

## Notice to Parties of Record

**Project Name:** Portland Vancouver Junction RailRoad LLC

**Case Number:** OLR-2020-00065

The attached decision of the Land Use Hearing Examiner is final unless a motion for reconsideration is filed or an appeal is filed with Superior Court.

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

### **Motion for Reconsideration:**

Any party of record to the proceeding before the hearings 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 the rights of the moving party:

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

Mailed on: October 2, 2020

DS1333

Revised 7/15/13



Community Development  
1300 Franklin Street, Vancouver, Washington  
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For an alternate format,  
contact the Clark County  
ADA Compliance Office.  
Phone: (360)397-2322  
Relay: 711 or (800) 833-6384  
E-mail: [ADA@clark.wa.gov](mailto:ADA@clark.wa.gov)

**BEFORE THE LAND USE HEARING EXAMINER  
OF CLARK COUNTY, WASHINGTON**

Regarding an application by Portland Vancouver	)	<b><u>FINAL ORDER</u></b>
Junction Railroad, LLC to rezone a 5.28-acre	)	<b>OLR-2020-00065</b>
parcel located north of NE 78 <sup>th</sup> Street from IL to	)	<b>(Portland Vancouver</b>
IR in unincorporated Clark County, Washington	)	<b>Junction Railroad Rezone)</b>

**A. SUMMARY**

1. Portland Vancouver Junction Railroad, LLC (the "applicant") requests approval of a zone change from IL (Light Industrial) to IR (Railroad Industrial) for a vacant triangular shaped roughly 5.28-acre parcel located on the north side of NE 78<sup>th</sup> Street, roughly 700 feet east of St. Johns Road. The legal description of the parcel is tax assessor parcel 986031-172 (the "site"). The site has roughly 1,000 feet of frontage on the existing Chelatchie Prairie Railroad, which abuts the northwest property line of the site. The site is currently vacant.

a. The site and surrounding properties to the east and south are designated "Industrial" on the County's Comprehensive Plan and currently zoned IL (Light Industrial). Properties to the north and west are zoned PF (Public Facilities). Properties roughly 200 feet southeast of the site are zoned CC (Community Commercial) and properties more than 400 feet to the north and south of the site are zoned R1-6 (Residential, 6,000 square foot minimum average lot size) and R-18 (Residential, 18 units/acre).

b. County GIS systems do not identify any wetlands, priority habitat or species areas, slope stability issues or geological hazards on the site. The site is served by Fire District #5, the Clark Regional Wastewater District for public sewer, the City of Vancouver for potable water service.

2. The existing IL zoning and the proposed IR zoning are both consistent with the site's "Industrial" designation on the comprehensive plan map. If the rezone is approved the site can be developed with certain additional uses allowed in the IR zone, in addition to most of the light industrial uses permitted in the existing IL zone.

3. The County issued a Determination of Nonsignificance ("DNS") for the application pursuant to the State Environmental Policy Act ("SEPA"). Hearing Examiner Joe Turner (the "examiner") conducted a public hearing regarding the application. County staff recommended that the examiner deny the application. See the Development and Environmental Review Staff Report and Recommendation to the Hearings Examiner dated August 12, 2020 (the "Staff Report"). The applicant's attorney testified in support of the application. Two other persons testified orally in opposition to the proposed zone change. Other persons and organizations testified in writing, in support and in opposition. (Exhibits 7, 14, 15, 17, 19, 23, 24, 25, and 27). Disputed issues or concerns in the case include the following:

a. Whether the requested zone change is consistent with the plan policies and locational criteria and the purpose statement of the zoning district, CCC 40.560.020.F.2;

b. Whether the proposed IR zoning designation better implements applicable comprehensive plan policies than the current IL map designation; CCC 40.560.020.F.3;

c. Whether the applicant is required to proposed a specific use on the site;

d. Whether the applicant is required to demonstrate that the proposed zoning is compatible with surrounding uses; and

e. Whether an alleged dispute regarding the existing railroad lease is relevant to this rezone application.

4. Based on the findings provided or incorporated herein, the examiner finds that the applicant demonstrated that the zone change complies with all of the applicable zone change approval criteria. Therefore, the examiner approves the proposed rezone request.

## **B. HEARING AND RECORD HIGHLIGHTS**

1. The examiner received testimony at the online public hearing about the application on August 27, 2020. That testimony and evidence, including a video recording of the public hearing and the casefile maintained by the Department of Community Development (“DCD”), are included herein as exhibits, and they are filed at DCD. The following is a summary by the examiner of selected testimony and evidence offered at the hearing.

2. County planner Amy Wooten summarized the Staff Report.

a. She noted that the site and all surrounding properties to the east and south are zoned IL and designated “I” (Industrial) on the County’s comprehensive plan map. Properties to the north and west are zoned PF (Public Facilities). There are residential zoned properties to the southeast, north, and northwest of the site.

b. The County received an additional comment letter in opposition to the proposed zone change (Exhibit 14). The author noted that the applicant did not propose a specific use on the site. They expressed concerns with the potential adverse impacts of uses allowed in the IR zone. Other persons submitted comments in support of the application (Exhibits 17 and 19). The applicant submitted a written response to the Staff Report (Exhibit 16). She requested the examiner hold the record open to allow County staff an opportunity to review and respond to the applicant’s letter.

c. She opined that the proposed rezone does not meet approval criteria 2 and 3, as discussed in the Staff Report, and should be denied. The proposed IR zoning does not better implement the applicable comprehensive plan policies, because the zone change is not necessary to allow development on the site to utilize the abutting railroad

and some uses allowed by the proposed IR zoning are likely incompatible with existing residential uses in the area.

d. The proposed IR zone allows some uses that are prohibited in the current IL zone and prohibits certain other uses that are allowed in the IL zone, including educational facilities and technical trade schools.

3. Attorney Armand Resto-Spotts testified on behalf of the applicant, Portland Vancouver Junction Railroad, LLC, and summarized his written testimony responding to the Staff Report and public comments (Exhibits 16 and 18).

a. He agreed with Staff's findings that the application complies with CCC 40.560.020.F(1), that the proposed zone change is consistent with the comprehensive plan map designation, and (4), that adequate public facilities and services are available to serve the requested zone change.

b. He argued that the application complies with CCC 40.560.020.F(2); the requested zone change is consistent with the plan policies and locational criteria and the purpose statement of the IR zoning district.

i. The County adopted the IR zone in 2007 to create a new zoning designation between the IL (Light Industrial) and IH (Heavy Industrial) zones. The applicant was very involved in the process of creating and adopting the IR zone. The applicant purchased the site in 2010 with the intent of operating the railroad.

ii. The purpose of the IR zone is to provide for those industrial uses that are most suited for and can take advantage of locations along the county's rail line. CCC 40.230.085.B(1)(c). The site is ideal for the proposed IR zone: It is surrounded by existing light industrial uses, has approximately 1,000 feet of frontage on the railroad line, and has an existing spur track extending onto the site.

iii. The rezone is consistent with comprehensive plan policy 5.4.5, which provides, "Improve mobility and access for the movement of goods and services on the short line railroad to enhance and promote economic opportunity throughout the county," and 9.6.2, which provides, "Develop compatible land uses that promote the long-term economic viability of the county railroad."

c. The County is attempting to add an additional "compatibility" approval criterion that is not included in the Code. Although the IR and IH (Heavy Industrial) zones allow some of the same uses, these zones are not equivalent. The site is zoned Industrial on the County's comprehensive plan map. The Industrial designation is implemented by the BP (Business Park), LI (Light Industrial), IR (Railroad Industrial), and A (Airport) zones. The IH zone is only allowed in areas designated Heavy Industrial on the comprehensive plan. Therefore, staff's analyses of uses allowed in the IH zone and the goals, policies, and criteria of the Heavy Industrial section of the comprehensive plan and Code are irrelevant.

i. Even if the IH standards applied, staff's findings do not show the proposed rezone is inconsistent with those standards; "likely incompatible" is not an applicable standard. CCC 40.560.020.F(2) requires a finding that the proposed zone change is "consistent with" applicable plan policies and locational criteria and the purpose statement of the zoning district. It does not require a showing of compatibility. If the Board of Commissioners had intended to require a showing of compatibility, it would have expressly imposed such a requirement, as it has elsewhere in the Code.

ii. The residential areas noted by staff are located roughly 500 feet to the north of the site. The site is separated from these residential areas by the existing railroad and a number of light industrial uses and structures that provide a buffer between the site and these areas.

d. Two entities submitted letters in support of the application. The Building Association of Washington noted that the proposed zone change will enhance the capacity of potential users and customers on the railroad, which would support aggregate resource industries and supportive industries, allowing for rail shipment of aggregate products and reducing the number of trucks on the roadway. The Columbia River Economic Development Council argued that the zone change will enhance economic development in the County by preserving and best utilizing industrial lands over the long-term, allowing for the highest and best use of industrial lands abutting the railroad.

e. The proposed IR zoning better implements applicable comprehensive plan policies than the current IL zone. CCC 40.560.020.F(3)(b). The IR zone will better implement policies 5.4.45, "Improve mobility and access for the movement of goods and services on the short line railroad to enhance and promote economic opportunity throughout the county" and 9.6.2, "Develop compatible land uses that promote the long-term economic viability of the county railroad." The proposed IR zone will expand and broaden the types of industrial uses allowed on the site, allowing a greater range and diversity of uses, thereby increasing the pool of potential uses and enhancing and promoting their ability to utilize the railroad and support its long-term viability. Allowing additional uses on the site also increases flexibility for uses and activities on the site to adapt to changing markets and needs. Although tenants of the site can utilize the railroad under existing conditions, the rezone will broaden the scope of uses allowed, potentially increasing utilization of the railroad.

f. The rezone approval criteria do not require that the applicant propose a specific use for the site. If the rezone is approved the applicant may develop the site with any use allowed in the IR zone. However, the applicant has a potential customer for the site who intends to utilize the railroad to serve the intended use on the site.

g. The IL zone allows certain uses that are prohibited in the IR zone. However, most of the "lost" uses would not utilize the railroad.

h. Dr. Cleveland and Mr. Gray's concerns with impacts to the veterinary clinic are not relevant to this zone change application. The zone change approval criteria do not require compatibility. The County will consider compatibility issues when specific

uses are proposed on the site. Compliance with applicable regulations will limit such adverse impacts.

4. Dr. Tammy Cleveland and office manager Cody Gray testified in opposition to the proposed zone change.

a. Dr. Cleveland operates a veterinary clinic on property abutting the east boundary of the site. The clinic has existed in this location since 1969. The clinic is currently in the middle of a multi-million dollar expansion, constructing a new veterinary facility behind their existing building. The clinic currently has 28 employees and will increase to 48 employees with the proposed expansion. The expansion is projected to double the clinic's revenue.

b. The clinic is compatible with uses allowed in the IL zone. However, changing the zoning of the site to IR would allow a variety of new uses that could generate adverse impacts on the clinic including increased noise, odors, vibrations, dust/particulates, etc., that could impact animals housed at the clinic as well as clinic customer/pet owners. Aggregate use on the site is a particular concern due to increased dust and other air quality impacts. The proposed IR zoning is not compatible with the existing veterinary clinic.

5. At the end of the hearing the examiner held the record open for three weeks, subject to the following schedule

a. Until September 3, 2020, to allow anyone an opportunity to submit new evidence;

b. Until September 10, 2020, to allow anyone an opportunity to respond to the new evidence submitted during the first week; and

c. Until September 17, 2020, to allow the applicant an opportunity to submit a final argument, without any new evidence.

6. The following exhibits were submitted during the open record period:

a. A transcript of the August 27, 2020 hearing (Exhibit 20);

b. A Memorandum from Ms. Wooten dated September 3, 2020 (Exhibit 21);

c. A letter from Mr. Resto-Spotts dated September 3, 2020, (Exhibit 22);

d. An email comment from Justin Allen dated September 7, 2020, (Exhibit 23);

e. An email comment from Daran Wilson dated September 9, 2020, (Exhibit 24);

- f. A comment letter from Katy and Marta Benson dated September 9, 2020, (Exhibit 25);
- g. A Memorandum from Ms. Wooten dated September 10, 2020, (Exhibit 26);
- h. An email comment from Silvia Fung dated September 10, 2020, (Exhibit 27); and
- i. A letter from Mr. Resto-Spotts dated September 17, 2020, (Exhibit 28).

### **C. DISCUSSION**

Only issues and approval criteria raised in the course of the application, during the hearing or before the close of the record are discussed in this section. All approval criteria not raised by staff, the applicant, or a party to the proceeding have been waived as contested issues, and no argument with regard to these issues can be raised in any subsequent appeal. The examiner finds those criteria to be met, even though they are not specifically addressed in these findings. The following issues relate to the mandatory applicable approval criteria for this proposal and were addressed by County staff in their reports, by agency comments, by the applicant and others. The examiner adopts the following findings with regard to each:

#### **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 in the record as 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. If the Surface Mining Overlay is approved for this site, uses put forth in Category 21 – Mining would be allowed.

The examiner finds that a condition of approval requiring application of the Surface Mining Overlay zoning designation to the site prior to allowing any mining related activities within Category 21 on the site is not warranted. The Code clearly requires

application of the Surface Mining Overlay prior to approval of such uses. A condition of approval requiring compliance with the Code would be redundant.

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 I (Industrial) 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).

The examiner 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.**

The examiner finds that the proposed IR zone is consistent with the purpose statement of the IR zone. “The railroad industrial district is intended to provide for those industrial uses that are most suited for and can take advantage of locations along the county’s rail line.” CCC 40.230.085.B(1)(c). The vacant 5.28-acre site abuts the rail line with roughly 1,000 feet of frontage on the railroad. Therefore, industrial uses on the site can take advantage of the rail line. The existing IL zone is also consistent with this purpose statement, as rail transportation and support activities for rail transportation are also allowed in the IL zone.

The IR zone is consistent with the locational criteria for the IR zone set out in the Land Use Element of the comprehensive plan, which provides, “The Industrial Railroad (IR) base zone provides land uses that require and take advantage of rail access. This designation is appropriate for industrial and manufacturing uses including manufacturing, assembly, fabrication, processing and bulk handling and storage (warehousing).” (p. 35 of the plan).

The examiner further finds that the proposed IR zone is consistent with the following plan policies:

Policy 5.4.5: Improve mobility and access for the movement of goods and services on the short line railroad to enhance and promote economic opportunity throughout the county.

Policy 9.6.2: Develop compatible land uses that promote the long-term economic viability of the county railroad.

The proposed IR zoning will implement plan policies 5.4.5 and 9.6.2 by allowing the site to develop with a variety of industrial uses that could utilize the railroad for transport goods and materials to the site. Therefore, the examiner finds that the application complies with CCC 40.560.020(F)(2). The current IL zone also implements these policies, as uses on the site can utilize the railroad under existing conditions.

Staff argue that the application does not comply with CCC 40.560.020(F)(2), because some uses in the IR zone are “[l]ikely to be incompatible with nearby residential zoning and uses.” (p. 5 of the Staff Report). However, the examiner finds that compatibility with surrounding land uses is not relevant to this approval criteria or any of the applicable plan policies.

The examiner finds based on the text and context of the comprehensive plan, that the term “compatible” as used in Policy 9.6.2, refers to compatibility with the railroad. It does not require compatibility with other surrounding uses. Chapter 9 is the Economic Development Element of the comprehensive plan, which “[d]escribes the policy direction and implementation strategies to provide for increased employment opportunities and higher family wages in the county.” (p. 7 of the comprehensive plan). Chapter 9 is not concerned with compatibility of adjacent land uses. Compatibility concerns are addressed in Chapter 3, the Land Use Element of the plan.<sup>1</sup> In addition, Policy 9.6.2 is intended to implement the following Goal: “Promote long-term economic development that will improve environmental quality and accommodate job generating activities.” Therefore, Policy 9.6.2 should be interpreted to encourage the development of uses that are compatible with and promote the long-term economic viability of the county railroad.

This is consistent with the wording of other statements and policies in the comprehensive plan which focus on compatibility between uses allowed in a particular zone and the purpose of the zone, rather than the compatibility of uses in adjacent zones. See, e.g.:

Goal 8 of the Growth Management Act, cited at p. 5 of the plan, which discourages uses that are incompatible with natural resource based industries;

The Forest Lands goal which discourages uses that are incompatible with forestry activities. (p. 93 of the comprehensive plan);

Policy 3.1.6 “Establish standards for compatible land uses on land designated for agriculture, forest and mineral resource uses” requiring that uses allowed on such lands be compatible with agriculture, forest and mineral resource uses; and

The Transportation Element discusses “compatible land use developments (e.g., commercial or industrial) on or near airport property” (p. 131 of the

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<sup>1</sup> For example, the locational criteria for the IH zone set out in Chapter 3, the Land Use Element of the comprehensive plan, expressly provides that uses allowed in the IH zone “[m]ay be incompatible with other categories of land uses.” Chapter 3 does not include similar compatibility concerns for the IR zone.

comprehensive plan), requiring that uses allowed on or near airport property be compatible with the airport use.

Where the plan is concerned with potential incompatibility between adjacent uses and zones, it says so expressly. See, e.g.:

Bullet six of Policy 11.4.8, “provide standards for adequate buffering between incompatible industrial, commercial and residential uses;” and

The definition of “Heavy Industrial” in the Land Use Element of the plan provides, “This designation is implemented with a heavy industrial (IH) base zone and provides land for heavy manufacturing, warehousing and industrial uses that may be incompatible with other categories of land uses.” (p. 32 of the comprehensive plan).

Staff cite to the language of the introduction to the Land Use Element of the comprehensive plan in support of its argument that compatibility with surrounding land uses is relevant to this zone change application (Exhibit 21). However, the cited text is from the introduction to the Land Use Element of the plan. The introduction does not constitute “plan policies and locational criteria [or] the purpose statement of the zoning district” cited in CCC 40.560.020(F)(2). Therefore, the cited text is not relevant to applicable zone change approval criteria.

The plan policies and locational criteria of the “IH” (Heavy Industrial) designation and zone cited by staff are not applicable to this application. The site is designated “I” (Industrial”) on the comprehensive plan map. The I designation is implemented by the LI (Light Industrial), BP (Business Park), IR (Railroad Industrial), and A (Airport) zoning designations. The IH designation is only implemented by the IH (Heavy Industrial) zoning designation. (See page 35 of the comprehensive plan). The IR zoning code and the Industrial sections of the comprehensive plan make no mention of compatibility. If the Board was concerned about the compatibility of IR zoning with other uses or zones, it would have said so explicitly, as it did for the IH zone and plan designation. It is a standard rule of statutory construction that the inclusion of a term or phrase in one section and not another implies an intent to exclude that term or phrase.

In addition, industrial uses allowed in the IR zone are unlikely to cause significant impacts on nearby residentially zoned properties. The nearest residential zoned properties are located more than 400 feet from the site, to the north, northeast, and southeast. Residential properties to the southeast are separated from the site by the NE 78<sup>th</sup> Street right-of-way and industrial and commercial zoned properties. Residential properties to the north and northeast are separated from the site by the 50-foot wide railroad right-of-way and industrial and public facilities zoned properties. This distance and intervening uses will serve to screen and buffer residential uses on these properties from activities occurring on the site. As noted above, any uses on this site must comply with all applicable approval criteria, which are intended to limit offsite impacts.

The examiner finds that the application complies with CCC 40.560.020(F)(2).

**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**
- c. Corrects an obvious mapping error.**

The examiner finds that the proposed IR zoning will better implement applicable comprehensive plan policies than the current IL zoning, specifically Policies 5.4.5 and 9.6.2 cited above. As staff note, rail transportation (482) and support activities for rail transportation (4882) are permitted in the existing IL zone. However, the proposed IR zone will expand the range of uses allowed on the site, including more uses that involve the use and/or processing of bulk materials that can be efficiently transported by rail. Allowing more potential rail supported uses increases the likelihood that uses on the site will utilize the railroad abutting the site, thereby promoting the long-term economic viability of the county railroad.

The proposed zone change will prohibit certain uses that are allowed in the current IL zone. However, with the possible exception of “building material and supplies dealers” and “scenic and sightseeing transportation,” the majority of such uses are less likely to utilize the adjacent rail line compared to the additional uses that are allowed in the IR zone but prohibited in the IL zone.

The applicant is not required to propose a specific use on the site or demonstrate that rail dependent or supported uses *will* occur on the site. The applicant is only required to demonstrate that the proposed zoning designation better implements these policies by increasing the likelihood that such uses will occur.

The examiner finds that Goal 3.8 and Policies 3.8.1. and 3.8.3, cited by the applicant in Exhibit 22, are inapplicable. These policies refer to “Freight Rail Dependent Uses,” which is a planned overlay zone that does not apply to this site.

The examiner finds it unnecessary to address the additional policies that the applicant cited in Exhibit 22. Although the proposed IR zoning may arguably have some impact on the cited policies, these policies are less directly applicable compared to Policies 5.4.5 and 9.6.2.

The examiner finds that the application complies with CCC 40.560.020(F)(3).

**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.

The examiner concurs with the applicant's statement as basic services are available to the site and the application complies with CCC 40.560.020(F)(4).

#### Finding 4 - Opponents Concerns

Opponents argued that the application should not be approved unless the applicant proposed a specific use for the site. However, the Code does not require that the applicant propose a specific use. Approval of this zone change will allow the site to develop with any use allowed in the IR zone, subject to compliance with all applicable approval criteria for that use.

Industrial uses on this site may generate noise, odors, vibrations, heat, glare, and other potentially adverse impacts. Such impacts may occur under the current IL or the proposed IR zoning. However, uses on the site will be required to implement mitigation measures to limit impacts on the surrounding area consistent with Code requirements. When a specific use is proposed on the site the County can impose conditions of approval necessary to ensure such mitigation through its site plan, conditional use, and/or SEPA review procedures, depending on the type of use proposed.

A public comment letter noted a dispute between the County and the applicant regarding the existing railroad lease. That dispute is not relevant to the applicable approval criteria for the proposed rezone. Review of this application is completely separate from any contract dispute regarding the lease of the railroad.

#### **Conclusion (Land Use)**

The examiner concludes that the applicant demonstrated that the proposed zone change complies with all of the applicable approval criteria in CCC 40.560.020(F).

#### **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 Light Industrial zoning to Railroad Industrial. The proposed rezoning of the property does not include a proposal for a site-specific development; therefore, the rezone itself is not anticipated to exceed ten peak hour trips and Concurrency staff have no further comments. Any future site-specific development application will require the reevaluation of transportation impacts on the surrounding road network and may require a traffic study.

#### **Conclusion (Concurrency)**

The examiner concludes that the proposed zone change meets the 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 does not include a proposal for a site-specific development with on-site transportation,

stormwater systems, etc.; therefore, Development Engineering has no further comments. Any future site-specific development application will require the evaluation of transportation, stormwater and other critical area impacts.

**Conclusion (Development Engineering)**

The examiner concludes that the proposed zone change meets the development engineering requirements of the Clark County Code.

**D. CONCLUSION AND DECISION**

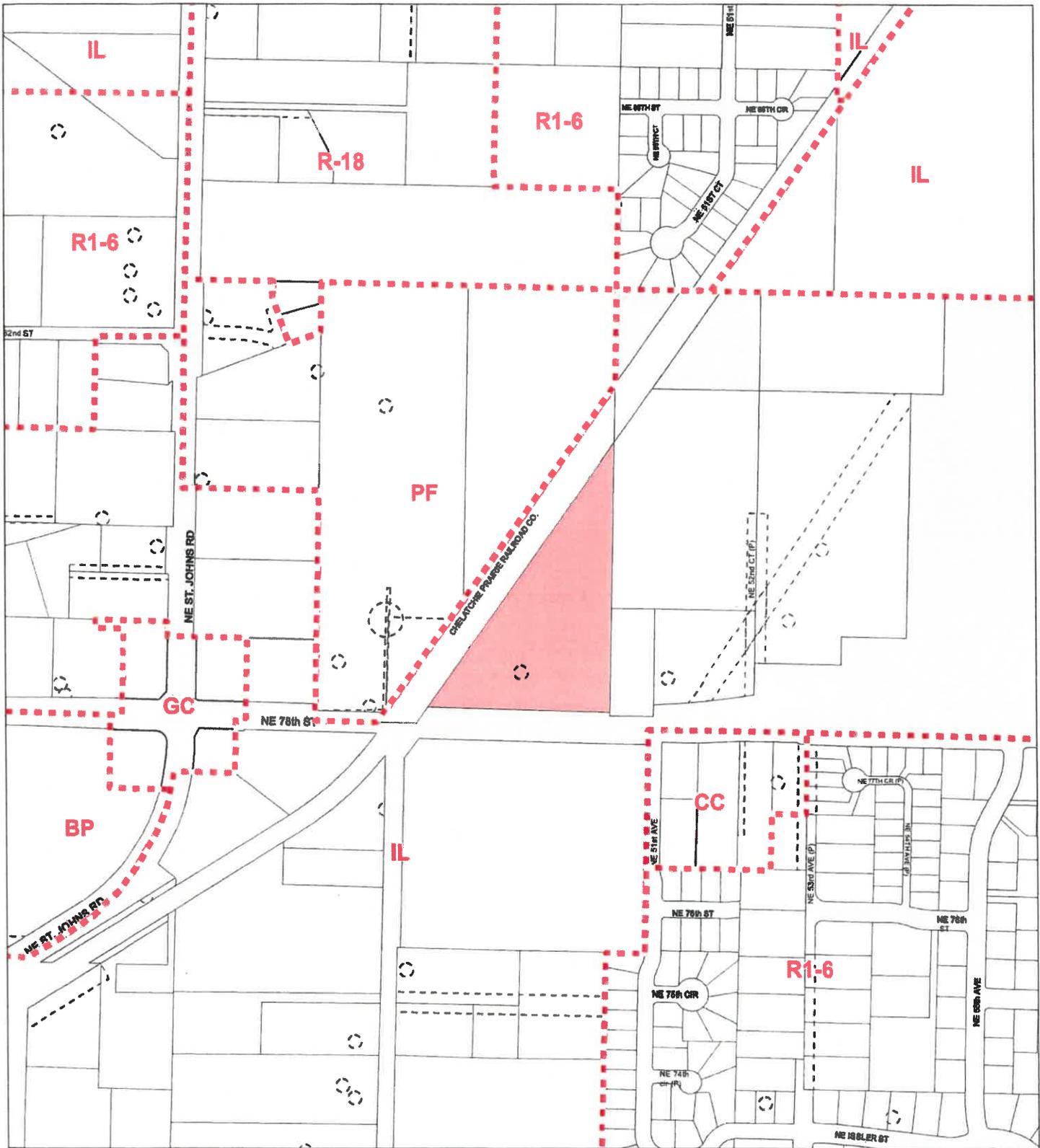
Based on the above findings, discussion, and conclusions provided or incorporated herein and the public record in this case, the examiner hereby approves OLR-2020-00065 (Portland Vancouver Junction Railroad Rezone) for IR zoning.

DATED this 2nd day of October, 2020.



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Joe Turner, AICP  
Clark County Hearing Examiner



### Zoning Designations

Printed on: February 20, 2020

Account: 986031172  
 Owner: PORTLAND VANCOUVER JUNCTION RAILROAD LLC  
 Address: 1203 114TH AVE SE  
 C/S/Z: BELLEVUE, WA 98004

Geographic Information System

0 200 400 Feet

- 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

21195	21198	22131
21102	21101	22106
21111	21112	22107

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

Role	Company Name	Name	Address 1	Address 2	City	State	Zip Code	Email Address
Planner	Clark County	Amy Wooten						
Applicant/Contact	Jordan Ramis PC	Armand Resto-Spotts	1499 SE Tech Center PI	Ste 380	Vancouver	WA	98683	<a href="mailto:armand.resto-spotts@jordanramis.com">armand.resto-spotts@jordanramis.com</a>
Owner	Portland Vancouver	Junction Railroad, LLC	1203 114th Ave SE	Ste 2	Bellevue	WA	98004	
N/H Association	Andresen/St Johns Nbhnd Assoc							<a href="mailto:marilee.mccall@clark.wa.gov">marilee.mccall@clark.wa.gov</a>
Utility Contact								
	Clark County	Desiree de Monye						<a href="mailto:desiree.demonye@clark.wa.gov">desiree.demonye@clark.wa.gov</a>
	City of Vancouver	Kristin Lehto						<a href="mailto:Kristin.Lehto@cityofvancouver.us">Kristin.Lehto@cityofvancouver.us</a>
		Nicole Daltoso						<a href="mailto:nicole.daltoso@vansd.org">nicole.daltoso@vansd.org</a>
		Jeff Roberts						<a href="mailto:jeff@crandallgroup.com">jeff@crandallgroup.com</a>
POR		Columbia Vet Center						<a href="mailto:office@columbiavetcenter.com">office@columbiavetcenter.com</a>
POR		David McDonald						<a href="mailto:davide@mcdonaldpc.com">davide@mcdonaldpc.com</a>
POR	BIA of Clark County	Ryan Makinster						<a href="mailto:ryan@biaofclarkcounty.org">ryan@biaofclarkcounty.org</a>
POR	CREDC	Larry Holt						<a href="mailto:lholt@credc.org">lholt@credc.org</a>
POR		Kim O'Hara						<a href="mailto:kohara42@gmail.com">kohara42@gmail.com</a>
POR		Justin Allen						<a href="mailto:justinchanceallen@gmail.com">justinchanceallen@gmail.com</a>
POR		Daran Wilson						<a href="mailto:darand228@yahoo.com">darand228@yahoo.com</a>
POR		Katy & Marta Benson						<a href="mailto:katv@ice.us">katv@ice.us</a>
POR		Silvia Fung						<a href="mailto:silviafung@yahoo.com">silviafung@yahoo.com</a>



# EXHIBIT LIST

Project Name: **PORTLAND VANCOUVER JUNCTION RAILROAD LLC**

Case Number: **OLR-2020-00065**

EXHIBIT NUMBER	DATE	SUBMITTED BY	DESCRIPTION
1		Applicant	Application Package
2		CC Land Use	Fully Complete
4	7/31/20	CC Land Use	Notice of Type III Application
5	7/31/20	CC Land Use	Affidavit of Mailing - Exhibit 4
6	7/31/20	Applicant	Affidavit of Posting Land Use Sign
7	8/6/20	CC Land Use	PCL_KOHara
8	no date	CC Land Use	Partial Table 40.230.085-1
9	8/3/20	CC Land Use	Concurrency Staff Report
10	8/3/20	CC Land Use	DE Staff Report
11	8/12/20	CC Land Use	Staff Report and Recommendation
12	8/12/20	CC Land Use	Affidavit - Exhibit #11
13	8/14/20	CC Land Use	Ecology SEPA Comments
14	8/14/20	CC Land Use	PCL_ColumbiaVets
15	8/21/20	CC Land Use	PCL_DMcDonald
16	8/21/20	CC Land Use	Applicant Response to Recommendation
17	8/26/20	CC Land Use	PCL_BIA
18	8/27/20	Applicant	Applicant response to public comments
19	8/27/20	CC Land Use	PCL_CREDC
20	9/1/20	CC Land Use	Hearing Transcript
21	9/3/20	CC Land Use	CC Response to Exhibit #16
22	9/3/20	Applicant	Post-Hearing response letter
23	9/7/20	CC Land Use	PCL_JAllen
24	9/9/20	CC Land Use	PCL_DWilson
25	9/10/20	CC Land Use	PCL_KBenson
26	9/10/20	CC Land Use	CCCD Final Rebuttal
27	9/10/20	CC Land Use	PCL_Sylvia Fung
28	9/17/20	Applicant	Applicant's Final Rebuttal
29	9/28/20	CC Land Use	Affidavit of Publication - The Columbian
30	10/2/20	CC Land Use	Hearing Examiner Decision
31	10/2/20	CC Land Use	Affidavit of Mailing - Exhibit 30

Copies of these exhibits can be viewed at:  
 Department of Community Development  
 Development Services Division  
 1300 Franklin Street  
 Vancouver, WA 98666-9810