



Date: April 28, 2014
To: Interested Person
From: Andrew Gulizia, Land Use Services
 503-823-7010 / Andrew.Gulizia@portlandoregon.gov

NOTICE OF A TYPE II DECISION ON A PROPOSAL IN YOUR NEIGHBORHOOD

The Bureau of Development Services has **approved** a proposal in your neighborhood. The reasons for the decision are included in the version located on the BDS website <http://www.portlandonline.com/bds/index.cfm?c=46429>. Click on the District Coalition then scroll to the relevant Neighborhood, and case number. If you disagree with the decision, you can appeal. Information on how to do so is included at the end of this decision.

CASE FILE NUMBER: LU 14-127955 ZE

GENERAL INFORMATION

Applicant: City of Portland Bureau of Development Services
 Land Use Services Division
 1900 SW 4th Avenue, Suite 5000 / Portland, OR 97201

Property Owner: Peter VanSchoonhoven / Flow Structures LLC
 14314 NW 8th Court / Vancouver, WA 98685

Site Address: 3839 NE Marine Drive

Legal Description: TL 300 2.35 ACRES, SECTION 01 1N 1E
Tax Account No.: R941010320
State ID No.: 1N1E01AD 00300
Quarter Section: 1934
Neighborhood: None
Business District: Columbia Corridor Association, contact Peter Livingston at 503-796-2892.

District Coalition: None
Plan District: Portland International Airport - Airport Subdistrict
Zoning: CGchsx – General Commercial with Environmental Conservation, Aircraft Landing, Scenic Resource, and Airport Noise Impact overlays
 IG2chsx – General Industrial 2 with Environmental Conservation, Aircraft Landing, Scenic Resource, and Airport Noise Impact overlays
 ZE – Zoning Map Error

Case Type: ZE – Zoning Map Error
Procedure: Type II administrative decision with appeal to the Hearings Officer

Proposal:
 The Bureau of Development Services is initiating a Zoning Map Error application to correct the zoning on a portion of this site from IG2chx and IG2chsx (General Industrial 2 with Environmental Conservation, Aircraft Landing, Scenic Resource, and Airport Noise Impact overlays) to CGhsx, CGchsx, and CGchx (General Commercial with Environmental Conservation, Aircraft Landing, Scenic Resource, and Airport Noise Impact overlays).

Due to an error when the site was annexed to the City of Portland from Multnomah County, the current boundary between the commercial and industrial zones bisects an existing restaurant and associated parking area. Without correction of the zoning map error, the existing commercial (restaurant) use will continue to be located in part in an industrial zone, which restricts commercial uses.

This proposal will also correct the mapping of the 'c' (Environmental Conservation) overlay on this site. In a previous mapping error, the 'c' overlay was incorrectly removed from a portion of this site.

Relevant Approval Criteria:

In order to be approved, this proposal must comply with the approval criteria of Title 33. The relevant criteria are found in Zoning Code Section 33.855.070.

ANALYSIS

Site and Vicinity: The 2.35-acre site is located on the north side of NE Marine Drive, about a half mile east of NE 33rd Avenue. The Columbia River abuts the site on the north, and Portland International Airport is across NE Marine Drive to the south. The site is developed with a restaurant and associated parking area. Neighboring properties along NE Marine Drive are developed with a variety of uses, including marinas, a tavern, and the Multnomah County River Patrol headquarters.

Zoning: The western part of the site is designated with the CG (General Commercial) base zone. Commercial zones generally seek to promote uses and developments that will enhance the economic viability of both the City and neighborhood. The CG zone in particular is intended to allow auto-accommodating commercial development in areas already predominantly built in this manner and in most newer commercial areas. The zone allows a full range of retail and service businesses with a local or regional market.

The eastern part of the site is designated with the IG2 (General Industrial 2) base zone. The IG2 zone is one of three zones that implement the Industrial Sanctuary map designation of the Comprehensive Plan. These zones provide areas where most industrial uses may locate, while other uses are restricted to prevent potential conflicts and to preserve land for industry. IG2 areas generally have larger lots and an irregular or large block pattern. These areas are less developed, with sites having medium and low building coverages and buildings which are usually set back from the street.

In addition to the base zones, several overlay zones apply to the site:

The Environmental Conservation ('c') overlay zone is intended to conserve important environmental features and resources while still allowing compatible development.

The Aircraft Landing ('h') overlay zone provides safer operating conditions for aircraft in the vicinity of Portland International Airport by limiting the height of structures and vegetation.

The Scenic Resource ('s') overlay zone establishes height limits within view corridors and additional landscaping and screening standards to preserve and enhance identified scenic resources.

The Portland International Airport Noise Impact ('x') overlay zone addresses specific residential density, noise insulation, and other issues for development in take-off and landing flight paths.

Land Use History: City records indicate that prior land use reviews include the following:

- MCF 1-87 – overlay zone designation approved by Multnomah County in 1987 to allow a parking area on this site
- MCF 6-87 – variance to landscaping requirements approved by Multnomah County in 1987

- MCF 87-02-01 – development review for a parking area approved by Multnomah County in 1987

Neighborhood Review: A “Notice of Proposal in Your Neighborhood” was mailed on March 31, 2014. No written responses have been received from notified property owners or from the notified District Coalition.

ZONING CODE APPROVAL CRITERIA

33.855.070 Corrections to the Official Zoning Maps

A. Mapping errors. The correction may be made for mapping errors such as:

1. A map line that was intended to follow a topographical feature does not do so. Topographical features include the tops and bottoms of hillsides, the banks of water bodies, and center lines of creeks or drainage ditches; or
2. There is a discrepancy between maps and on balance there is sufficient evidence of legislative intent for where the line should be located.

Findings: Section 33.855.070 is intended to provide a quasi-judicial process in which Zoning Map Errors can be evaluated and corrected if necessary. It is important to note that the language in Subsection A states, “The correction may be made for mapping errors *such as...*” Zoning Code Section 33.700.070.D.4 clarifies that lists of items in the Code that include the phrase “such as” or similar language are not limited to just those items. The list is intended to provide examples, but not be an exhaustive list of all possibilities. As such, the language included in Subsections A.1 and A.2, above, is intended to provide examples of situations in which Zoning Map Errors may be addressed, but is not intended to present an exclusive list.

This property was developed while under Multnomah County jurisdiction. Prior to annexation to the City of Portland, two Multnomah County zoning designations applied to this site: C-3, a commercial zone, on approximately the western half of the site, and M-3, an industrial zone, on the eastern half. The restaurant building was constructed entirely within the portion zoned C-3, where restaurant use was allowed outright.

When the site was annexed to the City of Portland, the Multnomah County zones were supposed to automatically convert to comparable City of Portland zones pursuant to Zoning Code Section 33.855.080. At the time of annexation, the County C-3 zone converted to the City’s C2 zone, which later became the CG zone. The County M-3 zone converted to the City’s GI-2 zone, which later became IG2. However, in an apparent mapping error, part of the site which had been zoned commercial (C-3) in Multnomah County was rezoned industrial (GI-2, later IG2) upon annexation to the City. This error led to the current situation in which the boundary between the CG and IG2 zones runs through the middle of the existing restaurant building, even though the restaurant building had been located entirely within the Multnomah County C-3 commercial zone in compliance with County zoning regulations.

Review of zoning history also shows that an error was made in the application of the Environmental Conservation (‘c’) overlay zone. Environmental overlay zones were placed on the property in 1989 as part of the *Columbia Corridor Industrial and Environmental Mapping* project. A ‘c’ overlay was placed on the Columbia River and its riparian area. In 2011, the City of Portland updated environmental overlay zones in this area through adoption of the Portland International Airport Plan District. However, the *Middle Columbia Corridor/Airport Economic, Social, Environmental and Energy Analysis* (2011) specified that the recommended updates for properties with industrial, employment, or commercial base zones would not be forwarded for

adoption. Therefore, the 'c' overlay should have remained in the same location as it was prior to 2011. The correct location for the 'c' overlay is illustrated in Exhibit B-2.

Summary

Based on the findings above, it has been demonstrated that two zoning map errors occurred on this site, and the zone boundaries illustrated in Exhibit B-2 would appropriately correct these errors.

This criterion is met.

- B. Movement of the reference item for the map line.** The correction may be made when it can be clearly shown that a map line is based on the location of a reference item that has since been moved. Reference items are rights-of-way, tentative rights-of-way, utility easements and similar type items. Map line changes in these cases must not be more than a trivial change to the map pattern and must not result in any significant impacts to abutting lots.

Findings: In this case, the Zoning Map error is not the result of the original zone line being based on a reference point that has since been moved. Therefore, this criterion is not applicable.

- C. Land within the Urban Growth Boundary.** The correction may be made when it involves the removal of the Future Urban overlay zone from properties that are now within the Urban Growth Boundary.

Findings: This situation does not apply to the subject site; 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.

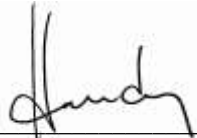
CONCLUSIONS

It has been demonstrated that zoning map errors occurred on the subject site, and that these errors will be appropriately corrected by applying the boundaries illustrated in Exhibit B-2. This proposal will place the existing restaurant entirely inside the CG zone, where restaurant use is allowed, and outside the IG2 zone, where restaurant use is restricted. In addition, approval of this proposal will reinstate the correct boundary of the Environmental Conservation ('c') overlay zone on a portion of this site.

ADMINISTRATIVE DECISION

Approval of a Zoning Map Error Correction (Zoning Code Section 33.855.070) to update the zoning map for this site as illustrated in Exhibit B-2.

Staff Planner: Andrew Gulizia

Decision rendered by:  **on April 24, 2014**

By authority of the Director of the Bureau of Development Services

Decision mailed: April 28, 2014

About this Decision. This land use decision is **not a permit** for development. Permits may be required prior to any work. Contact the Development Services Center at 503-823-7310 for information about permits.

Procedural Information. The application for this land use review was submitted on March 18, 2014, and was determined to be complete on **March 26, 2014**.

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 March 18, 2014.

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 waived or extended at the request of the applicant. In this case, the applicant did not waive or extend the 120-day review period. Unless extended by the applicant, **the 120 days will expire on: July 24, 2014**.

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

As required by Section 33.800.060 of the Portland Zoning Code, 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 decision 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 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.

Appealing this decision. This decision may be appealed to the Hearings Officer, which will hold a public hearing. Appeals must be filed **by 4:30 PM on May 12, 2014**, at 1900 SW Fourth Ave. Appeals can be filed Tuesday through Friday on the first floor of the Development Services Center until 3 p.m. After 3 p.m. and Mondays, appeals must be submitted to the receptionist at the front desk on the fifth floor. **An appeal fee of \$250 will be charged.** The appeal fee will be refunded if the appellant prevails. There is no fee for ONI recognized organizations appealing a land use decision for property within the organization's boundaries. The vote to appeal must be in accordance with the organization's bylaws. Assistance in filing the appeal and information on fee waivers is available from BDS in the Development Services Center. Please see the appeal form for additional information.

The file and all evidence on this case are available for your review by appointment only. Please call the Request Line at our office, 1900 SW Fourth Avenue, Suite 5000, phone 503-823-7617, to schedule an appointment. I can provide some information over the phone. Copies of all information in the file can be obtained for a fee equal to the cost of services. Additional information about the City of Portland, city bureaus, and a digital copy of the Portland Zoning Code is available on the internet at www.portlandonline.com.

Attending the hearing. If this decision is appealed, a hearing will be scheduled, and you will be notified of the date and time of the hearing. The decision of the Hearings Officer is final; any further appeal must be made to the Oregon Land Use Board of Appeals (LUBA) within 21 days of the date of mailing the decision, pursuant to ORS 197.620 and 197.830. Contact LUBA at 775 Summer St NE, Suite 330, Salem, Oregon 97301-1283, or phone 1-503-373-1265 for further information.

Failure to raise an issue by the close of the record at or following the final hearing on this case, in person or by letter, may preclude an appeal to the Land Use Board of Appeals (LUBA) on that issue. Also, if you do not raise an issue with enough specificity to give the Hearings Officer an opportunity to respond to it, that also may preclude an appeal to LUBA on that issue.

Recording the final decision.

If this Land Use Review is approved the final decision must be recorded with the Multnomah County Recorder. A few days prior to the last day to appeal, the City will mail instructions to the applicant for recording the documents associated with their final land use decision.

- *Unless appealed*, The final decision may be recorded on or after **May 13, 2014**.
- A building or zoning permit will be issued only after the final decision is recorded.

The applicant, builder, or a representative may record the final decision as follows:

- **By Mail:** Send the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to: Multnomah County Recorder, P.O. Box 5007, Portland OR 97208. The recording fee is identified on the recording sheet. Please include a self-addressed, stamped envelope.
- **In Person:** Bring the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to the County Recorder's office located at 501 SE Hawthorne Boulevard, #158, Portland OR 97214. The recording fee is identified on the recording sheet.

For further information on recording, please call the County Recorder at 503-988-3034. For further information on your recording documents please call the Bureau of Development Services Land Use Services Division at 503-823-0625.

Expiration of this approval. An approval expires three years from the date the final decision is rendered unless a building permit has been issued, or the approved activity has begun.

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

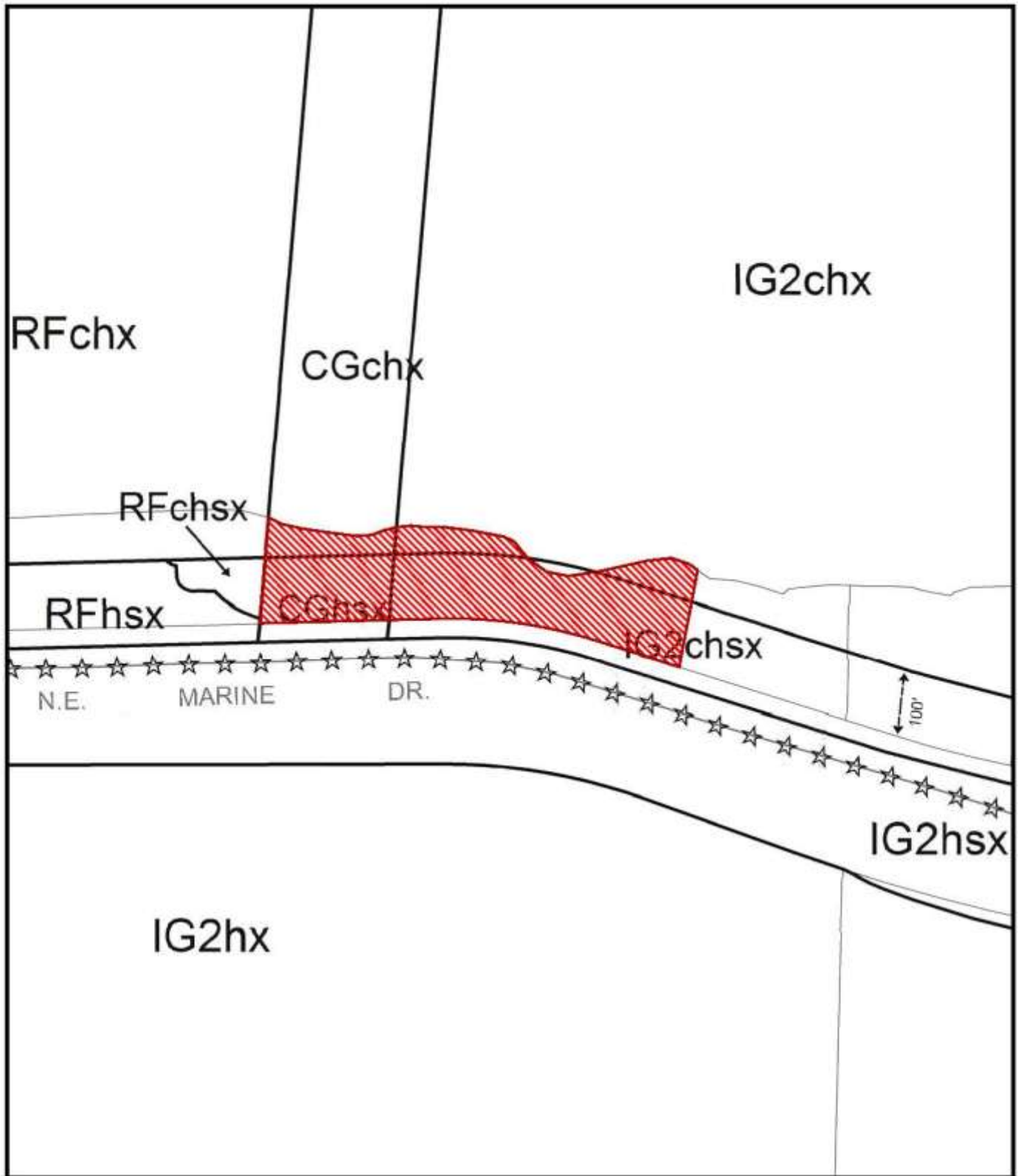
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations of the City.

EXHIBITS

NOT ATTACHED UNLESS INDICATED


- A. Applicant's Statement
- B. Zoning Maps
 - 1. Existing (attached)
 - 2. Corrected (attached)
- C. Plans/Drawings (none)
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses (none)
- F. Correspondence (none)
- G. Other:
 - 1. Original LU Application

The Bureau of Development Services is committed to providing equal access to information and hearings. Please notify us no less than five business days prior to the event if you need special accommodations. Call 503-823-7300 (TTY 503-823-6868).



ZONING EXISTING

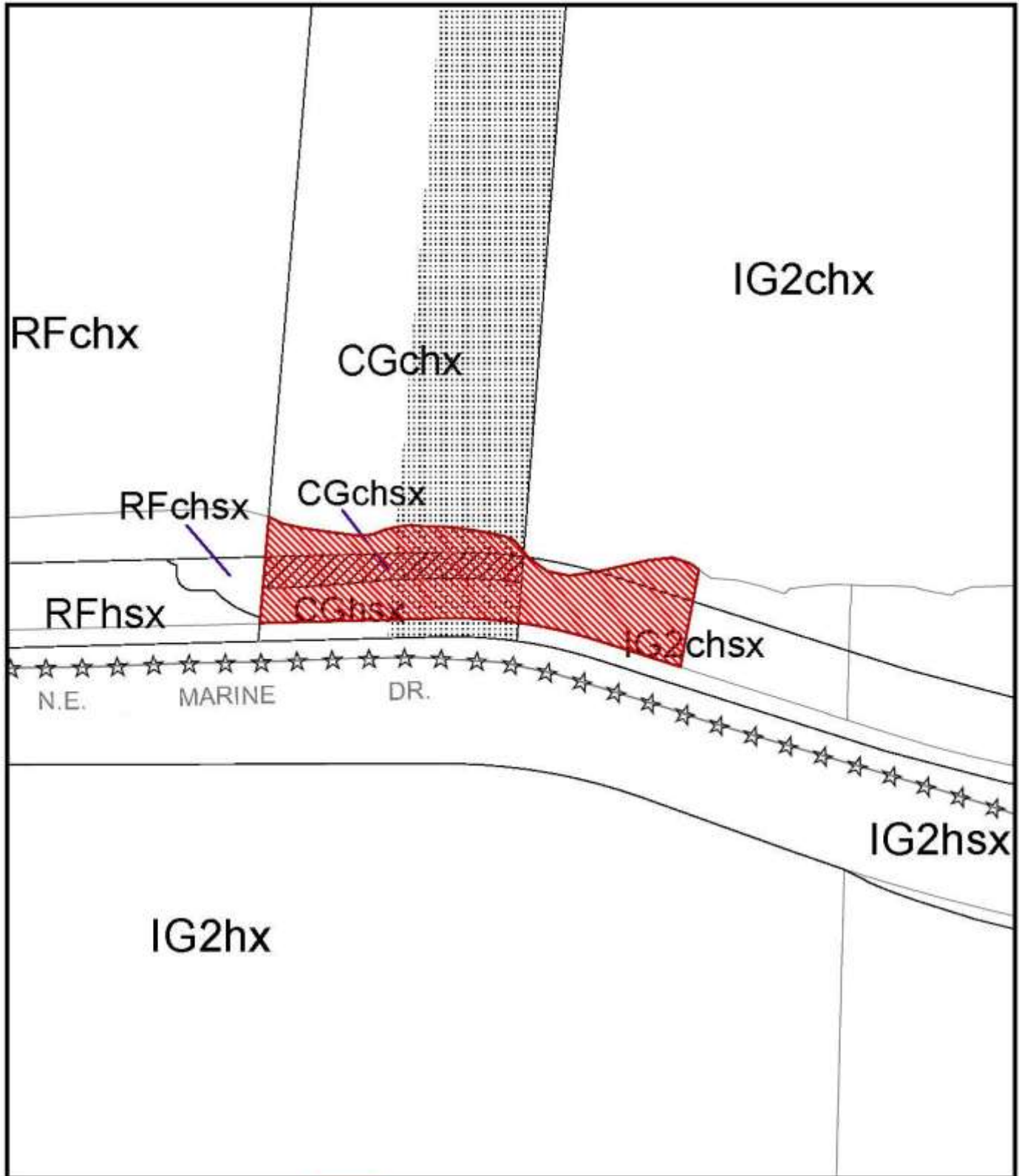
 Site

 Recreational Trail



This site lies within the:
PORTLAND INTERNATIONAL AIRPORT PLAN DISTRICT




File No. LU 14-127955 ZE
 1/4 Section 1934
 Scale 1 inch = 200 feet
 State_Id 1N1E01AD 300
 Exhibit B 1 (Mar 18, 2014)



ZONING PROPOSED



This site lies within the:
PORTLAND INTERNATIONAL AIRPORT PLAN DISTRICT

-  Site
-  Area of Zone Error Correction
-  Recreational Trail

File No. LU 14-127955 ZE
 1/4 Section 1934
 Scale 1 inch = 200 feet
 State_Id 1N1E01AD 300
 Exhibit B 2 (Mar 18, 2014)