

Type III Development and Environmental Review Staff Report and Recommendation

Project Name: Portland Vancouver Junction Railroad LLC

Case Number(s): OLR-2020-00065

Request: The applicant requests to rezone a 5.28acre parcel from the light industrial (IL) zoning designation to the railroad industrial (IR) zoning designation.

Address: The site is not addressed, but is known as Tax Lot #51, Section 1, Township 2 North, Range 1 East or the Willamette Meridian.

Parcel number(s): 986031-172

Applicant/Contact: Jordan Ramis PC
Armand Resto-Spotts, contact
1499 SE Tech Center Pl, Suite 380
Vancouver, WA 98683
360.567.3917
armand.resto-spotts@jordanramis.com

Owner: Portland Vancouver Junction Railroad LLC
1203 114th Avenue SE, Suite 2
Bellevue, WA 98004

Staff contact: Amy Wooten, Planner III
564.397.5683
amy.wooten@clark.wa.gov

Recommendation

DENIAL

Land Use Review Manager's Initials:



Date issued: August 12, 2020

Public Hearing date: August 27, 2020

Revised 8/12/2020



Community Development
1300 Franklin Street, Vancouver, Washington
Phone: 564.397.2375 Fax: 360.397.2011
www.clark.wa.gov/development



For an alternate format,
contact the Clark County
ADA Compliance Office.
Phone: 564.397.2322
Relay: 711 or 800.833.6384
E-mail: ADA@clark.wa.gov

County Review Staff

	Name	Phone	Email Address
Community Development			
Land Use Review Manager	Susan Ellinger	564.397.5122	susan.ellinger@clark.wa.gov
Land Use Review Planner	Amy Wooten	564.397.5683	amy.wooten@clark.wa.gov
Public Works			
Concurrency Engineer	David Jardin	564.397.4354	david.jardin@clark.wa.gov

Comp Plan Designation: I (Industrial)

Applicable Laws

Chapter 40.200 (General Provisions), Section 40.230.085 (Employment Districts), Section 40.350.020 (Transportation Concurrency), Chapters 40.500 and 40.510 (Procedures), Chapter 40.570 (SEPA), and the Clark County Comprehensive Plan.

Neighborhood Association/Contact: Andresen/St. Johns Neighborhood Association
Marilee McCall, Neighborhood Program
Coordinator
564.397.2316
marilee.mccall@clark.wa.gov

Vesting

An application is reviewed against the subdivision, zoning, transportation, stormwater and other land development codes in effect at the time a fully complete application for preliminary approval is submitted. If a pre-application conference is required, the application shall earlier contingently vest on the date the fully complete pre-application is filed. Contingent vesting requires that a fully complete application for substantially the same proposal is filed within 180 calendar days of the date the county issues its pre-application conference report. Contingent vesting does not apply to stormwater or concurrency standards.

A pre-application conference on this matter was held on March 26, 2020. The pre-application was determined not contingently vested.

The fully complete application was submitted on April 21, 2020 and determined to be fully complete on May 12, 2020. Given these facts, the application is vested to land use and concurrency standards on April 21, 2020. This vesting does not apply to stormwater standards.

There are no disputes regarding vesting.

Time Limits

The application was determined to be fully complete on May 12, 2020. The project was placed on hold, which extended the review period by 28 days. Therefore, the code requirement for issuing a decision within 92 days lapses on September 9, 2020. The state requirement for issuing a decision within 120 calendar days, lapses on October 7, 2020.

Public Notice

Notice of application and public hearing was mailed to the applicant, the Andresen/St. Johns Neighborhood Association and property owners within 300 feet of the site on July 31, 2020. One sign was posted on the subject property on July 8, 2020

Public Comments

One letter was received from Kim O'Hara, who resides at 12308 NE 103rd Avenue. The letter indicates that Ms. O'Hara opposes the re-zoning of the subject property due to current legal/lease issues between the Portland Vancouver Junction Railroad and Clark County.

Staff response: Ms. O'Hara's letter was forwarded to the Community Development Director; however, the current state of affairs between the County and the applicant do not receive consideration based on codified zone change standards.

Project Overview

The applicant is proposing to change the zoning designation of one (1) existing parcel zoned IL (light industrial) and approximately 5.28 acres in overall size to IR (railroad industrial) zoning. The subject site is currently vacant and triangular in shape. It is located north of NE 78th Street, sharing a property boundary with the Chelatchie Prairie Railroad approximately 1,000 feet along its westerly property line.

The subject site is located in an industrial area, with all adjacent property zoned for industrial use. County GIS systems do not identify the site as having any wetlands, priority habitat or species areas, slope stability issues or geological hazards. The site is served by Fire District #5, the Clark Regional Wastewater District for public sewer, the City of Vancouver for potable water service.

Comprehensive Plan, Zoning and Current Land Use

Compass	Comp Plan	Zoning	Current Land Use
Site	I	IL	Vacant
North	n/a	n/a	n/a
East	I	IL	Clark Regional Wastewater offices/ Veterinary Clinic
South	I	IL	Messer, LLC (Liquid gas refinery)
West	I	IL	Clark County Public Works offices

Staff Analysis

Staff first analyzed the proposal in light of the 16 topics from the Environmental Checklist (see list below). The purpose of this analysis was to identify any potential adverse environmental impacts that may occur without the benefit of protection found within existing ordinances.

- | | |
|---------------------------------|--|
| 1. Earth | 9. Housing |
| 2. Air | 10. Aesthetics |
| 3. Water | 11. Light and Glare |
| 4. Plants | 12. Recreation |
| 5. Animals | 13. Historic and Cultural Preservation |
| 6. Energy and Natural Resources | 14. Transportation |
| 7. Environmental Health | 15. Public Services |
| 8. Land and Shoreline Use | 16. Utilities |

Staff then reviewed the proposal for compliance with applicable code criteria and standards in order to determine whether all potential impacts could be mitigated by the requirements of the code.

Staff's analysis also reflects review of agency and public comments received during the comment period.

Major Issues

Only the major issues, errors in the development proposal, and/or justification for any conditions of approval are discussed below. Staff finds that all other aspects of this proposal not discussed below comply with the applicable code requirements.

Finding 1 – Approval Process

Where the proposed zoning is consistent with the current comprehensive plan map designation, a zone change must follow the Type III public hearing procedures described in Section 40.510.030.

The applicant has applied for a Type III review, consistent with CCC 40.560.020(A)(1). This standard is met.

Finding 2 – Uses

Table 40.230.085-1 establishes uses that are permitted outright or through the conditional use permit process in the industrial zones. A condensed version of this table is included herewith as "Attachment A" (See Exhibit 8). Notably, uses identified in "Category 21- Mining" are prohibited in the IL zone but permitted in the IR zone conditionally or outright, subject to the provisions of Section 40.250.022, Surface Mining Overlay District. Applicability standards put forth in Section 40.250.022.B.1 state that "The provisions in this section shall apply to parcels designated with the surface mining overlay." Therefore, in accordance with Section 40.250.022(B)(1), the Surface Mining Overlay zoning designation must be applied to the subject property before any uses within Category 21 – Mining are permitted. Application of this overlay will require a Type IV Comprehensive Plan Amendment, pursuant to Chapter 40.560 CCC. [See Condition 1] At such time as the overlay is approved, uses put forth in Category 21 – Mining will be allowed.

Finding 3 – Approval Criteria

The applicant requests approval to change the subject site's existing zoning from IL (light industrial) to IR (railroad industrial). Both zones are included in the I¹ comprehensive plan designation; therefore, a Type III Map Amendment (rezone) is required.

In accordance with Section 40.560.020(F), zone changes may be approved only when all of the following criteria are met:

1. Requested zone change is consistent with the comprehensive plan map designation.

Applicant statement: The applicant states that the requested zone change, from Light Industrial to Railroad Industrial, retains the Industrial Comprehensive Plan designation meeting CCC 40.560.020(F)(1).

Staff concurs with the applicant's statement.

2. The requested zone change is consistent with the plan policies and locational criteria and the purpose statement of the zoning district.

Applicant statement: The applicant's narrative notes that the Railroad Industrial District (IR) is intended for uses most suited for and can take advantage of locations along the county's rail line and references CCC 40.230.085(B)(1)(c). The applicant contends that the subject parcel is adjacent to the rail line and is in the precise intended location of IR zones, and specifically able to take advantage of the rail line are best suited for IR zoning, meeting this criterion. The applicant asserts that they satisfy criteria put forth in CCC 40.560.020(F)(2).

Staff does not concur with the applicant's statement. The Comprehensive Plan establishes as a policy (See Chapter 9, Policy 9.6.2, page 229) that land use designations should develop compatible land uses that promote the long-term economic viability of the county railroad. The Plan also states (See page 35) that uses implemented with a Heavy Industrial base zone may be incompatible with other categories of land uses. In this case, the Light Industrial and Heavy Industrial comp plan designations cannot be considered irrespective of one another as the proposed zone change would permit uses that are only elsewhere permitted in the Heavy Industrial zone/plan designation (See Exhibit 8) and are therefore likely to be incompatible with nearby residential zoning and uses².

3. The zone change either:

- a. Responds to a substantial change in conditions applicable to the area within which the subject property lies;**
- b. Better implements applicable comprehensive plan policies than the current map designation; or**

¹ Industrial Districts

² The St. Johns Wood Subdivision and a manufactured home park are located approximately 400 feet north of the subject site.

c. Corrects an obvious mapping error.

The applicant asserts that the proposed zone change will better implement applicable comprehensive plan policies and use of the subject industrial site. They state that the Railroad Industrial district is intended for uses that are suited for and can take advantage of locations along the county's rail line and reference CCC 40.230.085(B)(1)(c) and the Comprehensive Plan, Land Use Element-35. They note that the applicant's property, because it is adjacent to the rail line, is the type of property best suited to take advantage of the railroad uses and services. And, that it implements the intent of the IR district thereby limiting the need for significant changes to the design of the site in order to accommodate development standards established for rail uses and services put forth in CCC 40.230.085(D)(2). The applicant notes that the site owner was integral in the creation of the Railroad Industrial District and currently operates the rail line, referencing the Comprehensive Plan, "Transportation-131". The applicant further indicates that the core intent of the county's comprehensive plan is to preserve and protect rail corridors and develop "compatible land uses that promote the long-term economic viability of the county railroad" and refers to the following Comprehensive Plan goals: "Transportation-154", Goal 5.4 System Mobility Policies; and, Economic Development Element-229, Goal 9.6 Promote long-term economic development that will improve environmental quality and accommodate job generating activities. The applicant reiterates that the property is the exact type of property that the Railroad Industrial district was developed for as it will allow for the rail uses and services, as intended, for the Property and the County as a whole meeting CCC 40.560.020(F)(3).

Staff does not concur with the applicant's statements and finds that a change from the light industrial (IL) zone to the railroad industrial (IR) zone does not better implement applicable comprehensive plan policies than the current map designation.

As indicated in Table 40.230.085-1, Rail transportation (482) and support activities for rail transportation (4882) are currently permitted uses within the light industrial zone. Meaning, there is nothing precluding the applicant from future site development and use of the adjacent railroad under the current zoning designation. County wide, there are several existing industrial businesses in the IL zone that currently utilize the railroad to transport goods and materials; Staff cites use of the rail by Messer, LLC, for example, a business which is located to the south of the subject property, across NE 78th Street.

The zone change would, however, as indicated by Table 40.230.085-1, permit the following additional uses: oil and gas extraction, mining, support activities for mining, leather and allied product manufacturing, wood product manufacturing, paper manufacturing, petroleum and coal products manufacturing, chemical manufacturing, primary metal manufacturing, and fabricated metal product manufacturing. However, since the applicant has not provided any evidence that these additional uses can be accommodated on the site or that such uses are more likely to utilize the adjacent railroad for transport of goods and materials, and because the site is already afforded access to the railroad, Staff is unable to find that the proposed zone change better implements applicable comprehensive plan policies than the current IL map designation.

4. There are adequate public facilities and services to serve the requested zone change.

Applicant statement: The applicant indicates that there are adequate public facilities to serve the requested zone change.

Staff concurs with the applicant's statement as basic services are available to the site.

Staff finds that the applicant has not met the approval criteria established in Section 40.560.020(F) for zone changes and hereby recommends DENIAL of the requested zone change.

Conclusion (Land Use)

Staff concludes that the proposed preliminary plan, subject to conditions identified above, meets land use requirements of the Clark County Code.

Transportation Concurrency

Finding 1 - Applicability

Concurrency staff has reviewed the Portland Vancouver Junction Railroad rezone request application. The applicant is proposing to rezone the subject property from a Light Industrial zoning to Railroad Industrial. The proposed rezoning of the property is not proposing a site-specific development; therefore, the rezone itself is not anticipated to exceed 10 peak hour trips; therefore, Concurrency has no further comments. Please note that a site-specific development application will require the reevaluation of transportation impacts on the surrounding road network and may require a traffic study. The site is located on parcel #986031-172 in Vancouver.

Conclusion (Concurrency)

Transportation Concurrency staff concludes that the proposed preliminary plan, subject to conditions identified in their attached report, meets transportation concurrency requirements of the Clark County Code.

Development Engineering

Finding 1 – Applicability

Development Engineering staff has reviewed the Portland Vancouver Junction Railroad rezone request application. The applicant is proposing to rezone the subject property from a Light Industrial zoning to Railroad Industrial. The proposed rezoning of the property is not proposing a site-specific development with on-site transportation, stormwater systems, etc.; therefore, Development Engineering has no further comments. Please note that a site-specific development application will require the evaluation of transportation, stormwater and other critical area impacts. The site is located on parcel #986031-172 in Vancouver.

SEPA Determination

As lead agency under the State Environmental Policy Act (SEPA) Rules [Chapter 197-11, Washington Administrative Code (WAC)], Clark County must determine if there are possible significant adverse environmental impacts associated with this proposal. The options include the following:

- **DS = Determination of Significance** - The impacts cannot be mitigated through conditions of approval and, therefore, require the preparation of an Environmental Impact Statement (EIS);
- **MDNS = Mitigated Determination of Non-Significance** - The impacts can be addressed through conditions of approval; or,
- **DNS = Determination of Non-Significance** - The impacts can be addressed by applying the Clark County Code.

The likely SEPA Determination of Non-Significance (DNS) in the Notice of Development Review Application issued on May 19, 2020 is hereby final.

SEPA Appeal Process

An appeal of this SEPA determination and any required mitigations, must be filed with the Department of Community Development within fourteen (14) calendar days from the date this notice.

The hearing examiner shall hear appeals in a public hearing. Notice of the appeal hearing shall be mailed to parties of record, but shall not be posted or published.

A **procedural SEPA appeal** is an appeal of the determination (i.e., determination of significance, determination of non-significance, or mitigated determination of non-significance).

A **substantive SEPA appeal** is an appeal of the conditions required to mitigate for probable significant issues not adequately addressed by existing Clark County Code or other law.

Issues of compliance with existing approval standards and criteria can still be addressed in the public hearing without an appeal of this SEPA determination.

A **procedural or substantive appeal** must be filed within fourteen (14) calendar days of this determination, together with the appeal fee. Such appeals will be considered at a scheduled public hearing and decided by the Hearing Examiner in a subsequent written decision.

Appeals must be in writing and should contain the following information:

- Case number designated by the county
- Name of the applicant
- Name of each petitioner
- Signature of each petitioner or his or her duly authorized representative
- A statement showing the following:
 - That each petitioner is entitled to file the appeal as an interested party in accordance with CCC 40.510.020(H) or 40.510.030(H)
 - The reasons why the SEPA determination is in error
- The appeal fee

Refer to the *Appeals* handout for more information and fees.

The decision of the Hearing Examiner is final unless:

- A motion for reconsideration is filed within fourteen (14) days of written notice of the decision, as provided under Clark County Code, Section 2.51.160; or,
- An appeal is filed with Clark County Superior Court.

Staff Contact Person: Amy Wooten, 564.397.5683

Responsible Official: Dan Young, Community Development Director

Recommendation

Based upon the proposed plan known as Exhibit 8, and the findings and conclusions stated above, staff recommends the Hearing Examiner **DENIES** this request. Should the Examiner approve this application, and the applicant understands the requirement to adhere to all applicable codes and laws, the following are conditions of approval:

Conditions of Approval

1. In accordance with Section 40.250.022(B)(1), the Surface Mining Overlay zoning designation must be applied to the subject property before any uses within Category 21 – Mining are permitted. Application of this overlay will require a Type IV Comprehensive Plan Amendment, pursuant to Chapter 40.560 CCC. [See Land Use Finding 2]

Note: Any additional information submitted by the applicant within fourteen (14) calendar days prior to or after issuance of this report, may not be considered due to time constraints. In order for such additional information to be considered, the applicant may be required to request a “hearing extension” or “open record” and shall pay the associated fee.

Hearing Examiner Decision and Appeal Process

This report to the Hearing Examiner is a recommendation from the Land Use Review program of Clark County, Washington.

The examiner may adopt, modify or reject this recommendation. The examiner will render a decision within 14 calendar days of closing the public hearing. Clark County will mail a copy of the decision to the applicant and neighborhood association within 7 days of receipt from the Hearing Examiner. All parties of record will receive a notice of the final decision within 7 days of receipt from the Hearing Examiner.

Motion for Reconsideration

Any party of record to the proceeding before the Hearing Examiner may file with the responsible official a motion for reconsideration of an examiner’s decision within fourteen (14) calendar days of written notice of the decision. A party of record includes the applicant and those individuals who signed the sign-in sheet or presented oral testimony at the public hearing, and/or submitted written testimony prior to or at the Public Hearing on this matter.

The motion must be accompanied by the applicable fee and identify the specific authority within the Clark County Code or other applicable laws, and/or specific evidence, in support of reconsideration. A motion may be granted for any one of the following causes that materially affects their rights of the moving party:

- Procedural irregularity or error, clarification, or scrivener's error, for which no fee will be charged;
- Newly discovered evidence, which the moving party could not with reasonable diligence have timely discovered and produced for consideration by the examiners;
- The decision is not supported by substantial evidence in the record; or,
- The decision is contrary to law.

Any party of record may file a written response to the motion if filed within fourteen (14) calendar days of filing a motion for reconsideration.

The examiner will issue a decision on the motion for reconsideration within twenty-eight (28) calendar days of filing of a motion for reconsideration.

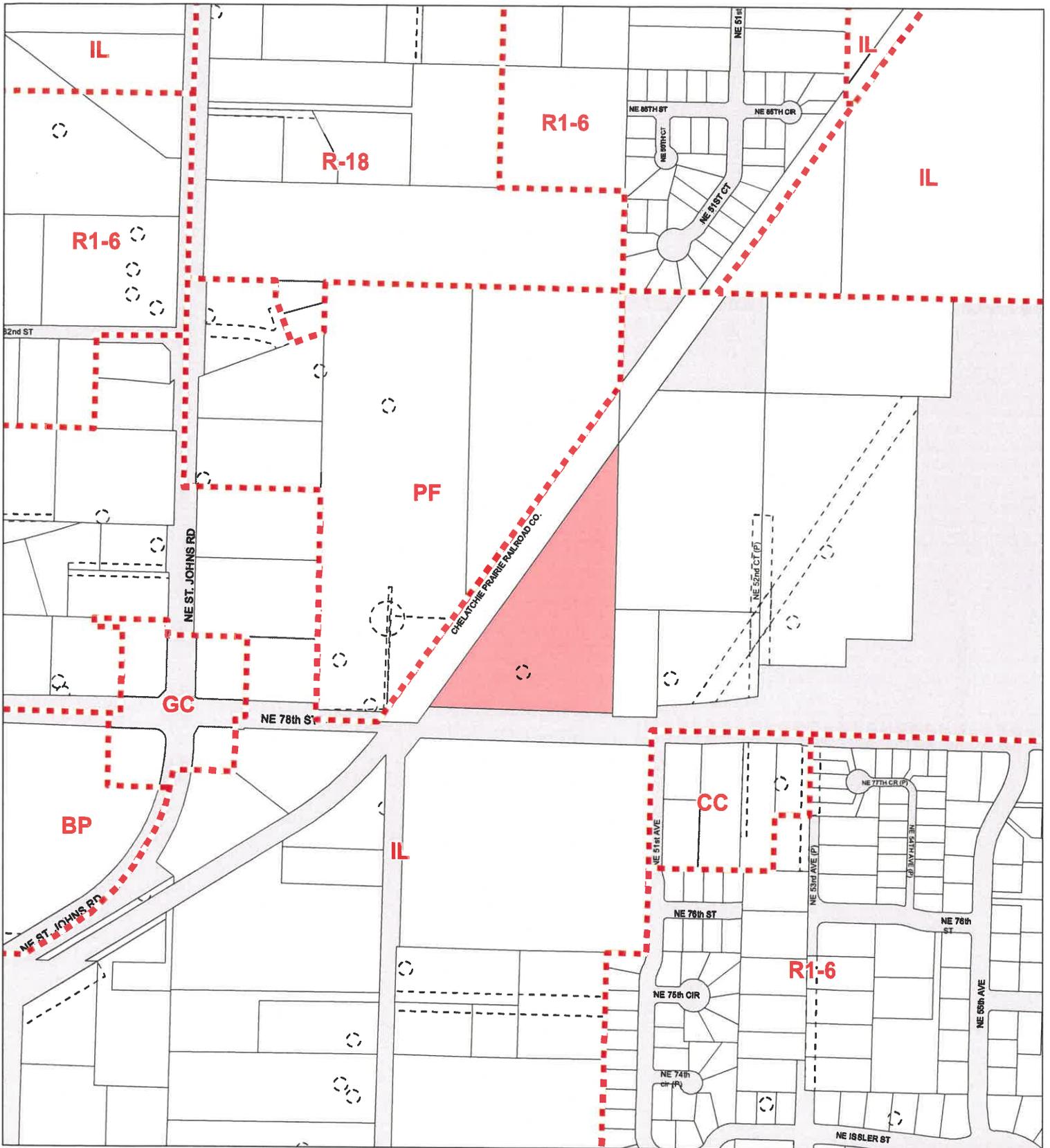
Appeal Rights

Any party of record to the proceeding before the hearings examiner may appeal any aspect of the Hearing Examiner's decision, except the SEPA determination (i.e., procedural issues), to the Superior Court.

See the *Appeals* handout for more information and fees.

Attachments

- Site Map
- Attachment A – Use Table



Zoning Designations

Printed on: February 20, 2020

Account: 988031172
 Owner: PORTLAND VANCOUVER JUNCTION RAILROAD LLC
 Address: 1203 114TH AVE SE
 C/S/Z: BELLEVUE, WA 98004



Geographic Information System



Information shown on this map was collected from several sources. Clark County accepts no responsibility for any inaccuracies that may be present.

- Subject Property(s)
- Public Road
- Transportation or Major Utility Easement
- Zoning Boundary
- Urban Holding - 10 (UH-10)
- Urban Holding - 20 (UH-20)
- Urban Holding - 40 (UH-40)
- Surface Mining Overlay District

31135	31138	32131
21102	21101	22105
21111	21112	22107

Table 40.230.085-1. Uses 2012 North American Industrial Classification System (NAICS)				IL	IH	IR	BP
21 Mining							
211	Oil and gas extraction			X	C4	C4	X
212	Mining (except oil and gas)			X	C4	C4	X
	2123	Nonmetallic mineral mining and quarrying		X	P4	P4	X
213	Support activities for mining			X	C4	C4	X
316 Leather and allied product manufacturing							
	3161	Leather and hide tanning and finishing		X	P	P	X
321 Wood product manufacturing							
	3211	Sawmills and wood preservation		X	P	P	X
	3212	Veneer, plywood, and engineered wood product manufacturing		X	P	P	X
322 Paper manufacturing							
	3221	Pulp, paper and paperboard mills		X	P	P	X
324	Petroleum and coal products manufacturing			X	P	P	X
325	Chemical manufacturing			X	P	P	X
		327310	Cement manufacturing	X	P	P	X
		327320	Ready-mix concrete manufacturing	X	P	P	X
	3274	Lime and gypsum product manufacturing		X	P	P	X
	3279	Other nonmetallic mineral product manufacturing		X	P	P	X
331	Primary metal manufacturing			X	P	P	X
332 Fabricated metal product manufacturing							
	4883	Support activities for water transportation		X	P	P	X

⁴ Subject to the provisions of Section [40.250.022](#), Surface Mining Overlay District.

EXHIBIT #8