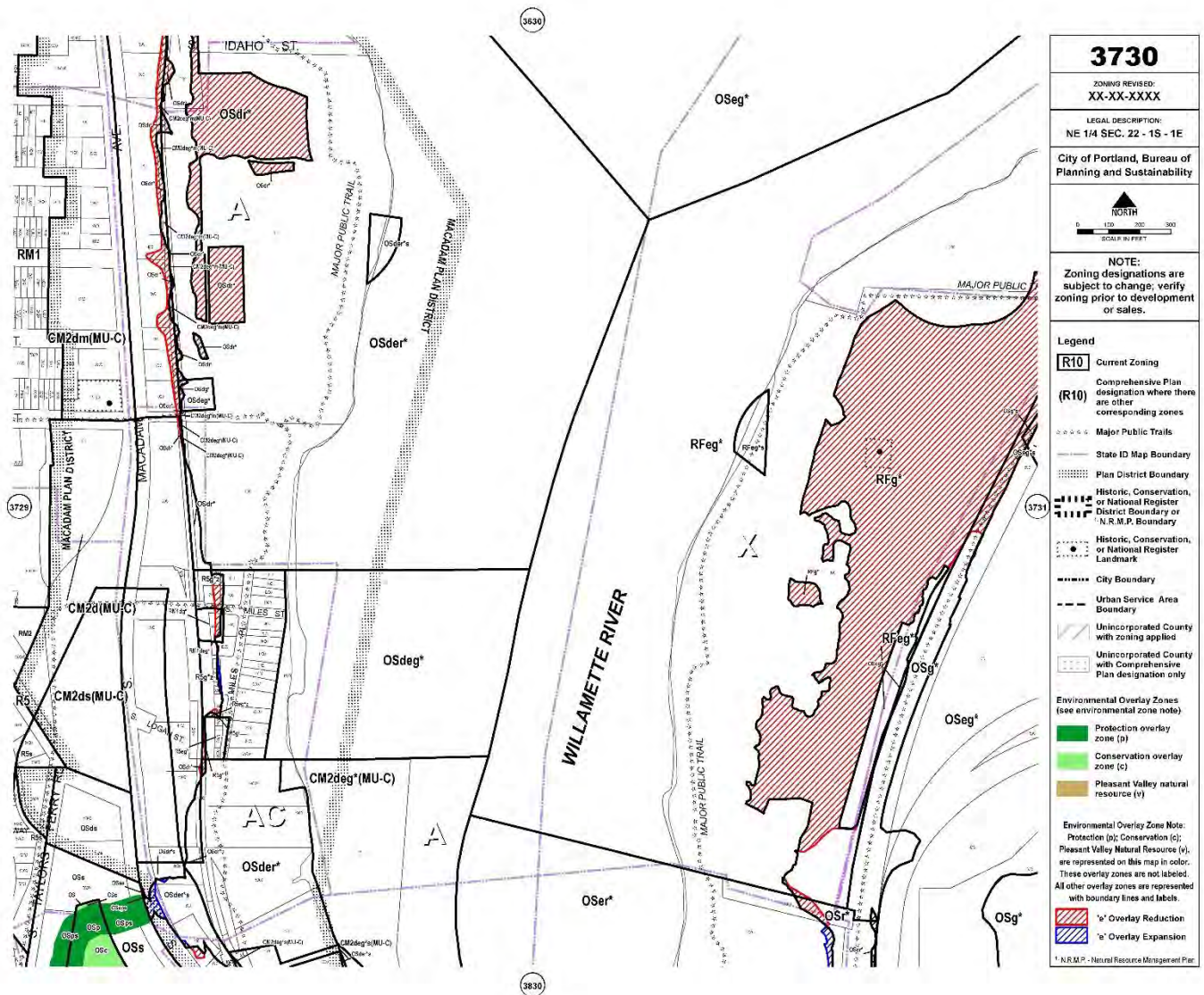
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Existing Quarter Section Map: 3730



Proposed Quarter Section Map: 3730



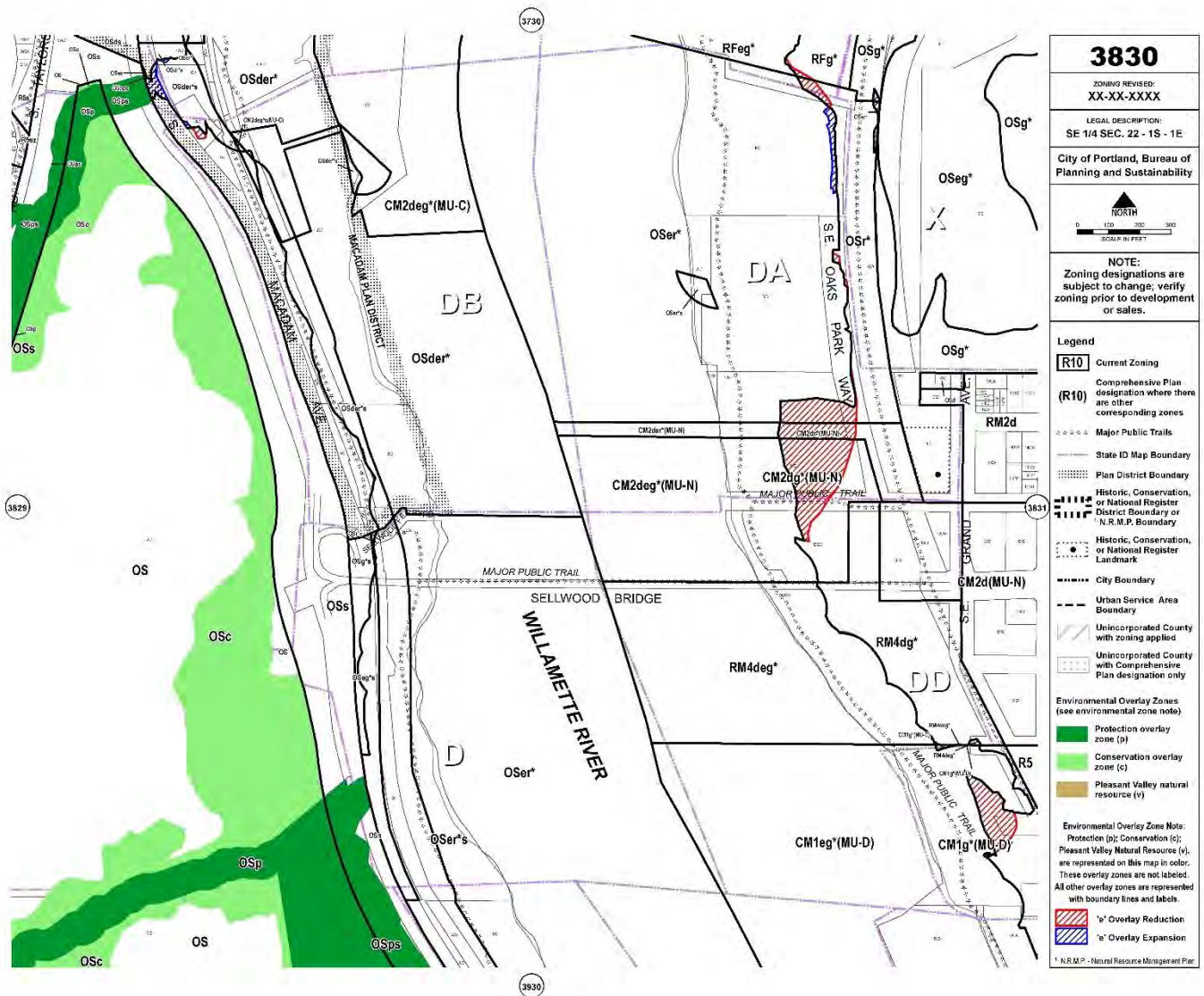
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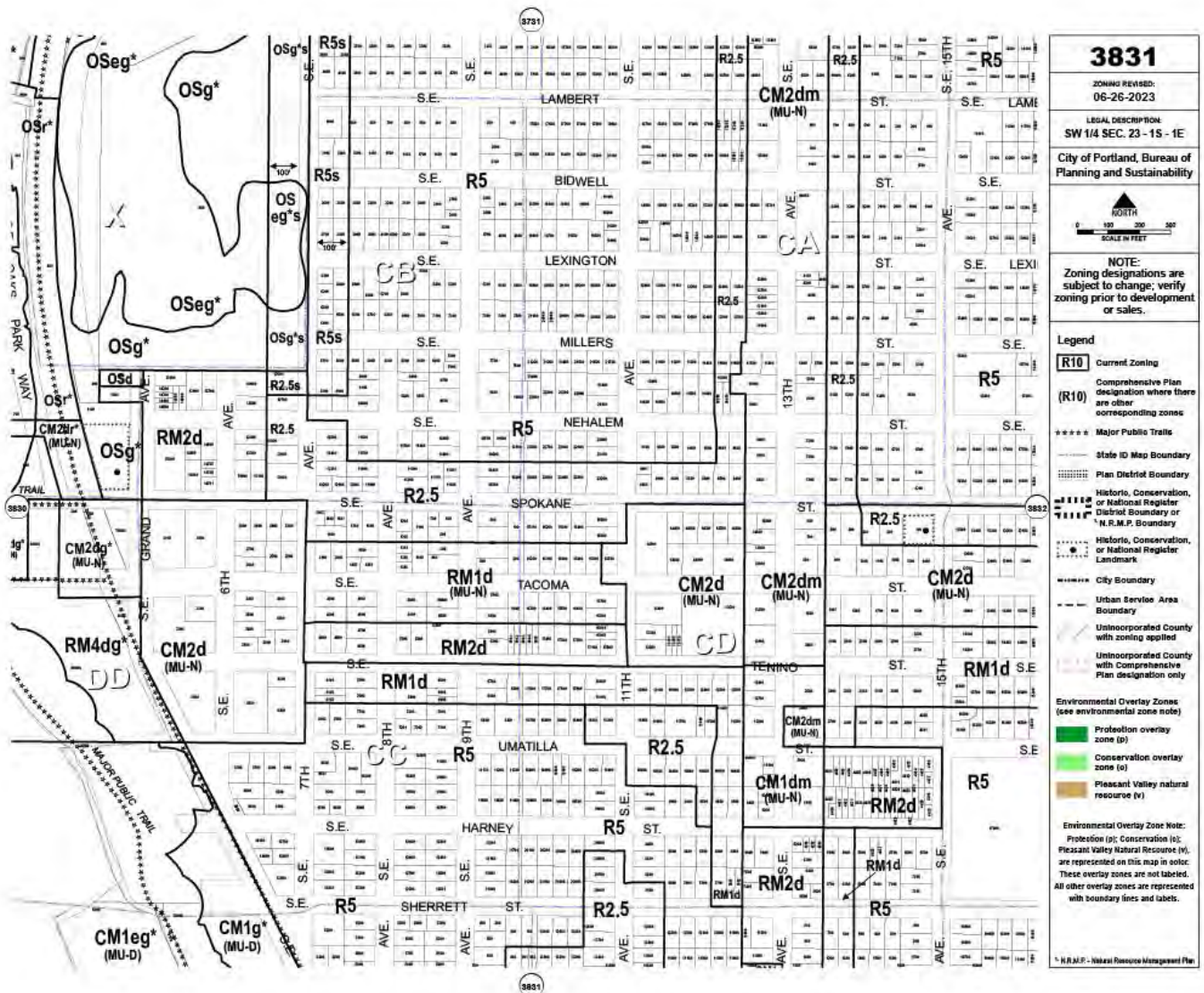
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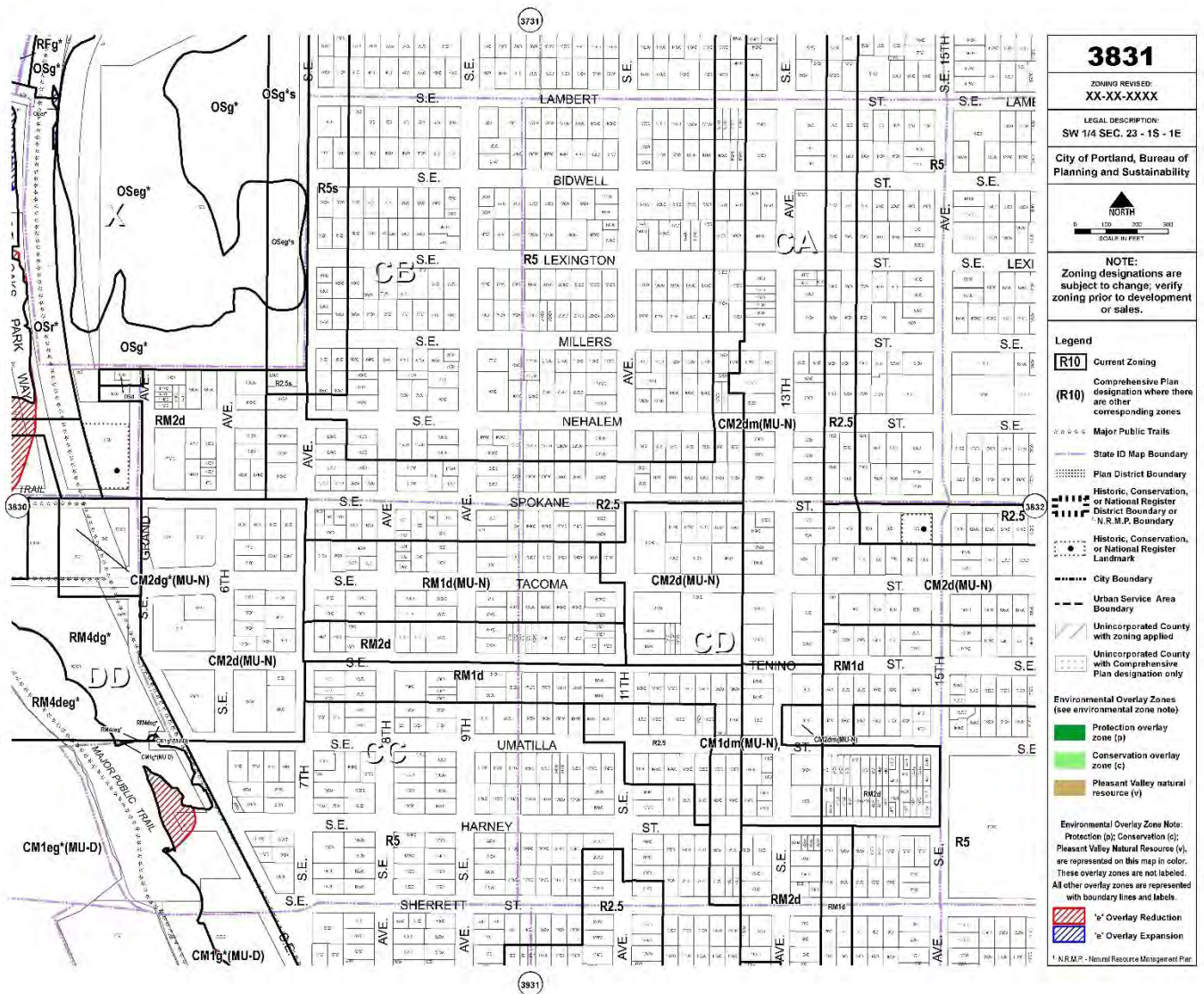
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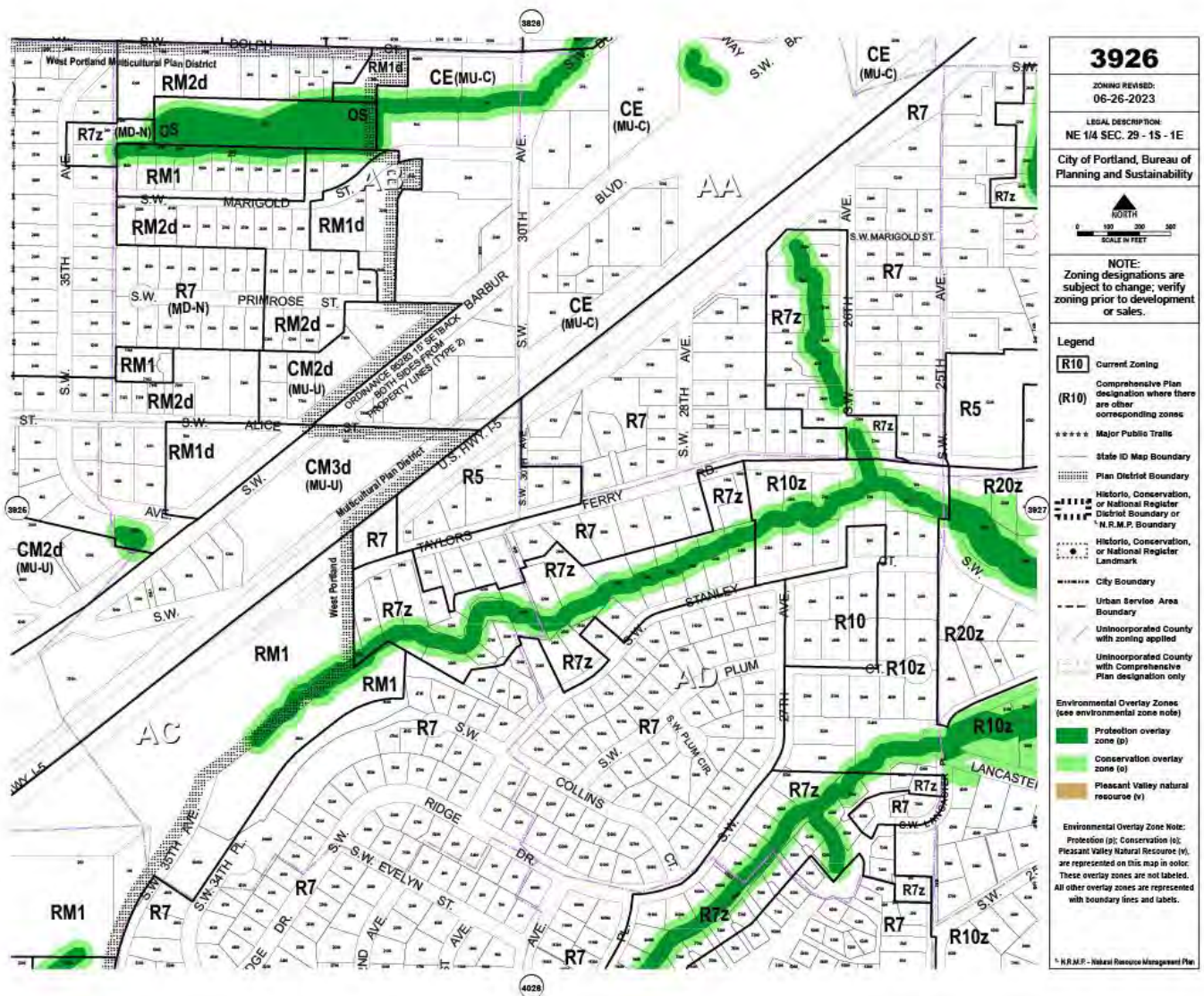
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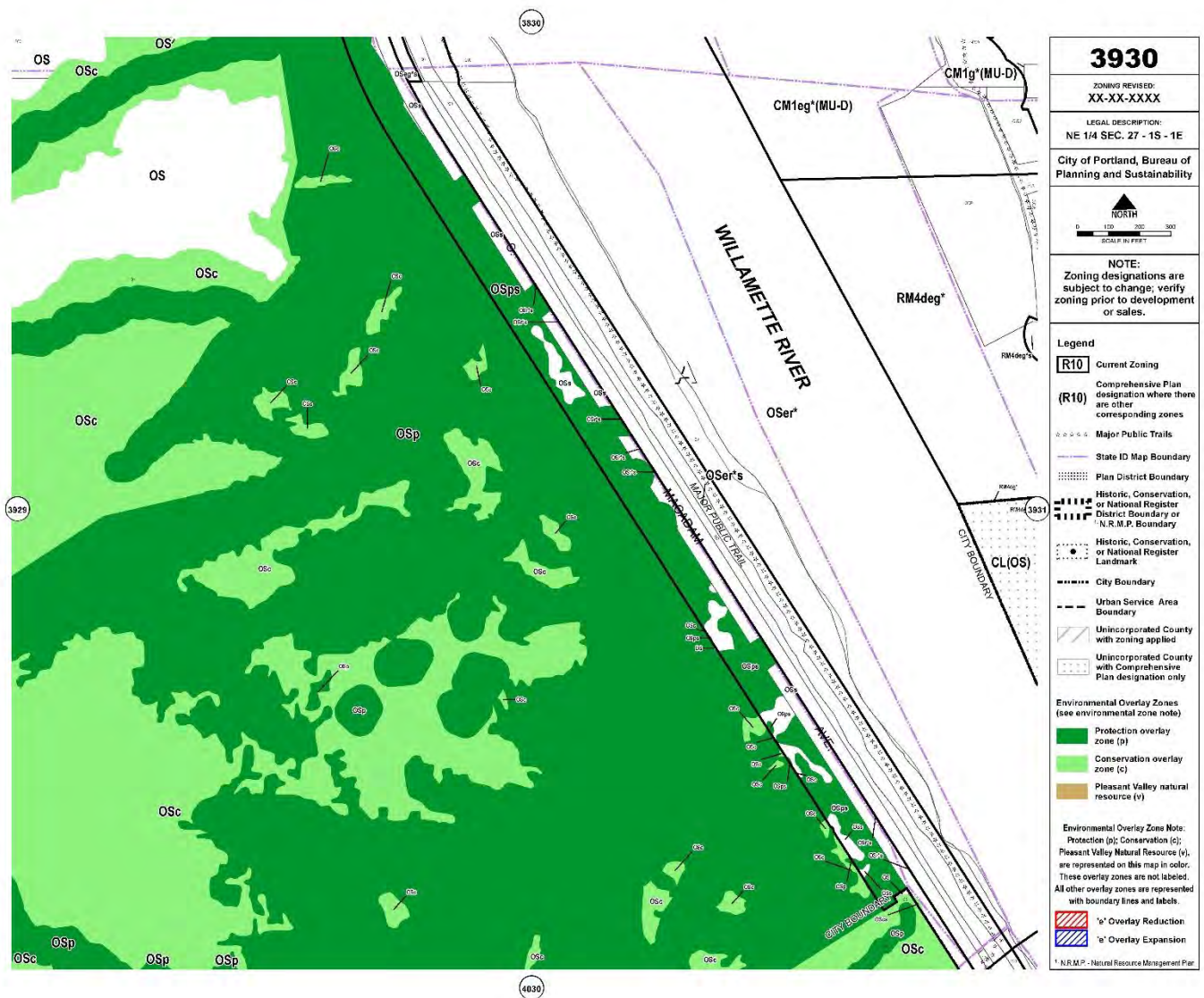
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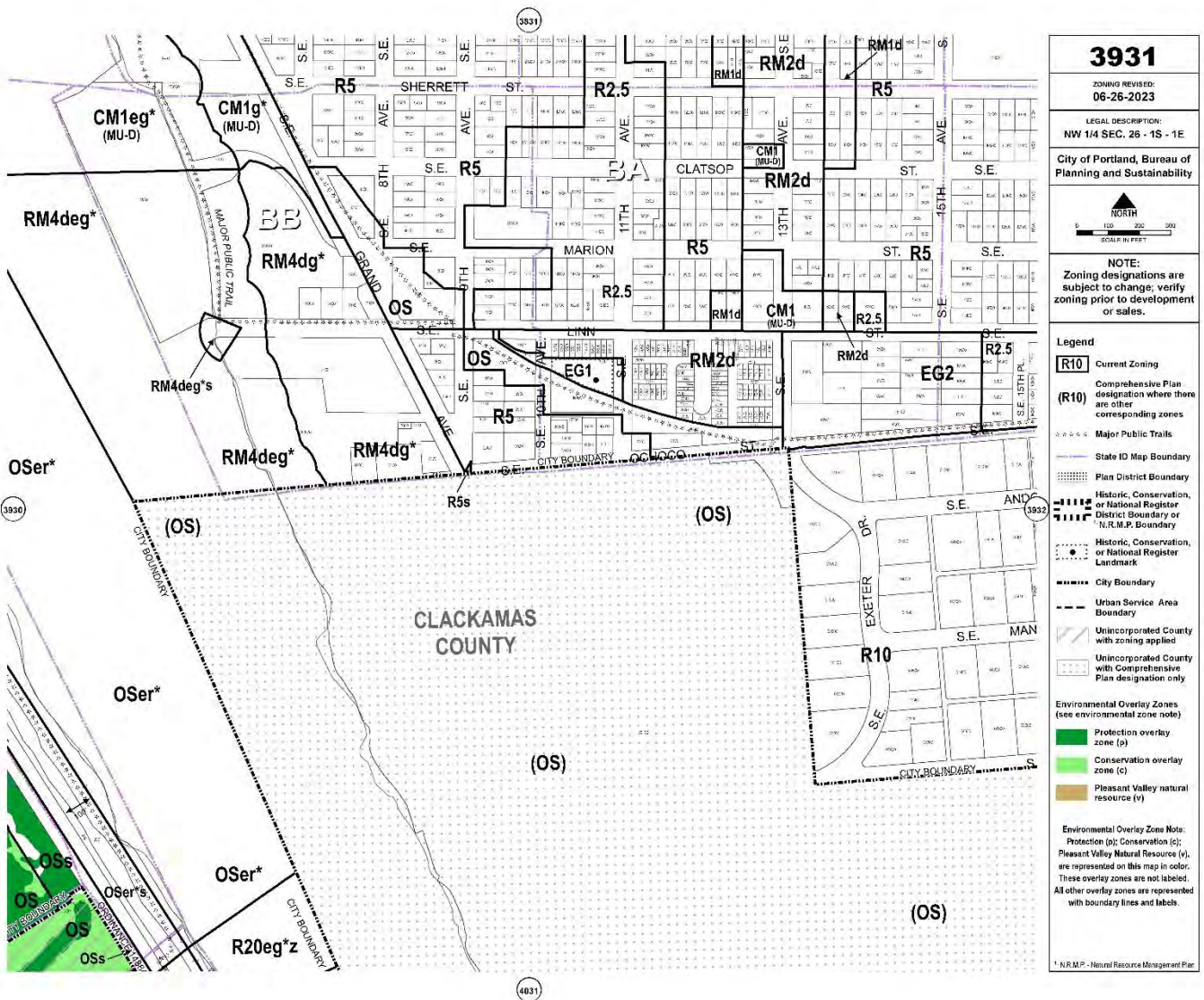
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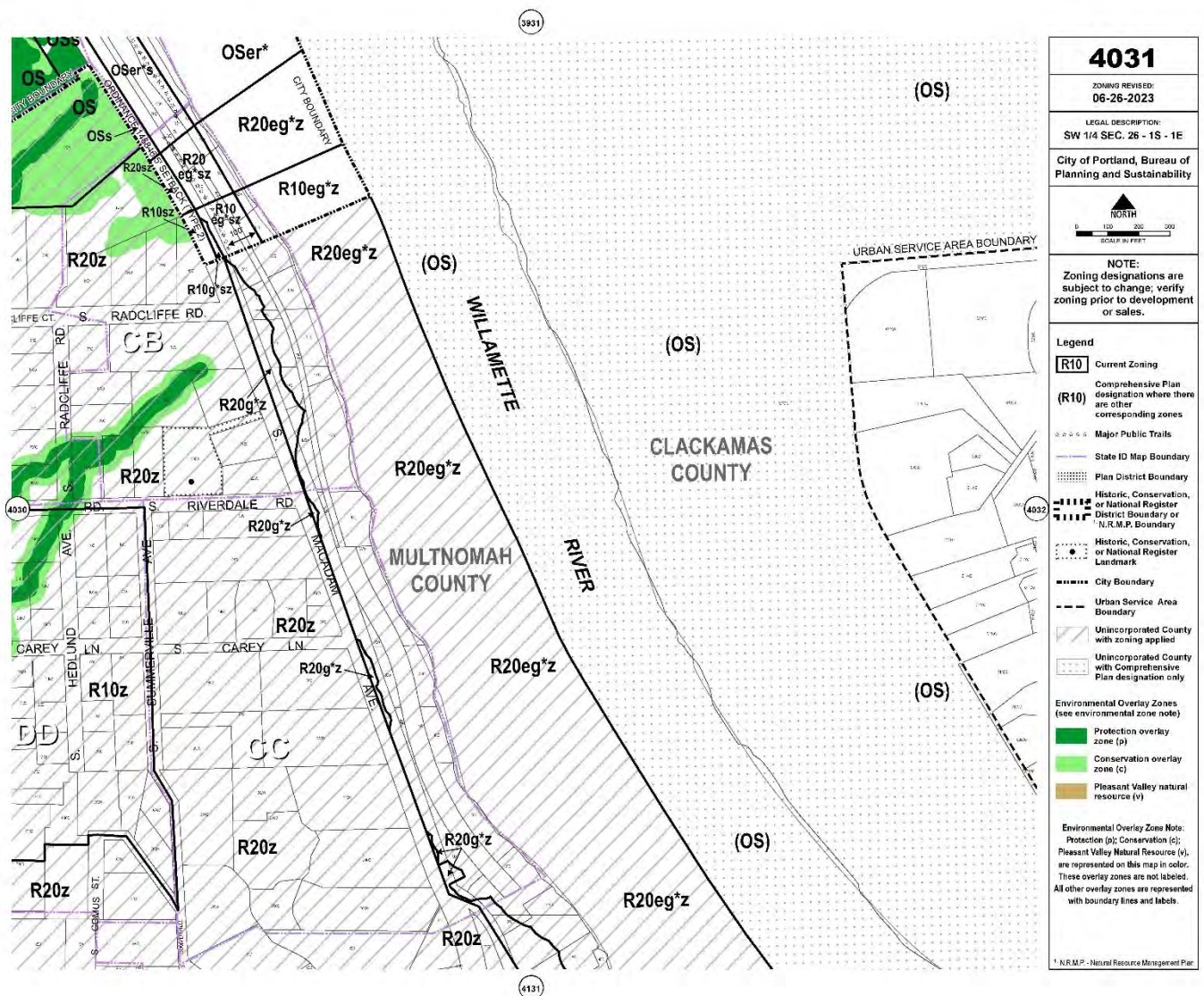
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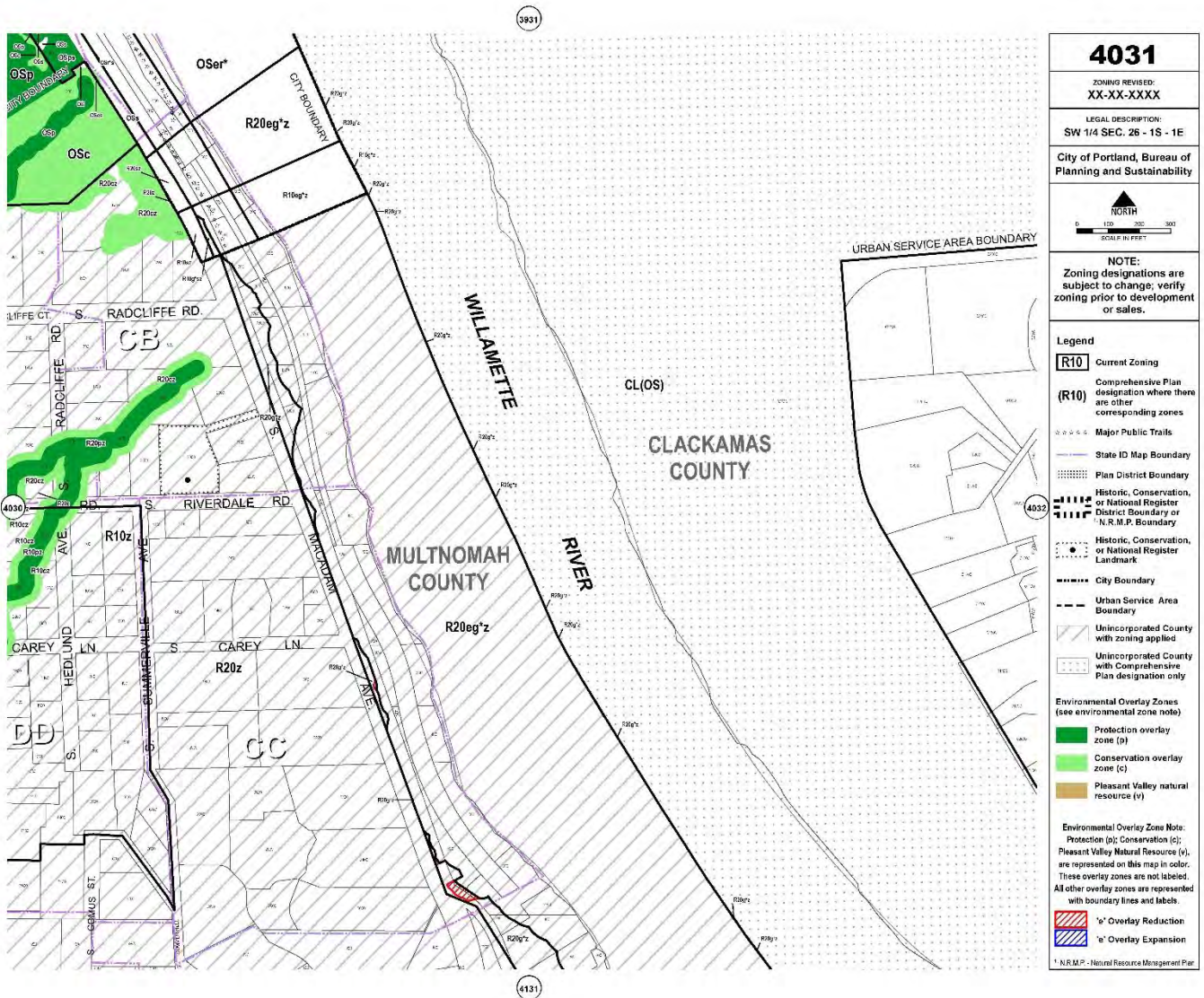
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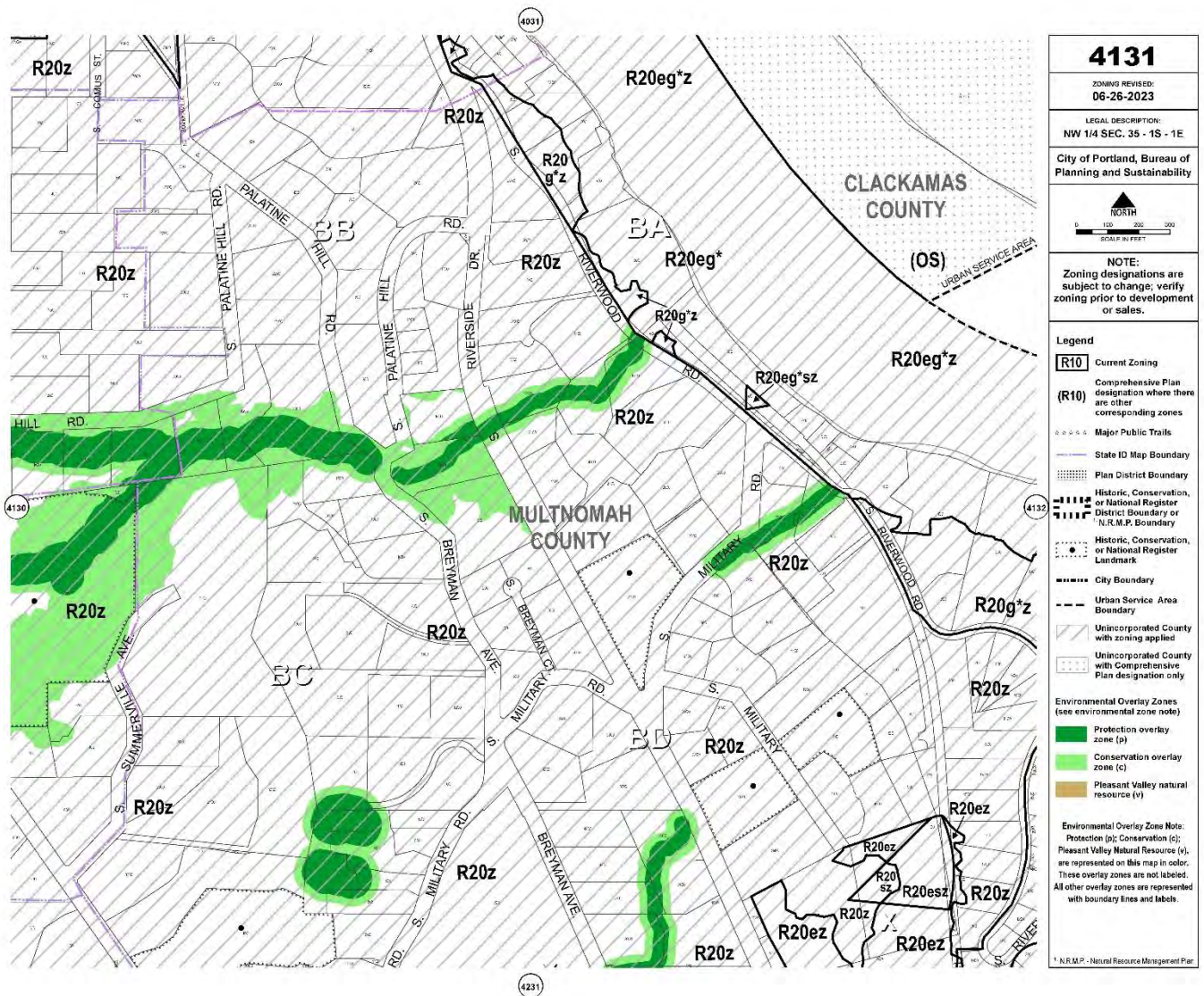
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Proposed Quarter Section Map: 4031



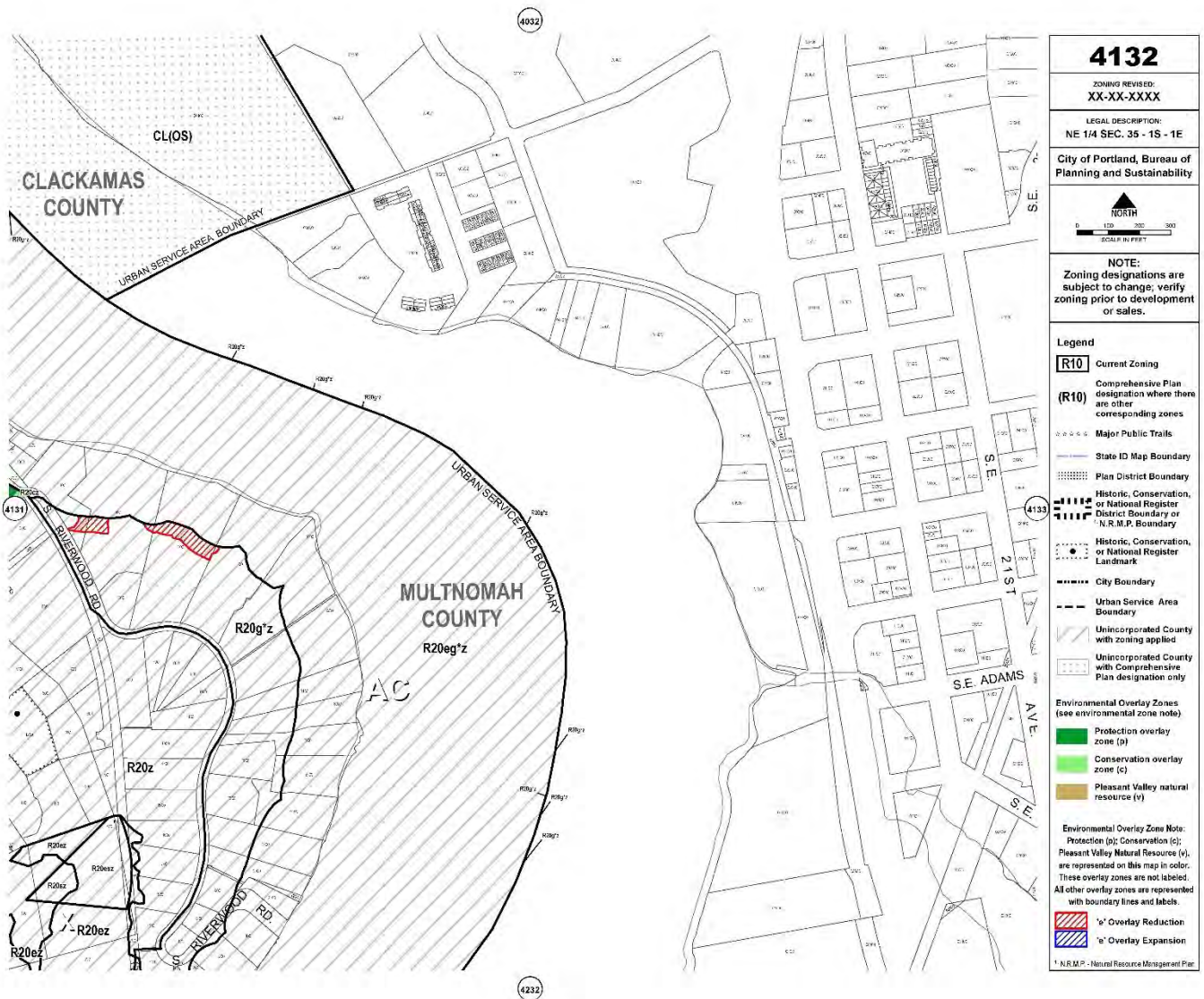
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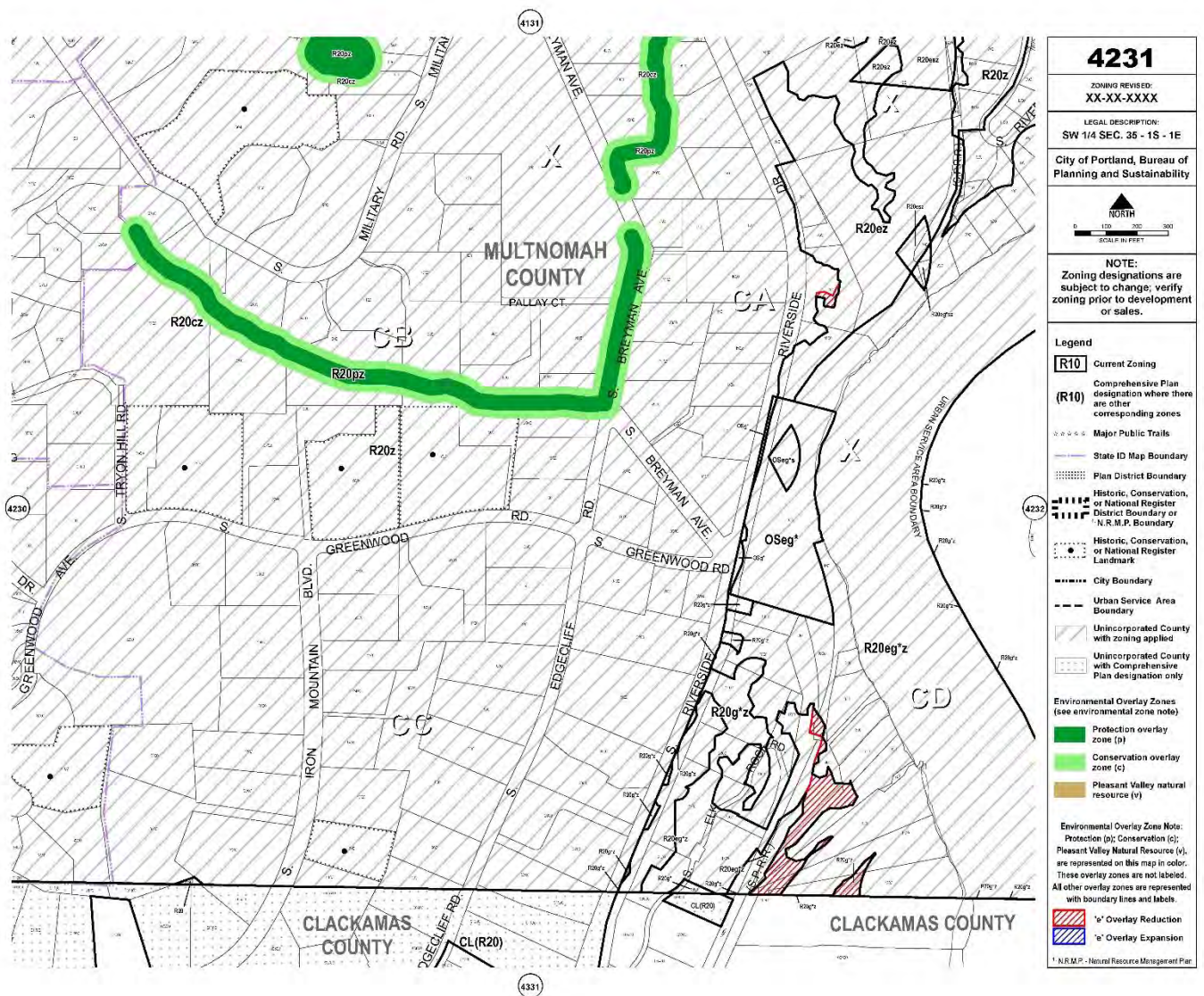
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Proposed Quarter Section Map: 4132



Proposed Quarter Section Map: 4231



Existing Quarter Section Map: 4232



Amend Title 33, Planning and Zoning, and the Zoning Map to reduce the impacts of future flooding on the city and prevent the degradation of floodplain habitat for endangered and threatened fish species (amend Code Title 33 and the Zoning Map)

The City of Portland ordains:

Section 1. The Council finds:

General Findings

1. The Federal Emergency Management Agency (FEMA) administers the National Flood Insurance Program (NFIP), a nationwide program that reduces future flood damage by requiring minimum floodplain management standards and provides protection for property owners against potential flood losses through insurance.
2. Participation in the NFIP is voluntary but necessary for communities to obtain access to NFIP flood insurance and to be eligible for disaster relief funds following a flooding event. Participating communities are responsible for adoption and enforcement of the floodplain management standards. The City of Portland is a participating community.
3. Under Section 7 of the Endangered Species Act (ESA), FEMA is required to consult with the US Fish and Wildlife Service and/or the National Marine Fisheries Service (NMFS) when any action the agency carries out, funds, or authorizes may affect a listed endangered or threatened species or adversely modify the habitat of such species.
4. A lawsuit brought against FEMA in 2009 by Portland Audubon Society and others sought to highlight FEMA's failure to consult with the US Fish and Wildlife Service or NMFS on the impacts of implementing the NFIP in Oregon on listed species present in the state's watersheds.
5. A settlement agreement was reached in 2010, and FEMA initiated formal consultation with NMFS in July 2011 with the submittal of a Programmatic Biological Assessment on the NFIP for Oregon state listed species and critical habitat.
6. On April 4, 2016, NMFS completed their analysis of the effects of the NFIP on species listed as threatened or endangered under the ESA and issued a Biological Opinion (BiOp).

Item 777 and Item 778 Proposed Amendments

Item 777

Proposed amendment by Commissioner Rubio to update Section 2, Directives D and F shall take effect on October 1, 2024. Directives A, B, C, and E will still take effect on March 1, 2024.

Item 778

Proposed amendment by Commissioner Rubio to update Directive B effective date to October 1, 2024.

Proposed amendment by Commissioner Mapps to add Finding 31 and Directive C:

31. The Council finds this ordinance strikes a necessary balance through promoting safety, livability and economic vitality. Council heard testimony concerned that the delayed implementation and areas not subject to these regulations would impact the flood storage capacity. The Council recognizes that the flood storage compensation requirements provide some protection to people and property by ensuring flood storage is not reduced and is interested in finding additional ways to further mitigate development.

C. Under the leadership of the Office of Governmental Relations, the City of Portland will establish a policy position for 2024 and 2025 state legislative sessions of support for state policies, programs, or resources that support environmental mitigation. Policies should include funding to provide or purchase mitigation credits in the floodplain along the Willamette, and additional strategies to help mitigate development of housing or other community needs.

Proposed Amendment by Commissioner Rubio to add a new Section 2 to the Title 24 Ordinance to incorporate a severability clause.

Section 2. If any provision of this Chapter, or its application to any person or circumstance, is held invalid by any court, the remainder of this Chapter and its application to other persons and circumstances, other than that which has been held invalid, shall not be affected by such invalidity, and to that extent the provisions of this Chapter are declared to be severable.

7. The BiOp concluded that the current implementation of the NFIP in Oregon is likely to jeopardize the continued existence of 16 anadromous fish species and the Southern Resident Killer Whale, all of which are listed as threatened or endangered under the ESA, and result in the destruction or adverse modification of designated or proposed critical habitat for the 16 anadromous fish species.
8. In the BiOp, NMFS directed FEMA to make changes to the NFIP in Oregon to ensure FEMA's flood insurance program complies with the ESA and does not result in harm to protected salmon and steelhead, or their critical habitat. The BiOp included a Reasonable and Prudent Alternative (RPA) to NFIP performance standards that, when implemented, would avoid continued jeopardy for the listed species and habitat described in the opinion.
9. In October 2021, FEMA published an implementation plan for Oregon, titled *Oregon Implementation Plan for NFIP-ESA Integration*, that outlines changes to the NFIP program based on the BiOp and recommendations made in the RPA.
10. Local compliance with FEMA's updated NFIP program is required in Portland to maintain access to FEMA's federally backed flood insurance and disaster relief funds for Portland residents and businesses.
11. It is anticipated that FEMA will require jurisdictions to achieve compliance with the updated NFIP program 18 to 24 months after its National Environmental Policy Act (NEPA) review is completed in March of 2025).

Floodplain Management Update Work Plan and Floodplain Resilience Plan

12. In October 2019, the City of Portland published a multi-year, multi-bureau work plan to implement a City of Portland ESA floodplain compliance program that will meet FEMA's requirements to maintain access to the NFIP, address ESA compliance generally, and advance critical City policy goals.
13. The City's work plan to achieve compliance with the updated NFIP program includes 4 tasks: 1) Regulations; 2) Restoration; 3) Supporting Analysis and Programs; and 4) Management.
14. The City worked with FEMA while developing the work plan and began the work before the final FEMA implementation plan was released because (a), existing policies support the work; and (b), completing the breadth of

regulatory and programmatic changes needed to achieve compliance with the updated NFIP will take a significant amount of time.

15. In 2020, the Bureau of Planning and Sustainability began working on the Floodplain Resilience Plan (FRP). The FRP will update the zoning code and zoning map to avoid or minimize the impacts of development on floodplain habitat and require mitigation of any unavoidable impacts within and near rivers and streams.
16. The FRP is Phase 2 of Task 1 of the ESA floodplain compliance program. Phase 1 of Task 1 was completed in December of 2020 with the adoption of the River Plan / South Reach, which applied floodplain management regulations in the southern portion of the Willamette River in the City of Portland and areas of unincorporated Multnomah County where the City has jurisdiction.
17. The *Floodplain Resilience Plan Proposed Draft* was released on August 30, 2022.
18. On August 23, 2022, notice of the Proposed Draft was mailed to the Department of Land Conservation and Development in compliance with the post-acknowledgement review process required by OAR [660-18-0020](#).
19. On August 22, 2022, notice of the proposed draft was mailed to all property owners potentially affected by proposed zoning map and code changes as required by ORS 227.186.
20. On August 23, 2022, notice of the September 27, 2022, public hearing on the Proposed Draft was mailed in accordance with Code Section 33.740.020.B, Public notice for the hearing.
21. On September 27, 2022, the Planning and Sustainability Commission (renamed the Planning Commission in March 2023) held a public hearing on the Proposed Draft.
22. On November 22, 2022, the Planning and Sustainability Commission voted to forward the FRP to City Council.
23. On August 15, 2023, notice of the August 30, 2023, public hearing on the recommended draft was mailed in accordance with Code Section 33.740.030.B, Notice.
24. On August 16, 2023, the *Floodplain Resilience Plan Recommended Draft* was released for public review.

25. The Findings of Fact Report, attached as Exhibit A, includes additional findings demonstrating consistency with the Statewide Planning Goals, Metro Urban Growth Management Functional Plan, and the City of Portland 2035 Comprehensive Plan.

NOW, THEREFORE, the Council directs:

- A. Adopt Exhibit A, Findings of Fact Report As Amended, as additional findings.
- B. Adopt the commentary in Exhibit B, Floodplain Resilience Plan Recommended Draft As Amended, dated ~~August~~ October 2023, as legislative intent and further findings.
- C. Amend Title 33, Planning and Zoning, of the Municipal Code of the City of Portland, as shown in Exhibit B, Floodplain Resilience Plan Recommended Draft As Amended, dated ~~August~~ October 2023, but excluding the amendments to Map 475-6 in 33.475 (River Overlay Zones).
- D. Amend Map 475-6 in Chapter 33.475 (River Overlay Zones) as shown in Exhibit B, Floodplain Resilience Plan Recommended Draft As Amended, dated ~~August~~ October 2023.
- E. Amend the official Zoning Map as shown in Exhibit B, Floodplain Resilience Plan Recommended Draft As Amended, dated ~~August~~ October 2023, but excluding the zoning map amendments shown on quarter sections 2828, 2829, 2929, 2930, 3030, 3130, 3229, 3230, 3330 and 3331.
- F. Amend the official Zoning Map as shown in Exhibit B, Floodplain Resilience Plan Recommended Draft As Amended, dated ~~August~~ October 2023, on quarter sections 2828, 2829, 2929, 2930, 3030, 3130, 3229, 3230, 3330 and 3331.

Section 2. Directives ~~1A~~, ~~2B~~, ~~3C~~ and ~~5E~~ shall be in full force and effect on March 1, 2024. Directives ~~4D~~ and ~~6E~~ shall be in full force and effect on October 1, ~~2025~~2024.

Section 3. If any section, subsection, sentence, clause, phrase, diagram, or drawing contained in this ordinance, or the map, report, inventory, analysis, or document it adopts or amends, is held to be deficient, invalid, or unconstitutional, that shall not affect the validity of the remaining portions. The Council declares that it would have adopted the map, report, inventory, analysis, or document each section, subsection, sentence, clause, phrase, diagram, and drawing thereof, regardless of if any one or more sections, subsections, sentences, clauses, phrases, diagrams, or

drawings contained in this Ordinance, may be found to be deficient, invalid, or unconstitutional.