



Hearings Office

City of Portland

1900 SW 4th Avenue, Room 3100, Portland, OR 97201

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DECISION OF THE HEARINGS OFFICER

I. GENERAL INFORMATION

File Number: LU 23-103216 CU (Hearings Office 4240005)

Applicant: Nicole Bassen
Riverdale School District
11733 SW Breyman Avenue
Portland, OR 97219

Applicant's Representative: Chris Hagerman
The Bookin Group, LLC
1020 SW Taylor Street, Suite 555
Portland OR 97205
hagerman@bookingroup.com

Property Owner: School District No. 51J
11733 SW Breyman Avenue
Portland, OR 97219

Hearings Officer: Marisha Childs

Bureau of Development Services (BDS) Staff Representative: Amanda Rhoads

Site Address: 11733 S Breyman Avenue

Legal Description: LOT 22-24 TL 200, ABERNETHY HTS

Tax Account Number: R001101270

State ID Number: 1S1E35 00200

Quarter Section: 4121 & 4231

Neighborhood: None

Business District: None

District Neighborhood Coalition: None

Plan District: None

Other Designations: Unincorporated Multnomah County

Zoning: R20c, p, z – Residential 20,000 with “z” Constrained Sites Overlay Zoning over entire site, and small areas of “c” Environmental Conservation and “p” Environmental Protection Overlay Zoning

Land Use Review: Type III, CU – Conditional Use Review

BDS Staff Recommendation to Hearings Officer: Approval with conditions.

Public Hearing: The hearing was opened at 1:30 p.m. on Monday, May 6, 2024, via the Zoom platform and was closed at 3:08 p.m. Having received no requests to hold the record open, the record closed at the conclusion of the hearing.

Testified at the Hearing:

Amanda Rhoads, Bureau of Development Services

Nicole Bassen, Applicant

Chris Hagerman, The Bookin Group, Applicant’s Representative

Brad Choi, Transportation Development Manager, Multnomah County

Graham Martin, Senior Planner, Multnomah County

Chris Russo, Riverdale School District Superintendent

Cozette Tran-Caffey, Miller Nash, counsel for Riverdale School District

Shaina Weinstein, neighbor

Alejandra Lanenga, neighbor

Carla Bunting, neighbor

Proposal: The K-8 Riverdale Grade School has been located at the site since the early 1900s. An enrollment cap of 350 students was placed on the school in a 1995 review with Multnomah County (MUP 5-95 CS). This cap was carried through and revised with the 2009 Conditional Use and Adjustment Review (LU 09-105772 CU AD) that approved significant alterations to the site, but no changes to the overall enrollment, staffing, or extracurricular activities.

The Applicant requests for the enrollment cap condition to be removed from the Conditional Use approval. This 2009 condition stated the following:

- C. The Riverdale School submits to Multnomah County Land Use and Transportation Division, by May 31st each year, an annual report containing the academic year enrollment, the number of teachers and staff (school and District) and the number of extra-curricular activities; to allow monitoring of changes relative to the base academic year 2008-09 and the maximum enrollment cap of 350 students. If use of the site increases, Riverdale School District will need to apply for a subsequent land use review per the*

thresholds of 33.815.040 A.4: Changes to an existing conditional use, or related thresholds in PCC 33.281, Schools and School Sites.

Another condition from the 2009 case, Condition B, also required an annual report to Multnomah County on the Transportation Demand Management Plan implementation. The school asks to remove this condition as well to relieve the district of the reporting requirement; however, an updated Transportation Demand Management Plan was submitted as part of the application materials (Exhibit A.5) and a further revised plan was submitted April 19, 2024 (Exhibit A.12). The previous condition proposed for removal reads as follows:

B. The Riverdale School District must implement the Transportation Operations/ Management Plan (exhibit H.38) and monitor the success of the strategies. The Riverdale school district shall report annually to Multnomah County, by May 31st of each year, by providing a description of the effectiveness of the Plan. If the Riverdale School changes the policies, strategies and practices included in its submitted Transportation Operations/Management Plan (Exhibit H-38) or any subsequent Plan, the School District must submit a revised Transportation Demand Management Plan/Transportation Operations/Management Plan to Multnomah County.

These conditions must be removed through another Conditional Use Review per Zoning Code Section 33.730.140.A. **No changes to development are proposed at this time.**

Relevant Approval Criteria: In order to be approved, this proposal must comply with the approval criteria of Title 33, Portland Zoning Code. The applicable approval criteria are:

- 33.815.105, Institutional and Other Uses in Residential and Campus Institutional Zones

The Portland Zoning Code is available online at <https://www.portland.gov/code/33>.

Decision of the Hearings Officer

The Applicant, by and through counsel, submitted Exhibit H.32, correspondence from Miller-Nash recommending modifications to the those offered by the Bureau of Development Services (BDS). The BDS Staff Report and Recommendations, Exhibit H.26 provides analysis of the Applicant's requests with the applicable approval code, 33.815.105 (*Institutional and Other Uses in Residential and Campus Institutional Zones*). The Applicant requests Condition C be stricken and that Condition D be modified; the Applicant does not object to any of the remaining conditions listed in the Staff Report and Recommendations. As written in the Staff Report, Conditions C and D state,

- "C. Within one year of the issuance of this approval, applicant must improve the sidewalks and ramps along the school frontage on S Breyman Ave and S Military Rd to current ADA standards to ensure compliance.

- D. Within one year of the issuance of this approval, applicant must do one of the following:
1. Improve the median from a painted median to a raised median, as specified by County Transportation Engineering; or
 2. Pay County Transportation a Payment in-lieu-of Construction [PILO] for the costs of creating a raised median (MCRR 9.300)."

The Applicant asserts "there is nothing in the record showing that removal of the 350-student cap will impact the existing pedestrian facilities." It is the Applicant's position that any finding to the contrary would otherwise violate the rule in *Nollan v. California Coastal Comm'n*, 483 U.S. 825, 107 S.Ct. 3141, 97 L.Ed.2d 677 (1987) as well as *Dolan v. City of Tigard*, 512 U.S. 374, 114 S. Ct. 2309, 129 L. Ed. 2d. 304 (1994).

In short, *Nollan v. California Coastal Comm'n*, involved homeowners who lived along the coastal waterways of Faria Park in California and they sought to make improvements to their home which would have impacted the public's access to the beach. The California Coastal Commission sought to place a condition on the permit requiring the Nollan's to grant an easement over their property allowing the public to access the beach. Ultimately, *Nollan* got a little muddled in the end as the concerns raised by the Coastal Commission presented inconsistencies with its stated goals: providing public access to see the beach from the street or to providing the public access to the beach across sand behind the Nollan's home. Notwithstanding, the Court found that the Coastal Commission's comprehensive program of providing beach access may be a good one, but the Nollan's could not be compelled to contribute to the plan (unless the Coastal Commission acted under powers of eminent domain); the Coastal Commission would need to pay the Nollan's for the easement.

The other case cited; *Dolan v. City of Tigard* addressed some similar issues as those raised in *Nollan*. The case in *Dolan* involved a business owner whose property abutted Fanno Creek and the business owner sought to expand the footprint of the building to almost twice the size. The City of Tigard granted the request to expand the building but conditioned approval on *Dolan* dedicating a portion of the property to improvement of the storm drainage and dedicating a 15 foot strip to a pedestrian pathway. The Court in *Dolan* considered issues including whether there was an "essential nexus" between a legitimate state interest and the permit condition and whether there was a reasonable relationship between the dedication and the proposed development.

The two above seminal cases cited on the issue of land dedication and whether the government action constitutes an unconstitutional taking are distinguishable from the instant matter. The recommendations proposed BDS which include specific transportation recommendations from Multnomah County Transportation Design Management Plan (TDMP) do not condition approval of Applicant's request upon Applicant granting an easement or a land dedication for the public benefit. The Applicant asserts "there is no connection between

the proposed pedestrian improvements and the projected impacts of increased enrollment and no rough proportionality in requiring the District to pay for them.”

The evidence in the record which establishes an “essential nexus” between the pedestrian improvements sought and removal of the enrollment cap include the following:

The record includes 21 letters/emails submitted by community members and neighbors in support and/or in opposition to the conditional use request. The letters/emails offered in support of removal of the enrollment cap all share a common theme: they all spoke highly of the Riverdale school community. The letters/emails submitted in opposition also shared a common theme: concerns related to pedestrian safety. These concerns are directly related to this Conditional Use Review.

The Bureau of Development Services Staff Presentation included several images depicting the transportation/pedestrian facilities around the area. The images below are taken directly from the Staff Presentation.



Figure 1 S. Military Rd.



Figure 2 S. Military Rd at S. Breyman Ave.



Figure 3 S. Breyman Ave. during pick-up/drop-off



Figure 4 S. Breyman during pick-up/drop-off

The images above also depict structures within the pedestrian walkway reducing the width of the sidewalk. The images above also depict different vantage points of South Breyman Avenue and South Military Road.

The letters submitted in opposition to removal of the enrollment cap raised concerns surrounding significant congestion in the area during drop-off/pick-up, the lack of pedestrian walkways, vehicles parking within the median¹, drivers exceeding the posted speed limit and illegal parking along the roadways. Specifically, incidences which can best be described as “close calls” were referenced in the submissions as well as mentions of parked cars being hit and sustaining damage and students walking with their backs to traffic.

Although the Staff Report references the Oregon Department of Transportation, Transportation Impact Study (Exhibit H.26, page 11) noting that “in the most recent five years of available crash data, there are no significant trends or crash patterns identified at any of the study intersections.” That no significant trends or crash patterns have been identified should not necessarily lead to the conclusion improvements are unnecessary. The evidence in the record depicts limited parking in the area with many vehicles parked bumper-to-bumper (evidenced in Figure 4 above). The Staff Report makes a Recommendation to Condition A, specifically that the Applicant update the Transportation Handbook sent to families. Although there is no evidence in the record of what families have been provided for the current school year, the images depicted in Exhibit H.33 suggests the utility of that information has limited efficacy.

Testimony from the hearing provided that the current student enrollment sits at 416 students - a number which already exceeds the previously imposed enrollment cap of 350 students. Although there is nothing in the record suggesting or indicating a prior request to exceed that 350 student enrollment cap, the only change since the 2009 Conditional Use Review until now is that the student enrollment increased from 350 students to 416 students. It is axiomatic that increasing student enrollment impacts traffic: increasing the student enrollment cap increases the number of parents driving to and from the school, even if only changing the traffic dynamic for a few hours a day. The bumper-to-bumper situation observed in Figure 4 above depicts an impassable roadway as well as pedestrians crossing the street toward an illegally parked car within the gore point.

Removing the enrollment cap now, after the enrollment cap has already been exceeded, is likely to have a negligible impact in terms of overall school community. However, the evidence in the record shows that the student enrollment increase has had a direct impact on traffic in and around the area. The Hearings Officer finds the evidence in the record

¹ The triangular shaped zone where South Breyman Avenue and South Military Road meet, seen in Figures 2 and 3, have been referred to as a median. This area is a gore point: a gore point is that triangular shaped zone with white striped lines which are placed to manage merging traffic. (See, *Taulbee v. EJ Distribution Corp.*, 35 Cal.App.5th 590 (2019); *Caldwell v. WASH. STATE DEPT. OF TRANSP.*, 96 P.3d 407, 123 Wn. App. 693 (2004); see also, [Gore \(road\) - Wikipedia](#))

establishes this “essential nexus” between the enrollment cap and pedestrian/transportation related facilities.

The Applicant sought removal of its annual reporting condition to Multnomah County. The Staff Report addresses this request directing that removal of this condition must be made via 33.730.140.A. Because the Transportation Demand Management Plan imposes conditions which have yet to be effectuated, removal of the annual reporting is premature.

The Applicant offered suggested modifications to the Approval Conditions C and D. The Applicant raised budgetary challenges as a factor to consider around timelines for completion of the recommendations: the Applicant proposes completion during the 2025-26 school year. The Hearings Officer declines to accept this proposal based upon the evidence in the record.

Although the Applicant expressed objection to Condition D, the Applicant did not offer any evidence to support its objections: no evidence that a raised median is untenable because of underground facilities, nor is there evidence of “lower cost alternatives” to the raised physical barrier. Because parking within the gore point has not been dissuaded by paint alone, the Hearings Officer declines to strike the condition of a raised physical barrier. Additionally, the Hearings Officer finds Condition D.2, Payment in Lieu of Construction, out of sync with the overall transportation/pedestrian safety goals stated. As such, this condition is stricken.

The Hearings Officer considered Applicant’s assertion regarding responsibility for payment of the recommended improvements. The Applicant failed to provide any evidence in support of the position that the district should not be required to pay. Absent guidance or evidence to the contrary, the Applicant has failed to make such a showing; as such the Applicant, as the owner, shall be responsible for covering the costs of those improvements.

Based upon the evidence in the record, the approval criteria of 33.18.105 (*Institutional and Other Uses in Residential and Campus Institutional Zones*) have been met and the proposed Conditional Use Review is approved.

II. DECISION

Approval of a Conditional Use Review to remove the previous conditions of approval B and C from the 2009 case LU 09-105772 CU AD, subject to the following conditions:

- A. The Transportation Demand Management Plan proposed in Exhibit A.12 must be implemented by the beginning of the 2024-25 school year, including at minimum the following strategies:
 - Update the Transportation Handbook sent to families to additionally address queuing and safety. Consider implementing the potential strategies listed in the plan to reduce queuing as part of this update. Implement the two recommended strategies to address safety issues (establish clear northbound lane on S Breyman Avenue and highlight where parking is allowed).

- Implement a carpool matching program similar to SchoolPool (<https://www.oregonsaferoutes.org/schoolpool/>)

Additional strategies may be added to the TDMP by the school at any point.

- B. Riverdale School student enrollment will be capped at 460 students total.
- C. Within one year of the issuance of this approval, the Applicant must improve the existing sidewalks and ramps along the school frontage on S Breyman Avenue and S Military Road to current Americans with Disabilities Act (ADA) standards to ensure compliance.
- D. Within one year of the issuance of this approval, the Applicant must do the following:
1. Improve the median from a painted median to a raised median, as specified by County Transportation Engineering.
- E. Within six months of the issuance of this approval, the Applicant must do one of the following:
1. Apply for a Right-of-Way (ROW)/Encroachment permit(s) for retention of any signs within the ROW (Multnomah County Road Rules (MCRR) 18.250); or
 2. Remove all unpermitted signs from the ROW.

Marisha Childs

Marisha Childs, Hearings Officer

May 23, 2024

Date

Application Determined Complete: February 20, 2024
Report to Hearings Officer: April 26, 2024
Decision Mailed: May 23, 2024
Last Date to Appeal: June 6, 2024, by 4:30 p.m.
Effective Date (if no appeal): June 7, 2024

Conditions of Approval. 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.

Appeal of the decision: The Hearings Officer’s decision is final and takes effect on the day the notice of decision is mailed. The decision may not be appealed to City Council but may be appealed to the Oregon Land Use Board of Appeals (LUBA), as specified in the Oregon Revised Statute (ORS) 197.830. Among other things, ORS 197.830 requires that:

- an appellant before LUBA must have presented testimony (orally or in writing) as part of the local hearing before the Hearing’s Officer; and
- a notice of intent to appeal be filed with LUBA within 21 days after the Hearings Officer’s decision becomes final.

Please contact LUBA at 1-503-373-1265 for further information on filing an appeal.

EXHIBITS RECEIVED IN THE HEARINGS OFFICE – SEE NEXT PAGE
(NOT ATTACHED UNLESS INDICATED)

The exhibits in the land use case file are all assigned a letter (example A-1). The Hearings Office accepts exhibits filed online in its case management system. These exhibits are marked in the lower right hand corner that identifies the exhibit as a “Portland Hearings Office” exhibit. All of these exhibits are designated “H Exhibits” (that is, Hearings Office Exhibits). See the BDS Staff Report for a list of exhibits prior to “H.”



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Exhibits, Orders, and Other Attachments

Number	Title	Status
Exhibit 1	Land Use Scheduling Request	Accepted
Exhibit 2	Hearing Participation Information	Accepted
Exhibit 3	Land Use Hearing Scheduled Info.	Accepted
Exhibit 4	Written Public Testimony	Accepted
Exhibit 5	Bogaty Testimony	Accepted
Exhibit 6	Allen Testimony	Accepted
Exhibit 7	Testimony by CB	Accepted
Exhibit 8	LU 23-1032016 CU HEARING RESCHEDULE	Accepted
Exhibit 9	LU 23-103216 CU 120 DAY EXTENSION	Accepted
Exhibit 10	Arrowsmith Testimony	Accepted
Exhibit 11	Rescheduled Zoom Participation Instructions	Accepted
Exhibit 12	Land Use Hearing Scheduled Info.	Accepted
Exhibit 13	Written Public Testimony	Accepted
Exhibit 14	Erler Testimony	Accepted
Exhibit 15	Robinson Rasmussen Testimony	Accepted
Exhibit 16	Duncan Testimony	Accepted
Exhibit 17	de Potttere-Smith Written Testimony	Accepted
Exhibit 18	FitzGibbon Testimony	Accepted
Exhibit 19	McLain Testimony	Accepted
Exhibit 20	Bogaty Email 4-5-24	Accepted
Exhibit 21	Milla Email Testimony 4-9-24	Accepted
Exhibit 23	Schones-Johnson Comment Email 4- 11-24	Accepted
Exhibit 24	Scarlett Email	Accepted
Exhibit 25	Steinberg Email	Accepted
Exhibit 26 (attached)	STAFF REPORT	Accepted
Exhibit 27	Updated Written Public Testimony (Lanenga)	Accepted
Exhibit 28	Bonnell Testimony	Accepted
Exhibit 29	Weinstein Testimony	Accepted
Exhibit 30	Goss Testimony	Accepted
Exhibit 31	Michael Testimony	Accepted
Exhibit 32	Written Testimony in favor of the Application	Accepted
Exhibit 33	STAFF PRESENTATION	Accepted
Exhibit 34	Allen Testimony	Accepted
Exhibit 35	Record Closing Information	Accepted



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

Carmen Rubio, Commissioner
David Kuhnhausen, Interim Director
Phone: (503) 823-7300
TTY: 711
www.portland.gov/bds

STAFF REPORT AND RECOMMENDATION TO THE HEARINGS OFFICER

CASE FILE: LU 23-103216 CU (PC # 23-026709)
Unincorporated Multnomah County
REVIEW BY: Hearings Officer
WHEN: Monday, May 6, 2024 at 1:30 pm

This land use hearing will take place online using the Zoom platform. See the instructions on how to participate remotely (online or by phone) at this link: <https://www.portland.gov/bds/zoning-land-use/events/2024/5/6/notice-land-use-hearing-lu-23-103216-cu> or contact the Hearings Office at HearingsOfficeClerks@portlandoregon.gov or 503-823-7307. Additional Hearings Office information is available at www.portland.gov/omf/hearings/land-use.

It is important to submit all evidence to the Hearings Officer. The Oregon Land Use Board of Appeals (LUBA) will not accept additional evidence if there is an appeal of this proposal.

BUREAU OF DEVELOPMENT SERVICES STAFF: AMANDA RHOADS / AMANDA.RHOADS@PORTLANDOREGON.GOV

GENERAL INFORMATION

Applicant's

Representative: Chris Hagerman | The Bookin Group, LLC
1020 SW Taylor St, Suite 555 | Portland OR 97205
503-241-2423 | hagerman@bookingroup.com

Applicant: Nicole Bassen | Riverdale School District
11733 SW Breyman Ave | Portland, OR 97219

Owner: School District No. 51J
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Site Address: 11733 S BREYMAN AVE

Legal Description: LOT 22-24 TL 200, ABERNETHY HTS
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State ID No.: 1S1E35 00200
Quarter Section: 4121 & 4231

Neighborhood: NONE
Business District: NONE
District Coalition: NONE
Plan District: NONE
Other Designations: Unincorporated Multnomah County

Zoning: R20c, p, z – Residential 20,000 with “z” Constrained Sites Overlay Zoning over entire site, and small areas of “c” Environmental Conservation and “p” Environmental Protection Overlay Zoning.

Case Type: CU – Conditional Use Review
Procedure: Type III, with a public hearing before the Hearings Officer. The decision of the Hearings Officer can be appealed to the Oregon Land Use Board of Appeals (LUBA).

Proposal: The K-8 Riverdale Grade School has been located at the site since the early 1900s. An enrollment cap of 350 students was placed on the school in a 1995 review with Multnomah County (MUP 5-95 CS). This cap was carried through and revised with the 2009 Conditional Use and Adjustment Review (LU 09-105772 CU AD) that approved significant alterations to the site, but no changes to the overall enrollment, staffing, or extracurricular activities.

The applicant requests for the enrollment cap condition to be removed from the Conditional Use approval. This 2009 condition stated the following:

- C. The Riverdale School submits to Multnomah County Land Use and Transportation Division, by May 31st each year, an annual report containing the academic year enrollment, the number of teachers and staff (school and District) and the number of extra-curricular activities; to allow monitoring of changes relative to the base academic year 2008-09 and the maximum enrollment cap of 350 students. If use of the site increases, Riverdale School District will need to apply for a subsequent land use review per the thresholds of 33.815.040 A.4: Changes to an existing conditional use, or related thresholds in PCC 33.281, Schools and School Sites.*

Another condition from the 2009 case, Condition B, also required an annual report to Multnomah County on the Transportation Demand Management Plan implementation. The school asks to remove this condition as well to relieve the district of the reporting requirement; however, an updated Transportation Demand Management Plan was submitted as part of the application materials (Exhibit A.5) and a further revised plan was submitted April 19, 2024 (Exhibit A.12). The previous condition proposed for removal reads as follows:

- B. The Riverdale School District must implement the Transportation Operations/Management Plan (exhibit H.38) and monitor the success of the strategies. The Riverdale school district shall report annually to Multnomah County, by May 31st of each year, by providing a description of the effectiveness of the Plan. If the Riverdale School changes the policies, strategies and practices included in its submitted Transportation Operations/Management Plan (Exhibit H-38) or any subsequent Plan, the School District must submit a revised Transportation Demand Management Plan/Transportation Operations/Management Plan to Multnomah County.*

These conditions must be removed through another Conditional Use Review per Zoning Code Section 33.730.140.A. **No changes to development are proposed at this time.**

Relevant Approval Criteria: In order to be approved, this proposal must comply with the approval criteria of Title 33, Portland Zoning Code. The applicable approval criteria are:

- 33.815.105, Institutional and Other Uses in Residential and Campus Institutional Zones

The Portland Zoning Code is available online at <https://www.portland.gov/code/33>.

ANALYSIS

Site and Vicinity: The Riverdale Grade School is a K-8 school located on a site made up of three contiguous lots (Abernethy Heights, Lots 22-24) which together comprise approximately 373,727 square feet, or almost 8.6 acres. The site is developed with a two-story “central classroom”

elementary school constructed after a 2009 Conditional Use approval, which replaced the original school building, two classroom wings, and the previous art building. The existing music building and the Little Red School House were retained.

The site has two parking lots: one to the south and one to the north of the primary building. The north parking lot also accommodates bus loading and unloading, and the south lot includes roughly 8 spaces for pickup queuing. A playground area with play equipment, utility sheds, and recreational fields on the south half of the site make up the rest of the development.

The southeastern corner of the site includes an open drainage way and some mature vegetation, both of which are within the Environmental Conservation and Protection overlay zones. The northwestern corner of the site is heavily vegetated and slopes relatively steeply up to the paved grade of SW Military Road. Although the entire site encompasses approximately 8.6 acres, the southern portion of the site which contains extensive grassy fields has a deed restriction that prohibits any permanent structures or buildings. Therefore, the northern portion of the site is the only opportunity area for development.

The surrounding area adjacent to the school site is zoned R20 and is characterized by larger parcels developed with larger single-dwelling residential uses built over the past 100 years. The size and design of the various residences varies based on time built, site size, and other factors.

Both S Military Rd and S Breyman Ave are classified as Local Service for all modes adjacent to the school.

Zoning: The Residential 20,000 (R20) single-dwelling zone is intended to preserve land for housing and to provide housing opportunities for individual households. The zones implement the comprehensive plan policies and designations for single-dwelling housing and provide options for infill housing that is compatible with the scale of the single-dwelling neighborhood.

The Environmental Conservation Zone “c” overlay conserves important resources and functional values in areas where the resources and functional values can be protected while following environmentally sensitive urban development.

The Environmental Protection Zone “p” overlay provides the highest level of protection to the most important resources and functional values. These resources and functional values are identified and assigned value in the inventory and economic, social, environmental, and energy (ESEE) analysis for each specific study area. Development will be approved in the environmental protection zone only in rare and unusual circumstances.

The Constrained Sites “z” overlay zone reduces residential development potential to comply with protective measures adopted and acknowledged pursuant to statewide land use planning goals. This overlay zone reduces risk to life or property from certain natural hazards.

Land Use History: The project site is located within an unincorporated area of Multnomah County, but lies within Portland’s Urban Services and Urban Growth Boundary. The City and Multnomah County have entered into an intergovernmental agreement (IGA) that allows the County to focus on rural land use issues and authorizes the City to administer applicable City of Portland regulations, including zoning requirements, for lands within these so-called ‘urban-county pockets’. This intergovernmental agreement was necessary in order for Multnomah County to comply with regional land use laws. While it is important to note that the affected properties have not been annexed into Portland, these sites are subject to City review for building and development permits, as well as land use reviews.

The zoning designations the City implemented on these areas is generally equivalent to what the County had applied, but some variations have occurred. Even with equivalent zoning, the City’s

codes and regulations vary from the previous Multnomah County requirements. For lands with environmental resources present, the City's environmental overlay zones have been applied as well. All of these lands within the urban-county pockets are subject to City of Portland standards for stormwater disposal, erosion control, grading and floodplain review.

City records show six prior land use reviews, which include the following:

- **MUP 54-89-PA:** Digital records note that this file is missing. There is no proposal description in the digital database, only a note that the decision was rendered on January 18, 1990. The applicant notes in their narrative that this review was for a request to build a music building.
- **MUP 5-95 CS:** Community Service approval, with conditions, of a proposal to construct new facilities at the existing Riverdale School site, including new classrooms and library and replacement and expansion in size of the existing gymnasium/auditorium. The most notable condition of approval imposed by this review is the enrollment limit of a maximum 350 students. This condition was carried forward by the 2009 City review in a new form.
- **MUP 15-96 DR:** Design Review approval, with conditions, of the development approved by the previous case [MUP 5-95 CS] and modified by the Board of County Commissioners through Order # 96-73. No significant or outstanding Conditions of Approval remain from this review beyond the requirement to comply with all previous Conditions of Approval for CS 5-96 as modified by the Board of county Commissioners via Order # 96-73.
- **MUP 4-98 DR:** Design Review approval, with conditions, of the replacement of the existing staff lounge, restrooms and two new classrooms in an adjacent area. No significant or outstanding Conditions of Approval remain from this review beyond the requirement to comply with all previous Conditions of Approval for MUP 5-95 CS as modified by the Board of county Commissioners via Order # 96-73.
- **MUP 01-016:** This review approved, with conditions, the use of the Riverdale School site to include shuttle bus service to Riverdale High School before and after class during weekdays, and parking and shuttle service to the high school for evening and weekend events.
- **LU 09-105772 CU AD:** Conditional Use and Adjustment Approval for a new two-story central classroom building replacing several previous structures; new multi-purpose building; reconfigured parking lots and bus loading/unloading area, redesigned outdoor assembly and play area; and other site upgrades, with Adjustments to reduce the total long-term bicycle parking spaces from 54 to 28; and to reduce the number of loading spaces on site from 2 to 1. Several conditions were part of the approval, including the two proposed to be removed through the current review – Conditions B and C.

Agency Review: A "Request for Response" was mailed **February 27, 2024**. Because the site is located within an Unincorporated Multnomah County Pocket, some urban services are provided by agencies that are not affiliated with the City of Portland. These agencies include the following:

- *Palatine Hill Water District* notes that there is adequate public water supply available for serving the proposed use (Exhibit E.3).
- *Lake Oswego Fire Marshal's Office* notes that Fire Department access is adequate for emergency vehicles and that fire flow for fire protection is adequate (Exhibit E.4).

City agencies also responded to the proposal:

- *Bureau of Environmental Services (BES)* does not object to the approval of the Conditional Use review application. The response provides detailed information regarding sanitary and stormwater infrastructure serving the site. More information is available under approval criterion 33.815.105.D.3 (Exhibit E.1).
- *Site Development Section of BDS* takes no exception to the proposed removal of the enrollment cap of 350 students (Exhibit E.5).
- *Life Safety Plan Review* noted they do not object to the approval of this proposal (Exhibit E.6).
- *Police Bureau* stated they have no concerns with the proposal. More information is available under approval criterion 33.815.105.D.3 (Exhibit E.7).

Finally, as part of the Intergovernmental Agreement [IGA] between the County and the City for land use reviews within Unincorporated Urban County Pockets, Multnomah County is responsible for reviewing proposals for Transportation and Stormwater discharge impacts.

- *Multnomah County Transportation Division* responded with a memo addressing transportation development standards. The County suggested several conditions of approval which are explored under criterion D below (Exhibit E.2).

Neighborhood Review: Written comments were received from 18 people. Three neighbors were in opposition to the proposal and/or shared concerns, mostly about safety issues stemming from traffic around the school; the rest were in support of removing the enrollment cap.

The neighbors writing in opposition expressed the following concerns:

- With no cap, the hard limit on school attendance would be the occupancy limits, which are more than twice the stated 460-student maximum.
- There are various safety concerns with the rights-of-way abutting the school even at current enrollment levels which will only get worse with more congestion. These primarily include the use of the striped triangle area at the center of the intersection at S Military Road and S Breyman Ave for parking and drop-offs; the location of school zone signage on S Military; the lack of crosswalks and sidewalks around the school; and cars exceeding the 20mph speed limit.
- Congestion: during pickup and drop-off times at the school, “the road is completely shut down and inaccessible for through traffic...I am very concerned that the school is allowed to negatively impact people on a small residential street in this way, and now without any remediation, further amplify the negative impacts” (Exhibit F.4).
- Concerns that the school is primarily growing by bringing students in from outside the Riverdale District. The percentage of students either paying tuition to attend Riverdale Grade School, or who have transferred into the school, is now close to half the total student population, and future growth, these comments indicate, is likely to come from the same sources outside the Riverdale School District. This is worse for traffic and the desire to increase enrollment is not to meet local needs.

The letters in support also shared many common themes:

- Enrollment caps affect class sizes and limit funding for a school. Class sizes are negotiated in teacher union contracts and shouldn't be determined by entities outside of education.
- Staffing and enrollment choices should be up to the school board, which is subject to its public processes that engage the community for the education of children, and not an external governmental body focused solely on land use issues.
- Riverdale prioritizes small class sizes, inherently limiting capacity. Additional, external limits on students in the existing structures are therefore unnecessary.
- It is an unfair burden to force the district to pay for repeated land use cases regarding enrollment caps when many area schools have no such limits, and the money spent should be "put towards maintaining and enhancing the safety measures already in place," like crossing guards, ride-the-bus-to-school campaigns, better signage, etc. (Exhibit H.4).
- Retaining the 350-student cap "would likely result in significant reductions in force for teachers and staff and that would be extremely detrimental to the entire school community" (Exhibit H.5).
- Removal of the enrollment cap is consistent with current treatment of schools subject to the Portland Zoning Code (current code states that changes in enrollment at a school are allowed without additional review, unless superseded by a condition of approval – Zoning Code Section 33.281.030.D and 33.281.020).
- The transportation impact study (TIS) found congestion has a limited timespan in the morning and afternoon, but otherwise the transportation system functions well and accidents have not been reported at the main intersection.
- The congestion present especially at pick-up time is consistent with what is seen at other schools in the region and, since there are other roads to use for most destinations and low traffic in the area, the temporary disruption has only minor impacts.
- The school has been proactive in addressing safety concerns and educating the community on best practices around transportation. Riverdale students are already safe.

Staff Comments: *The transportation system, including queuing for drop-off and pick-up, is addressed in approval criterion D.2.*

The home zip codes of current students are studied and accounted for in the transportation analysis – i.e., out-of-district students won't be able to use the local bus services and are more likely to be driven to the school since they are arriving from further away – but beyond that, it is not relevant to the approval criteria how the school has grown its student body. If the approval criteria can be met, or met with conditions of approval, the case must be approved.

ZONING CODE APPROVAL CRITERIA

33.815.010 Purpose

Certain uses are conditional uses instead of being allowed outright, although they may have beneficial effects and serve important public interests. They are subject to the conditional use regulations because they may, but do not necessarily, have significant adverse effects on the environment, overburden public services, change the desired character of an area, or create major nuisances. A review of these uses is necessary due to the potential individual or cumulative impacts

they may have on the surrounding area or neighborhood. The conditional use review provides an opportunity to allow the use when there are minimal impacts, to allow the use but impose mitigation measures to address identified concerns, or to deny the use if the concerns cannot be resolved.

33.815.105 Institutional and Other Uses in Residential and Campus Institutional Zones

These approval criteria apply to all conditional uses in R and campus institutional zones except those specifically listed in sections below. The approval criteria allow institutions and other non-Household Living uses in residential and campus institutional zones that maintain or do not significantly conflict with the appearance and function of residential or campus areas. Criteria A through E apply to institutions and other non-Household Living uses in residential zones. Criteria B through E apply to all other conditional uses in campus institutional zones. The approval criteria are:

- A. **Proportion of Household Living uses.** *The overall residential appearance and function of the area will not be significantly lessened due to the increased proportion of uses not in the Household Living category in the residential area. Consideration includes the proposal by itself and in combination with other uses in the area not in the Household Living category and is specifically based on:*
1. *The number, size, and location of other uses not in the Household Living category in the residential area; and*
 2. *The intensity and scale of the proposed use and of existing Household Living uses and other uses.*

Findings: For the Conditional Use criteria, the terms “area” and “residential area” have the same meaning and include all residential-zoned properties within 400 feet of the site’s perimeter. This distance is reasonable as it considers all properties within the immediate area containing the site. It is also equal to the required notification area for this Type III land use review.

The applicant notes the school is surrounded by residential uses – specifically, single-dwelling homes on larger residential lots appropriate to the R20 zoning (Exhibit A.1, page 2). The only non-residential use the applicant notes is the Bishop’s Close Garden at Elk Rock on S Riverside Drive east of the school; however, this undefined use is not within 400 feet of the site, so it is not considered part of the residential area. The residential area has substantial vegetation including many trees, with generous setbacks, grade changes, and a right-of-way with two-lane roads with no sidewalk corridor beyond the school.

In this case, the school is the only non-residential use in the residential area, and has operated on the site since 1920. The applicant does not propose to acquire any new property for the school nor expand the boundaries of the previously-approved Conditional Use site. The proportion of uses not in the Household Living category, therefore, is not changing within the residential area. No new development is proposed in this case, so the physical size and location of the school will also continue as previously approved. Therefore, the overall residential appearance and function of the area will not be significantly lessened due to an increased proportion of uses not in the Household Living category in the residential area.

A 1995 condition (for MUP 5-95 CS) limited school enrollment on this site to 350 students. Staff reviewed the available materials from this land use review. It appears this was due to 350 being the likely maximum of enrollment at the time rather than a result of analysis regarding 350 students being an appropriate upper limit for the capacity of either the transportation system, the stormwater system, the water supply or any other limiting factor. Perhaps it was standard at the time for Community Service reviews through Multnomah County to establish enrollment limits for the use. Regardless, the 1995 enrollment cap was carried forward in the 2009 Conditional Use Review for the new, two-story school building. The current enrollment of the school is 416 students and 39 employees, as well as 5 district employees located onsite. The applicant requests the previous condition limiting enrollment to be removed.

The maximum enrollment figure of 460 students used for the transportation analysis was calculated based on the assumption that a previous Daycare program (allowed outright in a building currently or previously used for a School use per Zoning Code Section 33.110.100.B.7) would be brought back, and the grade/class size breakdowns would look like this:

- Preschool: 2 classrooms x 15 students = 30 (possible program restarted – not in place currently)
- Kindergarten: 2 classrooms x 20 students = 40
- Grades 1st-4th: 2 classrooms x 22 students = 44; 44 x 4 grades = 176
- Grades 5th-8th: 2 classrooms x 26 students; 52 x 4 grades = 208
- Total: 454 rounded to **460**

The applicant goes on to state, “Anything larger would require adding a classroom for each grade, which would not be practical within the physical capacity of the facility. The 460 students figure is not a target, but simply an upper limit for the purposes of the transportation analysis” (Exhibit A.7).

The applicant further noted that this breakdown (minus the preschool classes, which is not yet an approved program) represents the current board-approved maximum class sizes for the school. “Programmatically it would be difficult to increase to this number [the building’s occupancy limit of 1,054] without either adding classrooms as we only have a couple that aren’t used for students already or increasing class sizes well beyond instructional best practices which would need to get board approval. One of the things that makes a Riverdale education special is that we have small classes, so any change to the current class size approach would be a drastic shift from our current practice” (Exhibit A.9).

The peak use of the site would be during school hours, 8:30 am to 3:20 pm on weekdays during the school year (Exhibit A.1, page 4). The applicant states the school property is also used for school events, including roughly 78 middle school athletic events, 13 districtwide meetings, and 35 non-athletic events such as Parent-Teacher Council meetings, visitors’ day, and principal’s coffees. These last three comprise 18 meetings which are held during the school day. The rest are outside of school hours (Exhibit A.2). These types of uses are typical for a K-8 school campus, and the number of events is not anticipated to increase based on the removal of the enrollment limit.

Staff proposes a new maximum enrollment figure of 460 students as described in findings for criterion D.2 below. This maximum enrollment limit will limit the intensity of the use adequately so that the appearance and function of the residential area is not significantly lessened. With this condition, staff finds criterion A is met.

B. Physical compatibility.

1. *The proposal will preserve any City-designated scenic resources; and*

Findings: City-designated scenic resources are identified on the official zoning maps with a lower case “s.” There are no City-designated scenic resources on the site or in the surrounding neighborhood. Therefore, this criterion is not applicable.

2. *The proposal will be compatible with adjacent residential developments based on characteristics such as the site size, building scale and style, setbacks, tree preservation, and landscaping; or*
3. *The proposal will mitigate differences in appearance or scale through such means as setbacks, screening, landscaping, tree preservation, and other design features.*

Findings: The subject property is significantly larger in site area than neighboring residential lots. However, the property has been developed with a public school for more than 100 years, and no expansion in the existing site area is proposed. No alterations to the site are proposed at this time. The current development has been reviewed through the previous land use reviews listed under “Land Use History” above, by both the City of Portland and Multnomah County. Since no changes are proposed at this time, criteria B.2 and B.3 are not applicable.

C. *Livability.* *The proposal will not have significant adverse impacts on the livability of nearby residential zoned lands due to:*

1. Noise, glare from lights, late-night operations, odors, and litter; and

Findings: No evidence has been added to the record to indicate that removing the previous conditions of approval related to enrollment and reporting would increase late-night operations, odors, or litter at the existing school, nor does staff find a reason to think any of these impacts would be worsened by more students. No additional late-night activities are proposed as a result of the proposed changes to the previous conditions of approval. Current development includes an enclosed trash and recycling area that was designed to City standards for odor and vector control, as well as stormwater treatment. The applicant notes, “Riverdale has a strong commitment to the appearance and upkeep of their property and ensures that litter on the site is picked up regularly” (Exhibit A.1, page 14). No additional glare from lights is expected, as no new lighting is proposed.

Noise is sometimes a concern near institutional uses; in this case, the applicant states, “virtually all regular school and extracurricular activities will be contained indoors, so there will be no excessive noise associated with the school program” (Exhibit A.1, page 14). The applicant notes some of the outdoor play areas are between the two buildings and significant vegetated areas; staff concurs that much of the outdoor play area is further from most adjacent residential properties than the 25 feet required by code for playground facilities and that they are most used during daytimes when the noise of children playing is expected at school sites and not significantly impactful to neighbors. For these reasons, staff finds criterion C.1 is met.

2. Privacy and safety issues.

Findings: The facility is not expected to have significant privacy impacts on nearby residential properties. Nothing is proposed to change with the layout of the campus. There is significant screening along the west and south property lines, and around the northwest portion of the site. The removal of the previous conditions limiting enrollment, implementing the previous Transportation Demand Management Plan and requiring yearly reports to Multnomah County on both, will not change the relationship between nearby residences and the school site.

Regarding safety, the Portland Police Bureau and the Lake Oswego Fire Department reviewed the proposal and raised no concerns about the adequacy of police or fire services or potential safety impacts from the proposed changes (Exhibits E.7 and E.4, respectively). The Transportation Impact Study (TIS) noted, “Based on a review of the most recent five years of available crash data, no significant trends or crash patterns were identified at any of the study intersections. No safety mitigation is recommended per the crash data analysis” (Exhibit A.11, page 4). The applicant noted that the school has “policies in place to handle any situations on the property that are deemed unsafe” (Exhibit A.1, page 15). For these reasons, staff finds criterion C.2 is met.

D. *Public services.*

1. The proposal is supportive of the street designations of the Transportation Element of the Comprehensive Plan;

Findings: The three rights-of-way abutting Riverdale School are Multnomah County facilities, but have been given street designations in the City of Portland's Transportation System Plan (TSP): all streets are classified as Local Service for all modes. The response from Multnomah County Transportation Division (Exhibit D.2) does not address street classifications. However, the TSP says the following regarding local service streets:

- *Local Service Walkways are, "intended to serve local circulation needs for pedestrians and provide safe and convenient access to local destinations."*
- *Local Service Bikeways are "intended to serve local circulation needs for bicyclists and provide access to adjacent properties."*
- *Local Service Transit streets "primarily facilitate movement of smaller transit vehicles, including paratransit and community/jobs connector shuttles. Local Service Transit Streets seldom have regular transit service except for short street segments and do not typically include transit-specific street design elements such as bus stops. Local Service Transit Streets may be used for bus movements to and from a layover facility or bus garage, for turning around at the end of a line, or for temporary reroutes of a fixed-route line."*
- *Local Service Freight streets "are intended to serve local truck circulation and access."*
- *Local Service Traffic streets are "intended to distribute local traffic and provide access to local residences or commercial uses"*

For context, the Multnomah County Design and Construction manual contains the following description of the function of specifically Urban Local streets:

Local streets provide access to abutting land uses and do not serve through traffic. Local streets may be further classified by adjacent land use, such as residential, commercial, and industrial. Their primary purpose is to serve local pedestrian, bicycle, and automobile trips in urban areas.

The three abutting streets will continue to function as intended above; the continuation of the site as an institutional use will not impact the classifications or functions of said streets. The "local" designation points to the limited utility of these streets for serving broader transportation needs of the area. The TIS notes, "All study intersections are currently operating acceptably per agency standards and are projected to continue operating acceptably through the future year 2028 with some school growth" (Exhibit A.11, page 5). The TIS further notes, "the school's use of Breyman Avenue and Military Road for access and student loading and unloading is consistent with the intended function of the roadway" (Exhibit A.11, page 10). For these reasons, staff finds that the proposed use is supportive of the street designations of the Transportation Element of the Comprehensive Plan.

2. *Transportation system:*

- a. *The transportation system is capable of supporting the proposed use in addition to the existing uses in the area. Evaluation factors include safety, street capacity, level of service, connectivity, transit availability, availability of pedestrian and bicycle networks, on-street parking impacts, access restrictions, neighborhood impacts, impacts on pedestrian, bicycle, and transit circulation. Evaluation factors may be balanced; a finding of failure in one or more factors may be acceptable if the failure is not a result of the proposed development, and any additional impacts on the system from the proposed development are mitigated;*
- b. *Measures proportional to the impacts of the proposed use are proposed to mitigate on- and off-site transportation impacts. Measures may include transportation improvements to on-site circulation, public street dedication and improvement, private street improvements, intersection improvements, signal or other traffic management improvements, additional transportation*

and parking demand management actions, street crossing improvements, improvements to the local pedestrian and bicycle networks, and transit improvements;

- c. *Transportation improvements adjacent to the development and in the vicinity needed to support the development are available or will be made available when the development is complete or, if the development is phased, will be available as each phase of the development is completed;*

Findings: Multnomah County Transportation Division reviewed the proposal, including the submitted TIS (Exhibit A.4) and revised TIS (Exhibit A.11) and both versions of the transportation demand management plan (TDMP – Exhibits A.4 and A.12) and submitted a detailed response analyzing the proposal against County development standards. The following findings are pulled from this response and from the revised TIS, the assumptions of which County staff accepts.

Safety

The submitted TIS findings regarding vehicle crashes span pages 30 and 31. The data analysis shows none of the study intersections have a motor vehicle crash rate above the 90th percentile crashes per million entering vehicles (CMEV). Per ODOT's Analysis Procedures Manual, a crash rate above 90th percentile MEV "may be indicative of design deficiencies and therefore require a need for further investigation and possible mitigation" (Exhibit A.11, page 30). The TIS analysis concludes, "Based on a review of the most recent five years of available crash data, no significant trends or crash patterns were identified at any of the study intersections. No safety mitigation is recommended per the crash data analysis" (Exhibit A.11, page 31). This evaluation factor is satisfied.

Street Capacity and Level of Service

The proposed removal of the 350-student enrollment cap will result in an increase in trips to the site. Street capacity and level of service were studied with findings on pages 37-39 of the TIS. The TIS analyzed current conditions, projected 2028 conditions based on regular growth, and projected 2028 conditions with growth in the school enrollment up to 460 students for both level of service and street capacity. Their analysis found that "[a]ll study intersections are currently operating acceptably per agency standards and are projected to continue operating acceptably through the future year 2028 with some school growth. No operational mitigation is necessary or recommended at these intersections" (Exhibit A.11, page 39 of TIS).

Note that this analysis does not include queuing, and the congestion associated with morning drop-off and afternoon pick-up. Multnomah County Transportation Division noted this issue in their analysis:

The queueing, delay, and parking issues are expected to worsen under future conditions if enrollment increases beyond the current figure of 416 students. The TIS reported future queueing (based on an estimated enrollment figure of 460 students) that is expected to extend into southbound S Breyman Ave for 40 minutes and into the S Military Road intersection at the peak of the queue for about 25 minutes (at a maximum queue of 39 vehicles and 31 queued in the street) during the afternoon pick-up period.

While the TIS reported acceptable future Level of Service (LOS) and capacity at the study intersections including the intersection of S Breyman Ave & S Military Rd, the existing and forecasted duration of queueing in the southbound direction of S Breyman Ave and the intersection of S Breyman Ave & S Military Rd creates a blocking of public travel on S Breyman Ave for an extended period of time. This negative condition is not properly reflected in the reporting of LOS and volume-to-capacity (v/c) which are delay- and capacity-based metrics that assume the ability for traffic to move through intersections and road segments and do not account for blocking of travel for an extended period of time such as the condition on S Breyman Ave.

In addition, the existing parking violations especially during afternoon pick-up period...if corrected, may add to the queue length and duration and thereby worsen blocking of southbound S Breyman Ave and the S Breyman Ave & S Military Rd intersection (Exhibit E.2, pages 7-8).

To address the issues created currently by queuing, and the expected additional worsening of the queue with additional growth in students, the County proposes a condition of approval that the school implements its revised transportation demand management plan (TDMP) in full, Exhibit A.12, to help mitigate congestion, queuing, and parking in the vicinity of the school (Exhibit E.2, page 10):

County is supportive of continued TDM measures and initiatives to reduce the number of private vehicle trips, prevent the blocking of northbound S Breyman Ave, reduce the duration and queue length in southbound S Breyman Ave, mitigate the illegal and improper parking, and improve traffic circulation of area streets during school drop-off, pick-up and other special events...County Staff recommend that the school employ all strategies within their revised TDM plan to help mitigate congestion, queuing and parking in the vicinity of the school (Exhibit E.2, page 10).

The County did not directly request a condition of approval to limit enrollment to the 460-student figure, but the conclusions are clear that, since no analysis was conducted of transportation impacts beyond the 460-student figure, staff cannot predict whether the proposed conditions of approval would be adequate to mitigate impacts from additional students. Further, at several points in their analysis, they included statements like, “However, the School District may be required to submit a revised TIS and/or TDM plan should enrollment exceed 460 students” (Exhibit E.2, page 10) and “County Staff recommends that City Land Use staff and the Hearing Officer consider the implications of removing a cap on the local transportation network, given that no supporting evidence has been provided for enrollment numbers greater than 460 students” (Exhibit E.2, page 2).

City staff finds there is no mechanism to require updated plans or analysis if enrollment exceeds 460 without conditioning this approval with a new enrollment cap of 460 students. Therefore, staff proposes a new student enrollment cap of 460 students through condition of approval to ensure that the mitigation proposed by the County will limit impacts as intended, in this case, to the queuing and level of service of adjacent intersections. With the two conditions to limit enrollment to 460 students, and to implement the TDMP proposed in Exhibit A.12, staff finds these two evaluation factors are satisfied.

Connectivity

The City’s spacing goals for public through-streets and public pedestrian connections is a maximum of 530 feet and 330 feet, respectively. The subject site is larger than these maximums. While connectivity in public right-of-way is one of the City’s goals, PBOT, for instance, typically does not seek to further this goal through the middle of school sites. Creating new public streets through this site would be very disruptive to the school operation and would be extremely costly to due to slope and drainage issues. Additionally, a no-build easement on the southern section of the site complicates the location of a public street, and the lack of a connection to the new street through private sites to the west means the connectivity of the area would not be improved. When streets are not viable, then pedestrian connections must be assessed. The current proposal has no development associated with it. Pedestrian paths already run around the fields on the south of the site; again, there is no current opportunity for connection to the west. Since no development is proposed at this time, the County is limiting its approach to improving existing rights-of-way. See other sections for conditions the County is requesting. This evaluation factor is satisfied.

Transit availability

The applicant notes in the TIS that two TriMet bus lines run north-south along OR 43, with the closest stop at S Military Rd approximately ¼ mile from the school entrance (Exhibit A.11, page 11). Transit service, therefore, is provided in the vicinity of the study area. Transit availability will not be impacted by the proposal to remove the enrollment cap on the Riverdale School. This evaluation factor is satisfied.

Availability of pedestrian and bike networks

The TIS notes the following with regard to facilities near the school:

There are limited pedestrian facilities and no bike facilities on any of the area roadways. The only sidewalks present in the study area are located on the west side of S Breyman Avenue along the school frontage. Multnomah County has noted that objects in the sidewalks, such as a mailbox, fire hydrant, and signs in the sidewalk along Breyman Ave restrict the sidewalk travel space to less than an ADA-compliant four feet.

A midblock crosswalk is located on S Breyman Avenue near the main school entrance. The crossing on the east side of the street is at-grade, connecting with the roadway shoulder. The crossing on the west side of the street connects with the sidewalk and does not have a ramp (Exhibit A.11, page 11).

The subject site is in a neighborhood where many area streets including collectors are missing dedicated bicycle lanes and sidewalks. Additional bicycle improvements are not warranted by the scope of this project, which does not include any new development. With regard to pedestrian networks, Multnomah County Transportation Division notes the following:

County Transportation has identified that several sections of sidewalks along S Breyman Ave and S Military Rd do not meet the [ADA-] required four feet width due to barriers impeding adequate passage on the sidewalks. These include the placement of unpermitted signs and mailboxes. Relocation of posts and signs may be required if sidewalk improvements are deemed necessary by the County Transportation Engineer. In addition, ADA-compliant curb ramps appear to be missing at several locations along the school frontage.

If granted approval, the applicant will be required to apply for a Construction Permit (MCRR 9.200) to improve the sidewalks and ramps along the school frontage on S Breyman Ave and S Military Rd to current ADA standards to ensure compliance (Exhibit E.2, page 9)...

If the applicant seeks to place, or retain existing but unpermitted, signs within the public right-of-way to support the Transportation Demand Management (TDM) plan or enforcement of traffic rules, the applicant shall apply for the appropriate permits from the County (Exhibit E.2, page 12).

Therefore, staff recommends a condition of approval to require the applicant to meet current ADA requirements along the school frontage on S Breyman Ave and S Military Rd. Further, a condition will require the applicant to permit any signs located in the public right-of-way, or remove them. With these conditions, this evaluation factor is satisfied.

On-street parking impacts

The number of parking spaces was not directly analyzed by either the applicant or County staff. Between the south and north lot, the site has 35 on-site parking spaces, and approximately 8 additional spaces in the south lot to serve for queuing in the morning and afternoon. An additional 40 legal parking spaces are provided along the school's frontage in the public right-of-way. Neither the applicant nor County staff noted that the number of available parking spaces

was insufficient; the applicant notes that parking for 94 percent of the extracurricular events held at the school outside school hours could be accommodated by the 70 available parking spaces.

Temporary parking, and more specifically, temporary illegal parking, did come up as an issue for families grappling with the end-of-the-day pick-up queue. One location where this was seen was within the painted median at the intersection of S Military Rd and S Breyman Ave. The County states:

County Staff have observed that the current painted, triangular median has led to a number of compliance issues. These include illegal parking and waiting for pick-up and drop-off within the painted median. This is not in compliance with Oregon Revised Statute (ORS, 811.550[5]). Written public testimony noted this as an issue, as well as County Staff observations over the years.

County Transportation has identified the painted median as a candidate to be converted to a raised median. A raised median will help prevent illegal parking, provide traffic calming and channelization, and improve overall safety at this intersection. If granted approval by the Hearings Officer, the applicant will be required to improve the median as an off-site improvement via a Construction Permit (MCRR 9.200), or pay County Transportation the equivalent cost as a Payment in Lieu of Construction (PILO, MCRR 9.300).

To successfully address this evaluation factor, therefore, staff proposes a condition of approval to convert the painted median within the S Military Rd and S Breyman Ave intersection to a raised median. With this condition, this evaluation factor is satisfied.

Access restrictions

The site has frontage on multiple streets with all driveway access being from both S Military Rd and S Breyman Ave. The proposal does not include any changes to the existing access points. There is no documented history of crashes or safety concerns with the existing access points. Relocating the access points to other streets is not viable given the location of the school and parking lots. No access restrictions are warranted. County staff notes:

The school has more than one access, which exceeds the one access standard pursuant to the Multnomah County Code. However, the previous Conditional Use applications (1995 and 2009) established that the accesses on the property are in compliance with Multnomah County Codes. Furthermore, the accesses have subsequently been permitted with ROW/Encroachment permits (88-0426-2 and 67579) pursuant to MCRR 18.250. As no changes are proposed to the accesses, the existing accesses remain consistent with the approved conditional use and ROW permits (Exhibit E.2, page 4).

This evaluation factor is satisfied.

Neighborhood Impacts

Impacts on pedestrian, bicycle, and transit circulation

As documented throughout the findings above, the proposal to remove the existing enrollment cap of 350 students is anticipated to result in an increase in trips to the site. With the condition limiting the increase to a future total of 460 students, the increase should be relatively modest. County staff have proposed right-of-way improvements through additional conditions that will address a portion of the need for pedestrian improvements in the area and minimize neighborhood impacts.

As documented in the TIS, there should be little to no impact to intersection operation as a result of the proposed project. Area roadways are anticipated to continue to operate well within standards. The proposal includes sufficient on-site and on-street parking to accommodate all of the anticipated parking demand. These evaluation factors are satisfied.

Based on these findings from Multnomah County Transportation Division, and with the five noted conditions of approval to implement the proposed TDMP of Exhibit A.12; limit school enrollment to a maximum of 460 students; make the noted ADA upgrades along the school's frontages; permit or remove any signs in the right-of-way; and convert the painted median within the S Breyman Ave and S Military Rd intersection to a raised median, staff finds approval criteria D.1 and D.2 are met.

3. *Public services for water supply, police and fire protection are capable of serving the proposed use, and proposed sanitary waste disposal and stormwater disposal systems are acceptable to the Bureau of Environmental Services.*

Findings: The Bureau of Environmental Services (BES) reviewed the proposal for availability and adequacy of sanitary sewer service and stormwater disposal systems. They provided a written response stating no objection to the proposal related to this criterion for stormwater and sanitary service (Exhibit E.1). Specifically, they conclude the following:

- *Staff finds the existing sanitary sewer service acceptable for the purpose of reviewing the conditional use application against the sanitary sewer disposal approval criterion...*
- *Staff finds the existing stormwater management service acceptable for the purpose of reviewing the conditional use application against the stormwater management approval criterion...(Exhibit E.1).*

The Palatine Hills Water District, Lake Oswego Fire Department, and Portland Police Bureau reviewed the proposal and have no concerns about the availability and adequacy of water, police, and fire protection services (Exhibits E.3, E.4, and E.7, respectively). The Police response went on to say, "The proposal was evaluated on whether police can provide adequate public safety services to the proposed Conditional Use. The Police Bureau is currently able to serve the existing site and will be able to provide services after the proposed change. Police officers can reasonably access the site using the existing or proposed right of ways by foot and vehicle without restriction. The Portland Police Bureau does not request any conditions of approval" (Exhibit E.7).

Based on the responses from the relevant service bureaus, and with the four conditions of approval noted above, staff finds this criterion is met.

- E. **Area plans.** *The proposal is consistent with any area plans adopted by the City Council as part of the Comprehensive Plan, such as neighborhood or community plans.*

Findings: The site is not within the boundary of any neighborhood, community, or area plan. Therefore, this criterion is not applicable.

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 proposal to remove both a previous condition of approval limiting enrollment at Riverdale Grade School to 350 students with yearly reports to Multnomah County; and a previous condition

implementing the Transportation Demand Management Plan with yearly reports to Multnomah County; would not significantly lessen the residential appearance and function of the area, as the subject site has already been developed with a school for many years. No changes are proposed at this time to school development, and so no changes are proposed to the physical compatibility of the school to the neighboring residentially-zoned properties. The proposal would not cause significant, adverse impacts on the livability of the neighborhood with the condition to cap school enrollment at the expanded 460 student level. The transportation system and other public services are adequate to support the proposal, with the proposed conditions of approval to make ADA upgrades in the pedestrian system along the school's frontages; to permit any signs in the public right-of-way; to convert the median in the S Breyman Ave and S Military Rd intersection to a raised median; and to fully implement the school's proposed TDMP.

Staff finds that each of the applicable approval criteria are met or can be met with conditions of approval. Therefore, staff recommends approval of the proposal with the conditions of approval listed below.

TENTATIVE STAFF RECOMMENDATION

(May be revised upon receipt of new information at any time prior to the Hearings Officer decision)

Approval of a Conditional Use Review to remove the previous conditions of approval B and C from the 2009 case LU 09-105772 CU AD, subject to the following conditions:

- A. The Transportation Demand Management Plan proposed in Exhibit A.12 must be implemented by the beginning of the 2024-25 school year, including at minimum the following strategies:
 - Update the Transportation Handbook sent to families to additionally address queuing and safety. Consider implementing the potential strategies listed in the plan to reduce queuing as part of this update. Implement the two recommended strategies to address safety issues (establish clear northbound lane on S Breyman Ave and highlight where parking is allowed).
 - Implement a carpool matching program similar to SchoolPool (<https://www.oregonsaferoutes.org/schoolpool/>)

Additional strategies may be added to the TDMP by the school at any point.
- B. Riverdale School student enrollment will be capped at 460 students total.
- C. Within one year of the issuance of this approval, applicant must improve the sidewalks and ramps along the school frontage on S Breyman Ave and S Military Rd to current ADA standards to ensure compliance.
- D. Within one year of the issuance of this approval, applicant must do one of the following:
 1. Improve the median from a painted median to a raised median, as specified by County Transportation Engineering; or
 2. Pay County Transportation a Payment in-lieu-of Construction [PILO] for the costs of creating a raised median (MCRR 9.300).
- E. Within six months of the issuance of this approval, applicant must do one of the following:
 1. Apply for a ROW/Encroachment permit(s) for retention of any signs within the ROW (MCRR 18.250); or
 2. Remove all unpermitted signs from the ROW.

PROCEDURAL INFORMATION

The application for this land use review was submitted on November 15, 2023, and was determined to be complete on February 20, 2024.

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 November 15, 2023.

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 extended at the request of the applicant. In this case, the applicant extended the 120-day review period by 60 days. Unless further extended by the applicant, **the 120 days will expire on August 18, 2024.**

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

As required by Zoning Code Section 33.800.060, 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 recommendation 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 specific conditions of approval, 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.

This report is not a decision. The review body for this proposal is the Hearings Officer who will make the decision on this case. This report is a recommendation to the Hearings Officer by the Bureau of Development Services. The review body may adopt, modify, or reject this recommendation. The Hearings Officer will make a decision about this proposal within 17 days of the close of the record. To comment, you may testify at the hearing, submit comments at www.portland.gov/omf/hearings/land-use; email your comments to HearingsOfficeClerks@portlandoregon.gov; write to the Land Use Hearings Officer, 1900 SW Fourth Ave., Suite 3100, Portland, OR 97201; or FAX your comments to 503-823-4347.

You will receive mailed notice of the decision if you write a letter received before the hearing or testify at the hearing, or if you are the property owner or applicant. This Staff Report will be posted on the Bureau of Development Services website at <https://www.portland.gov/bds/zoning-land-use/public-notices>. Land use review notices are listed on the website by the District Coalition in which the site is located; the District Coalition for this site is identified at the beginning of this staff report.

Appeal of the decision: You can appeal the decision of the Hearings Officer to the Oregon Land Use Board of Appeals (LUBA), within 21 days of the date of decision, as specified in the Oregon Revised Statute (ORS) 197.830. Among other things, ORS 197.830 requires that a petitioner at LUBA must have submitted written testimony during the comment period for this land use review. You may call LUBA at 1-503-373-1265 for further information on filing an appeal.

Recording the final decision.

If this land use review is approved the final decision will be recorded with the County Recorder. *Unless appealed*, the final decision will be recorded by the Bureau of Development Services.

Expiration of this approval. Generally, land use approvals (except Comprehensive Plan and Zoning Map Amendments) expire five years from the date of the final decision unless one of the actions below has occurred (see Zoning Code Section 33.730.130 for specific expiration rules):

- A City permit has been issued for the approved development,
- The approved activity has begun (for situations not requiring a permit), or

In situations involving only the creation of lots, the final plat must be submitted within three years.

Where a site has received approval for multiple developments, and a building permit is not issued for all of the approved development within seven 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 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.

Planner's Name: Amanda Rhoads

Date: April 26, 2024

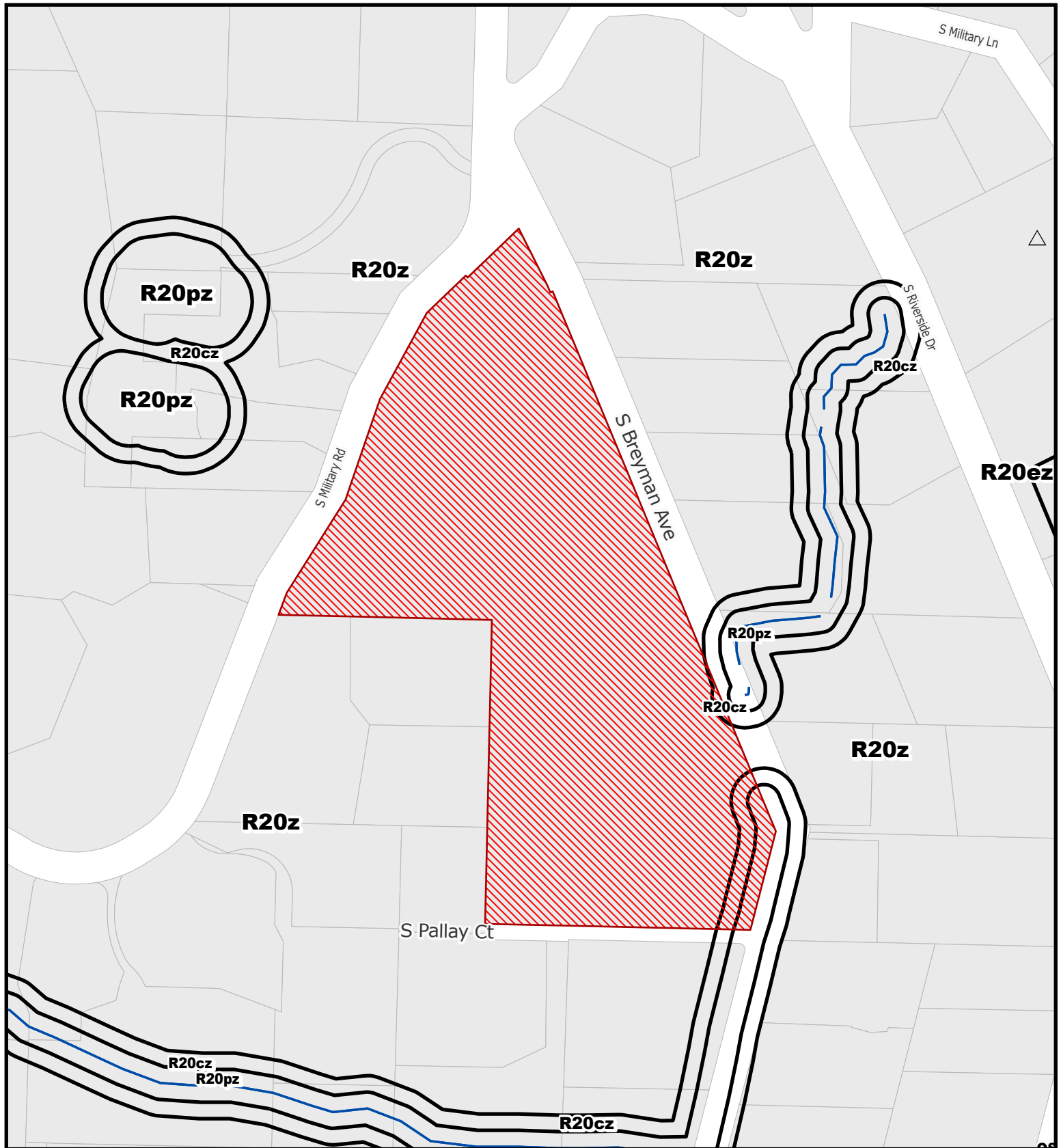
EXHIBITS (not attached unless indicated)

A. Applicant's Statement:

1. Narrative
2. Extracurricular Events and Estimated Parking Impacts
3. Aerial and site plan
4. Transportation Impact Study
5. Updated Transportation Demand Management Plan
6. Pre-Application Conference Notes
7. Completeness Response Memo, February 16, 2024
8. Existing Classroom Building Elevations
9. Email on Maximum Enrollment, March 5, 2024
10. Second Email on Enrollment, March 10, 2024

11. Revised Transportation Impact Study, submitted April 19, 2024
12. Revised Transportation Demand Management Plan, submitted April 19, 2024
13. 120-day extension form and hearing reschedule form
- B. Zoning Map (attached)
- C. Plans & Drawings:
 1. Site Plan (attached)
- D. Notification information:
 1. Request for response
 2. Posting letter sent to applicant
 3. Notice to be posted
 4. Applicant's statement certifying posting
 5. Mailing list
 6. Mailed notice
- E. Agency Responses:
 1. Bureau of Environmental Services
 2. Multnomah County Transportation Division
 3. Palatine Hills Water District
 4. Lake Oswego Fire Department
 5. Site Development Review Section of Bureau of Development Services
 6. Life Safety Plans Examiner
 7. Police Bureau
- F. Letters:
 1. Andrew Allen, March 5, 2024, with concerns
 2. Andrew Allen, March 5, 2024, with concerns
 3. Andrew Allen, March 5, 2024, with concerns
 4. Jonathan McNulty, March 18, 2024, in opposition
- G. Other:
 1. Original Land Use Application
 2. Incomplete Letter, December 15, 2023
- H.

The Bureau of Development Services is committed to providing equal access to information and hearings. To request an accommodation or alternative format of communication, please contact us at least five business days prior to the hearing at 503-823-7300 (TTY 503-823-6868).



For Zoning Code in Effect Post October 1, 2022

ZONING 

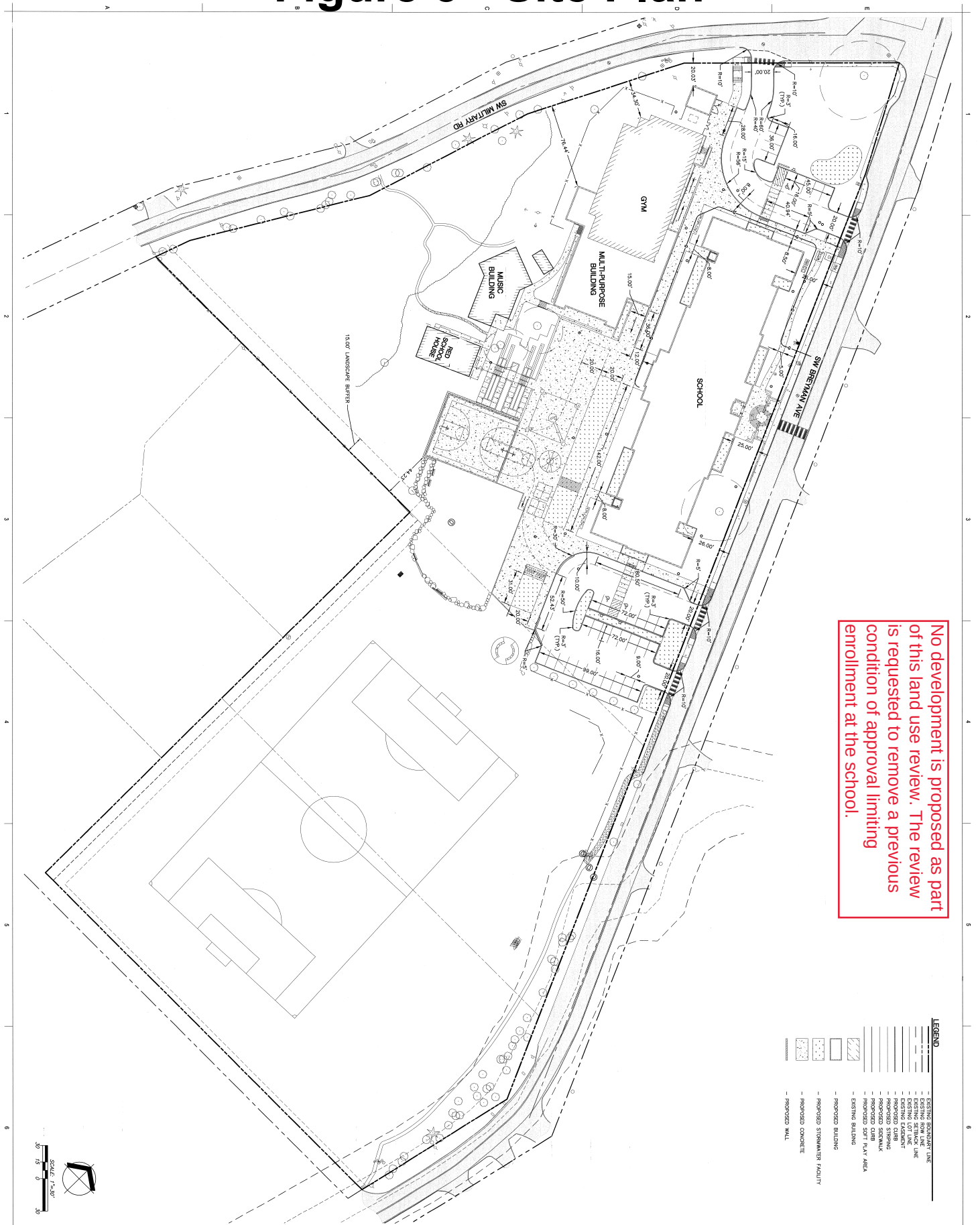
UNINCORPORATED
MULTNOMAH COUNTY

-  Site
-  Historic Landmark
-  Stream

File No. LU 23 - 103216 CU
 1/4 Section 4131,4231
 Scale 1 inch =200 feet

State ID 1S1E35 200
 Portland Hearing Office
 Case # 4216001
 Bureau Case # LU 23-103216 CU
 Exhibit #26
 Nov 15, 2023

Figure 3 - Site Plan



No development is proposed as part of this land use review. The review is requested to remove a previous condition of approval limiting enrollment at the school.

LEGEND	
	- EXISTING BOUNDARY LINE
	- EXISTING ROW LINE
	- EXISTING LOT LINE
	- EXISTING EASEMENT
	- PROPOSED SHEDDING
	- PROPOSED SIDEWALK
	- PROPOSED SPORT PLAY AREA
	- EXISTING BUILDING
	- PROPOSED BUILDING
	- PROPOSED STORMWATER FACILITY
	- PROPOSED CONCRETE
	- PROPOSED WALL