

Type III Development and Environmental Review Staff Report and Recommendation

Project Name: Pioneer Industrial, LLC Rezone

Case Number(s): OLR-2020-00059

Request: The applicant requests to rezone a 2.69acre parcel from the light industrial (IL) zoning designation to the railroad industrial (IR) zoning designation.

Address: 7511 NE 101st Street

Parcel number(s): 119480-000

Applicant/Contact: Miller Nash Graham & Dunn, LLP
LeAnne Bremer, contact
500 Broadway Street, #400
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Owner: Pioneer Industrial, LLC
Mike Leboki, contact
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taytransport@aol.com

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

Recommendation

DENIAL

Land Use Review Manager's Initials: 
Public Hearing date: June 25, 2020

Date issued: June 23, 2020

Revised 6/23/2020



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)

Parcel Number(s): 119480-000

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: Sunnyside NA
 Judy Bumbarger-Enright, president
 360.699.2050
sunnysidenava@yahoo.com

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 January 30, 2020. The pre-application was determined not contingently vested.

The fully complete application was submitted on March 23, 2020 and determined to be fully complete on April 14, 2020. Given these facts, the application is vested to land use and concurrency standards on March 23, 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 April 14, 2020. Therefore, the code requirement for issuing a decision within 92 days lapses on July 15, 2020. The state requirement for issuing a decision within 120 calendar days, lapses on August 12, 2020.

Public Notice

Notice of application and public hearing was mailed to the applicant, the Sunnyside Neighborhood Association and property owners within 300 feet of the site on May 19, 2020. One sign was posted on the subject property on June 12, 2020

Public Comments

One letter was received from the Washington State Department of Ecology. The letter notes that there are known contaminated site within a 1/2 mile proximity of the proposed site.

The applicant is not proposing site development at this time. If environmental contamination is discovered during any future development, it must be reported to Ecology’s Southwest Regional Office at 360.407.6300.

Project Overview

The applicant is proposing to change the zoning designation of one (1) existing parcel zoned IL (light industrial) and approximately 2.69 acres in overall size to IR (railroad industrial) zoning. The subject site is improved with an existing residence, which will be removed pursuant under permit DEM-2019-00247. The site is located at the east end of NE 101st Street, sharing a property boundary with the Chelatchie Prairie Railroad approximately 250 feet along its south easterly property line.

The subject site is located in an industrial area, with newer industrial development to the north and existing industrial uses to the south and east. 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	I	IL	New industrial development
East	I	IL	New industrial development
South	I	IL	Existing industrial development
West	I	IL	Existing industrial development

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, and knowledge gained through a site visit.

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.

Pursuant to Section 40.510.030(E)(3)(c)(4), at least 30 days in advance of the public hearing, the applicant shall post one (1) sign board on the property subject to the development application. An affidavit of sign installation shall be executed and an affidavit certifying where and when the sign board was posted shall be submitted to the responsible official for inclusion in the project file. As of the date of the issuance of this report and recommendation, evidence of sign placement has not been provided by the applicant. Therefore, staff requests an open record period equal to 30 days from the date of sign installation.

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". 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 2] 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 asserts that the IR zone 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. And as the site is located and abutting the County's rail line, the request is fully consistent with the comprehensive map designation.

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 current comprehensive plan describes the IR zone as a base zone that provides land uses that require and take advantage of rail access. Based on that definition, the applicant provides the following goals and policy statements, as contained in the Clark County Comprehensive Plan, in support of the requested zone change:

Goal: Support freight rail dependent uses where the use is dependent on and makes use of the short line railroad, as defined by the Surface Transportation Board;

Policy 3.8.1: Support freight rail dependent uses in rural lands, as well as agriculture, forest and mineral resource lands, where the use is dependent on and makes use of the short line railroad within the County;

Policy 3.8.2: Freight rail dependent uses will be allowed on parcels with a freight rail dependent use overlay, where such uses minimize impacts on adjacent rural and resource uses;

Policy 3.8.3: Freight rail dependent uses means buildings and other infrastructure that are used in the fabrication, processing, storage, and transport of goods where the use is dependent on and makes use of an adjacent short line railroad. Such facilities are both urban and rural development. Clark County may include development of freight rail dependent uses on land adjacent to a short line railroad in the transportation element of this plan. The County may also modify development regulations to include development of freight rail dependent uses that do to require urban governmental services in rural lands; and,

¹ Industrial Districts

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

The applicant further states that the request is fully consistent with locational criteria as there are few properties located along the rail line that could support development served by rail as contemplated by the comprehensive plan.

Staff does not concur with the applicant's statements. The locational criteria for the industrial districts are on page 35 of the comprehensive plan and state,

- "Light Industrial (IL) base zones are intended to provide for light manufacturing, warehousing, transportation and other land intensive uses. Services and uses which support industrial uses are allowed in these areas but limited in size and location to serve workers within the industrial area."
- "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)."

Staff argues that in this specific location, the light industrial zone is more applicable. The site is in close proximity (approximately 400 feet) of residential zoning and existing residential homes (approximately 750 feet). In addition, the change of only this 2.69 acre site to the IR zone would constitute spot zoning, as the site is surrounded on all sides by the IL, light industrial, district.

Title 40.230.085.B.1.c states that 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. The proposed site has a very limited frontage (approximately 250 feet) along the rail line, and staff questions if a rail spur is possible in this location. A rail use plan is required in CCC 40.230.085.D.2.e. Staff recommends requiring at least a conceptual plan developed by an engineer to ensure rail development is possible on this site for the zone change prior to the close of the record. If rail access is not possible, staff argues that the zone change is inappropriate.

The proposed location of the IR zone is largely inconsistent with plan policies and locational criteria. The subject location conflicts with Policies 3.8.1, 3.8.2, and 9.6.2 as is it located in an urban area, and within approximately 400 feet of the existing residential zone and 750 feet of existing residential development. Staff also questions if these policies are applicable, as they appear to apply to lands with the freight rail dependent overlay, as specified in Policy 3.8.2. This overlay is not currently applied to the subject parcel.

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.

As criterion 1 and 3 do not apply to this request, the applicant addresses criterion 2 by stating that the site is uniquely able to take advantage of the rail lines proximity to the subject property. The applicant further recounts Clark County's legislative process, including a report entitled *Chelatchie Prairie Railroad Market Study* and its recognition of the positive economic impact the IR zone, and subsequent allowed uses, would have on the County by providing a location for rail dependent uses. The applicant notes that this site is uniquely located to take advantage of the rail line which is adjacent to the property; and, since Clark County has made the legislative determination to encourage rail-dependent uses and uses served by rail on properties adjacent to the rail lines; therefor, a change in zoning designation better implements applicable comprehensive plan policies than the current map designation.

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.

The Industrial Plan Designation is implemented by the following four zones: light industrial (IL), railroad industrial (IR), business park (BP), and airport (A). As indicated by Table 40.230.085-1 the following uses are permitted in the IR zone: 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. All of these uses are prohibited in the IL, BP and A zones. Each of these uses are permitted in the IH zone which provides land for heavy manufacturing, warehousing and industrial uses that may be incompatible with other categories of land uses and is appropriate for areas having extensive rail and shipping facilities, as noted above.

The subject site is not located in an area with extensive rail or shipping facilities. The subject parcel has approximately 250 feet of right-of-way along the rail line, is roughly 2.5+ acres overall, and is located on the east end of NE 101st Street, a dead-end public roadway.

Staff also notes that rail transportation (NAICS code 488) and support activities for rail transportation (NAICS code 4882) are permitted uses within the light industrial zone. Therefore, there is nothing precluding the applicant from utilizing the railroad under the current zone. Staff concludes that the applicant requests the IR zone due to the uses that are permitted that zone and that are not permitted in the IL zone. Staff argues that those uses are not compatible with the residential zone that is in close proximity (within approx. 400 feet).

Based on the site's limited size, limited rail access and incompatibility with existing nearby residential uses, staff finds that the site is not suited for those "heavy industrial uses" that would be permitted should the zone change be approved. Further, Staff asserts that the detrimental aspects of the uses that would be permitted outweighs the potential for use of the rail line in this location.

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

Applicant statement: The applicant indicates that site can be served by public water and sewer, an adequate transportation system, including the adjacent rail line, for uses permitted by the railroad industrial zone, which meets this criterion.

Staff concurs with the applicant's statement that basic services are available to the site, but as stated above, the subject site is not located in an area with extensive rail or shipping facilities which are appropriate for heavy industrial uses.

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 Pioneer Industrial 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 at 7511 NE 101st Street 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.

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.

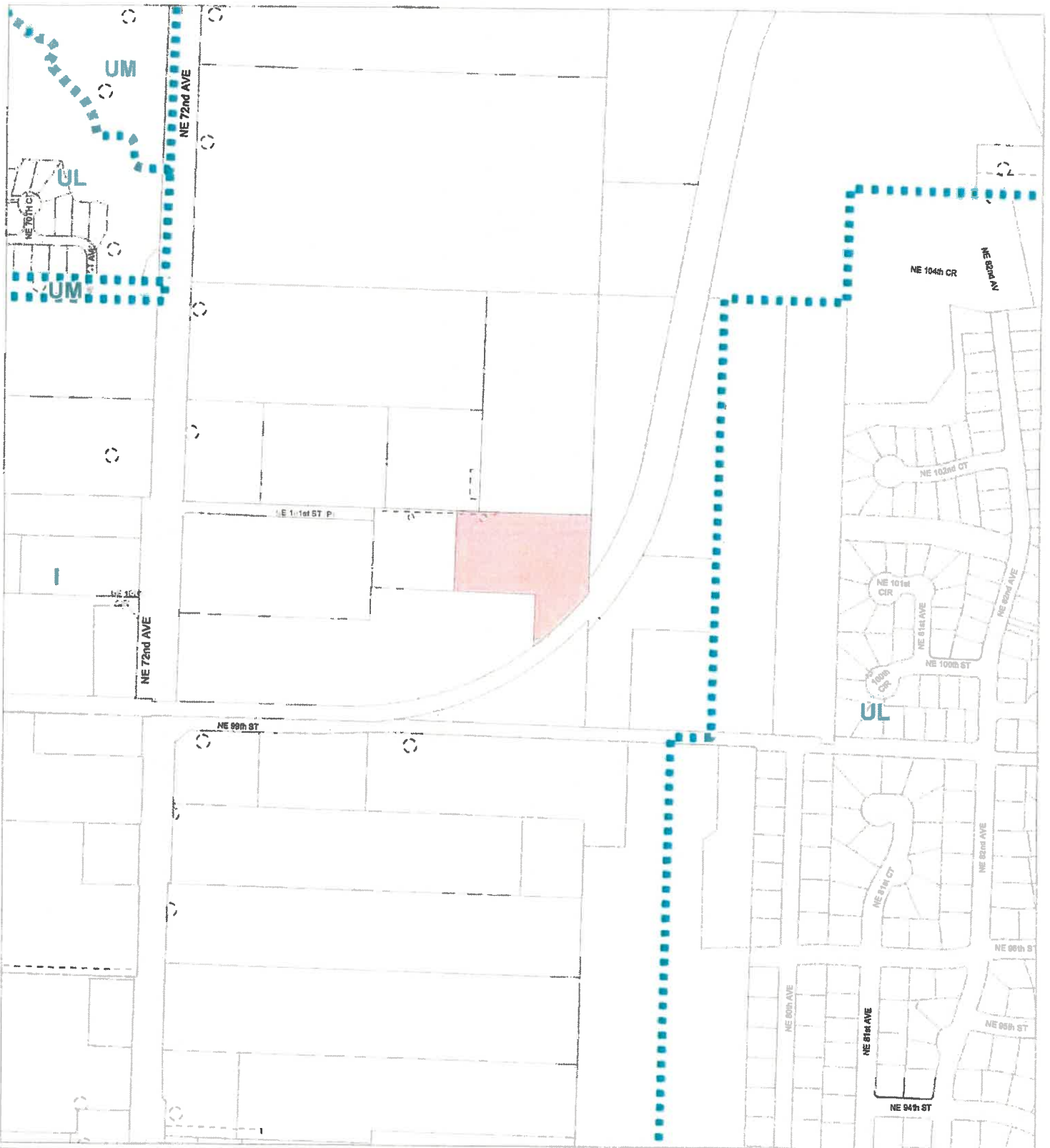
See the *Appeals* handout for more information and fees.

Attachments

- Site Map
- Attachment A – Use Table

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.



Comprehensive Plan Designations

Account: 119480000
 Owner: PIONEER INDUSTRIAL LLC
 Address: 7416 NE 101ST ST
 C/S/Z: VANCOUVER, WA 98662

Printed on: December 18, 2019

Geographic Information System

0 200 400 Feet

- Subject Property(s)
- Industrial Reserve
- Public Road
- Railroad Industrial Reserve
- Transportation or Major Utility Easement
- Mining
- Comprehensive Plan Boundary
- Rural Center Mixed Use
- Urban Reserve
- Columbia River Gorge Scenic Area

32130	32129	32128
32131	32132	32133
22105	22106	22104

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