



Bureau of Planning and Sustainability

Innovation. Collaboration. Practical Solutions.

Date: January 22, 2020

To: Stephanie Beckman, Bureau of Development Services

From: Mindy Brooks, Bureau of Planning and Sustainability

Cc: Sallie Edmunds, Planning Manager, Bureau of Planning and Sustainability
Jeff Caudill, Bureau of Planning and Sustainability
Ethan Brown, Bureau of Planning and Sustainability

RE: Zoning Map Error Correction Request for 3699 N Hayden Island Drive, R323354, QS 1627, QS 1628 and QS 1728; IQ 19-245039

Robert Smith, representing Canoe Bay, LLC, submitted a request for a zoning map error correction for the property located at 3699 N Hayden Island Drive. In the request, Robert Smith suggests that the environmental overlay zone on the property is mapped in error because the overlay zone boundary was intended to protect wetlands and there are no wetlands present on the site (Attachment A: Submittal).

According to the applicable zoning code, 33.855.070, Corrections to the Official Zoning Maps, corrections can be made for mapping errors including:

- A.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
- A.2 There is a discrepancy between maps and on balance there is sufficient evidence of legislative intent for where the line should be located. (33.855.070.A.2)

Based on review of the *Columbia Corridor Industrial/Environmental Mapping Project* (1989) inventory and ESEE analysis, the *Natural Resources Inventory* (2012), the zoning history for Quarter Sections 1627, 1628 and 1728, and the information submitted by the applicant, **I have concluded that an environmental overlay zone mapping error exists on the property in question.** It appears that the current location of the Environmental Conservation overlay zone is incorrectly placed.

Although based on existing regulations an error exists on the site, which results in removal of a significant portion of the conservation (c) overlay zone, the entire site is within the 100-year floodplain and 1996 flood inundation area (Attachment B). Title 24 rules apply to the flood



areas. In addition, the Bureau of Planning and Sustainability is undertaking a project to update regulations to maintain property owner access to the National Flood Insurance Program and to ensure protection of endangered and threatened salmon and steelhead. These updates are expected to extend new regulations to the site. (More information about that at the end of this letter.)

Analysis

The property is located in Resource Site 71 Columbia River and Bankline of the *Columbia Corridor Industrial/Environmental Mapping Project* (1989). The inventory is documented as Resource Site 71 and the ESEE was conducted and a decision was made for the Hayden/Tomahawk Island Subdistrict and for the Columbia River and Bankline (Attachment C and D).

In the inventory, the natural resource features and functions identified in Resource Site 71 include (see Attachment C):

- River
- Riverine shore
- Wetlands
- Forest vegetation
- Shrubland vegetation
- Floodplain

Using the information presented in the inventory, the Economic, Social, Environmental, and Energy Analysis and recommendations was completed (see Attachment D). The ESEE reviews and evaluates existing and potential conflicting uses to best determine the level of protection for natural resources within the identified resource sites. Resource Site 71 was not explicitly addressed in the ESEE; instead, Resource Site 71 was lumped into a recommendation for the Columbia River and Bankline.

The ESEE states on page 163 that an ec (environmental conservation) overlay zone is recommended for the Columbia River and bankline. The values to be protected are “Riparian strip for wildlife habitat, visual amenity, erosion control. Drainageway functions, including fish habitat, drainage, flood storage, desynchronization, erosion control, sediment trapping, and pollution and nutrient retention and removal for the same area. The “same area” is interpreted to mean “riparian strip” which is the same geography as the “bankline” and is shown on the inventory map on page 110 (Attachment C). There is no measurement provided for the width of the riparian area (aka, bankline) within the inventory or ESEE.

The city-wide *Natural Resources Inventory* (2012) includes an update to the natural resource features based on current data and GIS research. The NRI includes the waterbodies, the ordinary high water mark, the flood area, wetlands and vegetation (Attachment B). The area below the ordinary high water mark is considered part of the Columbia River because that area is seasonally inundated with water during normal high flows. The area landward of the ordinary high water mark is considered the river bank and riparian area. According to best available science adopted in the 2012 NRI, the minimum width of riparian areas around rivers, streams and wetlands is 50 feet, but could be considerably wider depending on functions.



The zoning history for Quarter Section 1627, 1628 and 1728 shows that the environmental conservation overlay zone boundary is not applied in accordance with the Columbia Corridor Industrial/Environmental Mapping Project inventory or ESEE recommendations (Attachment E). Based on the inventory map on page 110 of the inventory and the ESEE recommendation, the conservation overlay zone should have been applied only to the Columbia River and riverbank.

Conclusion and Recommendations

According to 33.855.070, Corrections to the Official Zoning Maps, corrections can be made for mapping errors including:

- A.1 A map line that was intended to follow a topographic feature does not do so. Topographic features include the tops and bottoms of hillsides, the banks of water bodies, and center lines of creeks or drainage ditches.
- A.2 There is a discrepancy between maps and on balance there is sufficient evidence of legislative intent for where the line should be located. (33.855.070.A.2)

There is evidence that an environmental overlay zone mapping error exists on the property in question. The error meets criterion A.2.

Criterion A.2 – Based on the inventory map on page 110 of the inventory and the ESEE recommendation, the conservation overlay zone should have been applied only to the Columbia River and riparian area. The current extent of the conservation overlay zone extends beyond the riparian area. Therefore, the environmental overlay zone should be corrected to include only Columbia River and riparian area.

Staff recommends that Bureau of Development Services process a Type II map error correction to amend the official zoning map. Attachment F shows the existing and recommended location of the conservation overlay zone on the property. The riparian area is identified in the 2012 NRI as the area landward of the ordinary high water mark that is providing riparian corridor functions and the minimum width of any riparian area is 50 feet. An additional 25 feet of transition area should be applied landward of the resource area.

Staff also wanted to highlight an issue that was identified in reviewing the relevant documents for this site. Based on the wetland delineation conducted by Pacific Habitat Services, there are no wetlands on the site. The city-wide Natural Resources Inventory will be updated to remove the wetlands.

The Bureau of Planning and Sustainability (BPS) will be starting a comprehensive update to regulations related to the floodplains to maintain property owners access to the National Flood Insurance Program and to ensure protection of endangered and threatened salmon and steelhead. At that time, the site will be considered for regulations that may limit uses or require additional mitigation. For more information about the floodplain project, please contact Ethan Brown at 503-823-7920.



Attachments:

- Attachment A: Submittal
- Attachment B: Natural Resources Inventory.
- Attachment C: Columbia Corridor Industrial/Environmental Mapping Natural Resources Inventory
- Attachment D: Columbia Corridor Industrial/Environmental Mapping ESEE
- Attachment E: Zoning History
- Attachment F: Existing and Recommended Environmental Conservation Overlay Zone




CITY OF PORTLAND, OREGON - BUREAU OF DEVELOPMENT SERVICES

1900 SW Fourth Avenue • Portland, Oregon 97201 • 503-823-7526 • www.bds.ci.portland.or.us



Zoning Map Error Correction Request Form

33.855.070 Corrections to the Official Zoning Maps

The Director of the Bureau of Development Services may initiate and approve a review following the Type II procedure for the types of discretionary corrections to the Official Zoning Maps listed below. Nondiscretionary corrections to the Official Zoning Maps may be initiated by the Director of Planning as described in Section 1.01.037 of the Portland City Code.

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 there is clear legislative intent for where the line should be located.

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.

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.

1.01.037 Planning Director Authority to Correct Portland Zoning Code Maps.

Subject to the approval of the City Attorney, the Director of the Bureau of Planning shall have the authority to correct Portland Zoning Code maps, including the City's Official Zoning Map:

1. When a map line does not match the legal description or map referenced in the ordinance or approved land use decision that applied the designation; or
2. When there is a discrepancy between maps and there is clear legislative intent for where the line should be located; or
3. When the Open Space zone has been applied to property in private ownership that is not in an open space use, or is not receiving special tax considerations because of its status as open space.

Zoning map corrections initiated under this section must be clear and objective. Discretionary map corrections must be processed under the procedures set forth in PZC 33.855.070.

Please provide the following information using the form on the other side, and submit to Planning and Zoning, Bureau of Development Services, 1900 SW Fourth Avenue, Rm 1500, Portland, Oregon

Your request will be processed within 6 weeks of the date of this request. The BDS Director has the discretion to notify an applicant that additional time is needed to review this request.

- **Applicant name**
- **Address or tax account number of property in question**
- **The City's environmental resource inventory plan name and resource site number, if applicable**
- **City Land Use Review case numbers, if applicable, for the property in question (include all case numbers and brief description of case(s) pertaining to potential map error)**
- **Reason for requesting a map error correction review**
- **Site plan showing all development and the current location of all base zone and overlay zone lines**

Zoning Map Error Correction Request Form

Date 10/24/2019

Applicant Information

Applicant Name Canoe Bay, LLC, Robert E. Smith
Applicant Telephone 503 381-3560 FAX _____ e-mail address Rsmith291@hotmail.com
Applicant Address 7327 S.W. Barnes Rd. PMB 120, Portland, OR 97225-6119

Site Information

Site Address and Tax Account Number, include addresses and tax account numbers for all lots
3699 N. Hayden Island Dr., Portland, OR 97217, Map Number 2N1E280030, Property ID Number R323354, Section 28 2N 1E, TL 100 2.57 Acres
Owner of Site Canoe Bay, LLC SDP, LLC
City's Environmental Resource Inventory Plan and Resource Site Number*, if applicable _____

Land Use History

Please provide all Land Use Review case number(s) affecting the site, and brief description of any cases pertaining to the request*

Case File EA 15-127106
In late 2017 and early 2018, while marketing our land for sale, we were informed by multiple buyers they would not be able to complete their purchases. The reasons cited in both cases were the presence of wetland areas noted in the public records. As such, in March of 2018, we commissioned a wetland delineation report (attached) through Pacific Habit Services which in fact confirmed that NO wetland areas exist on the property. We subsequently also learned the City's original process for mapping wetland areas over our property had been "completed in an arbitrary fashion," and without any science (or even a physical visit to the site).

Finally, it is worth noting that despite our proper distribution of the "clean" wetland delineation report to all involved State of Oregon Governmental Agencies, the Corps of Engineers, Division of State lands, and to the City of Portland, our property is (i) still mistakenly labeled as having wetland areas present, and (ii) subject to the limitations of being in an environmental overlay zone (the application of which would not have been placed on our property had the land not been designated with wetlands in the first place).

Since the erroneous wetland conclusions were already of record when the City's subsequent application of Environmental and Conservation (c) overlay zones were put in place (including on our property), we now wish to have the record corrected and this overlay zone removed.

Describe Error

Must meet one or more of the criteria listed in 33.855.070 on the front of this form

Our request meets the requirement of 33.855.070, the overlay zone was intended to follow a topographic feature and it does not.












Please attach site plans.

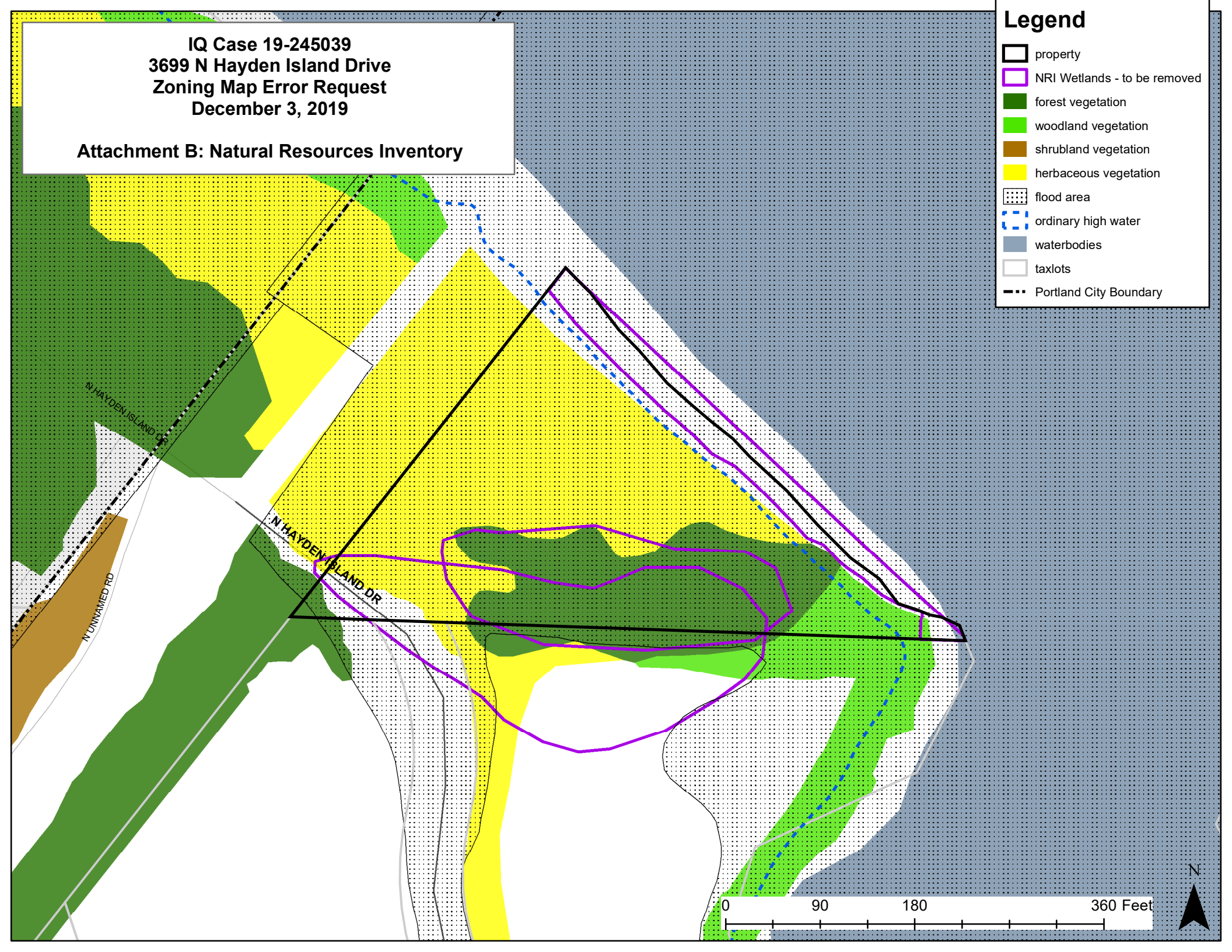
*information available in the Development Services Center, 1900 SW Fourth Avenue, First Floor

**IQ Case 19-245039
3699 N Hayden Island Drive
Zoning Map Error Request
December 3, 2019**

Attachment B: Natural Resources Inventory

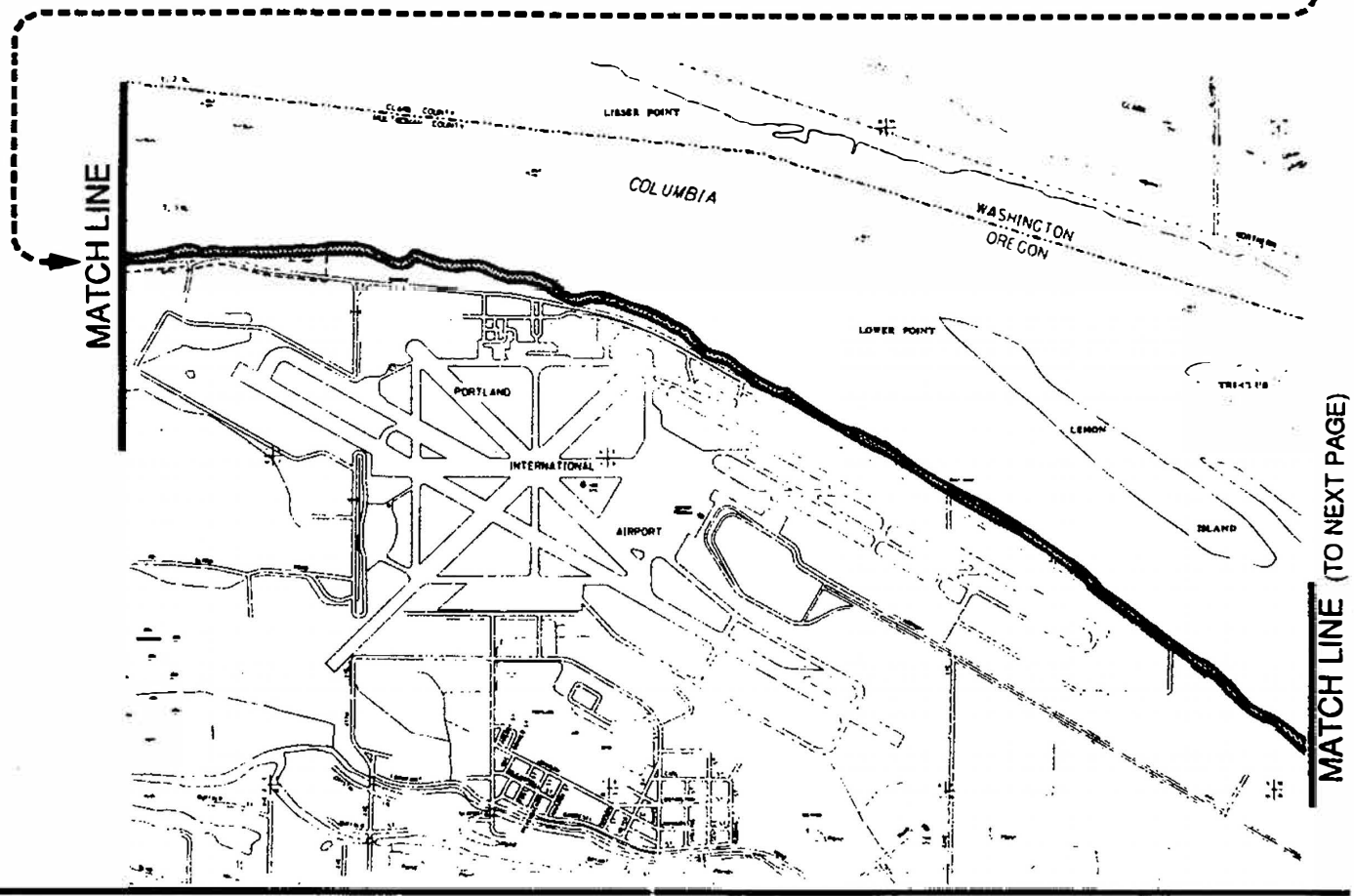
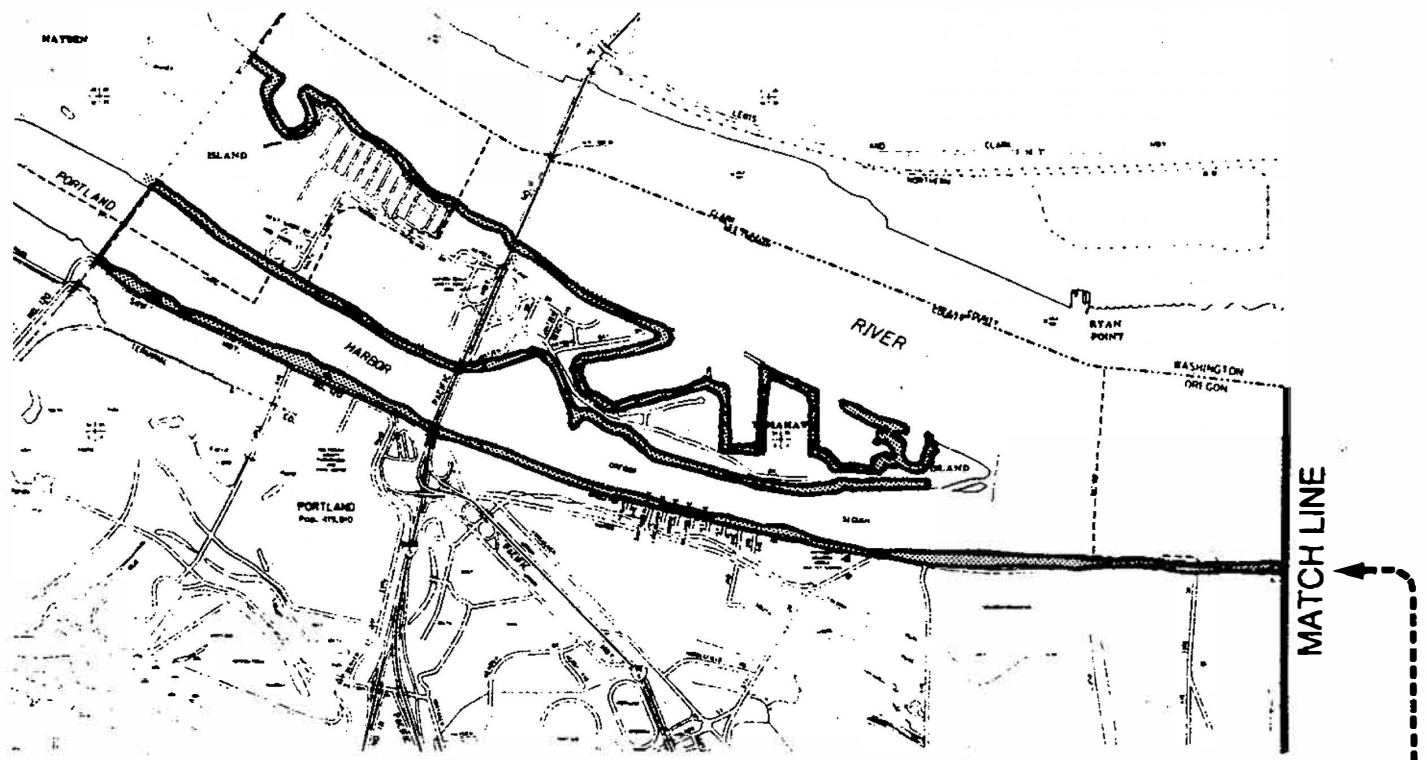
Legend

-  property
-  NRI Wetlands - to be removed
-  forest vegetation
-  woodland vegetation
-  shrubland vegetation
-  herbaceous vegetation
-  flood area
-  ordinary high water
-  waterbodies
-  taxlots
-  Portland City Boundary

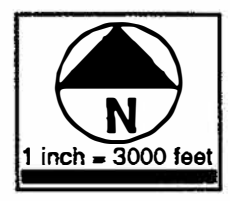


0 90 180 360 Feet

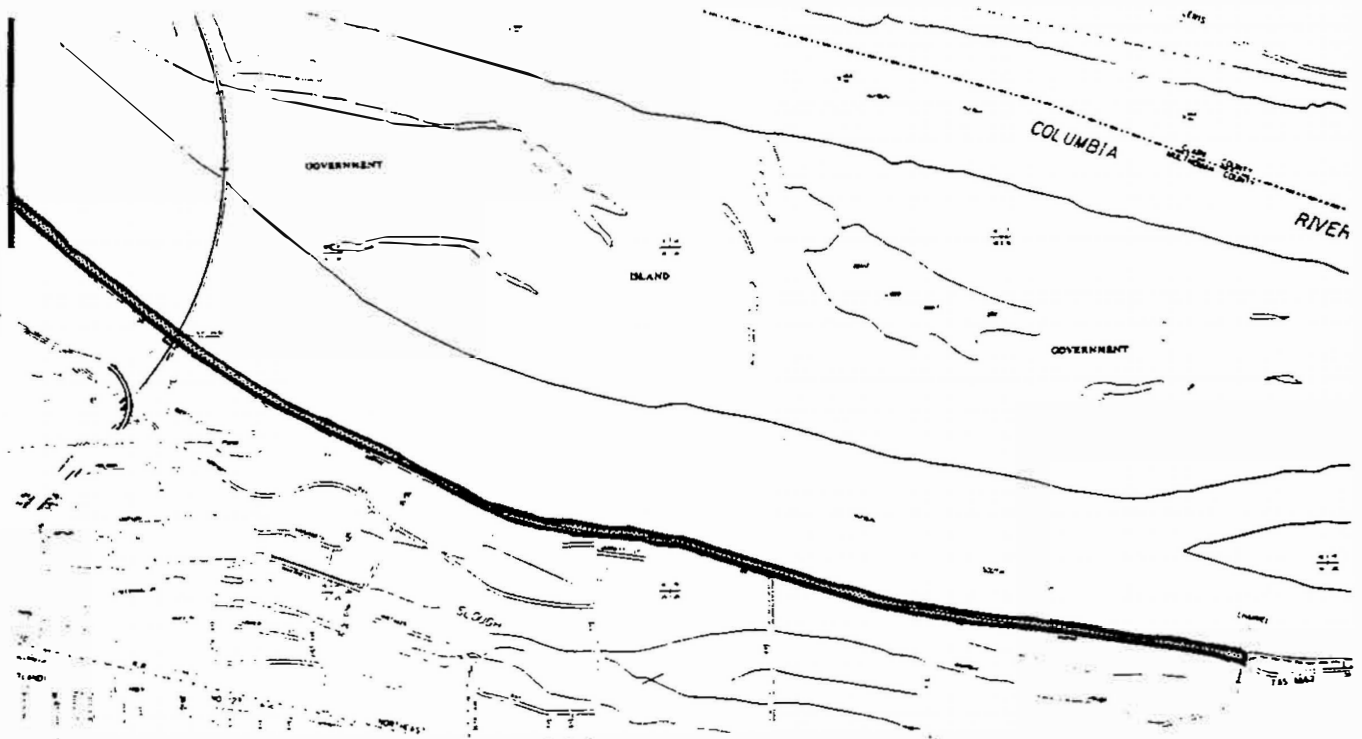




SITE 71



MATCH LINE (FROM PREVIOUS PAGE)



SITE 71, continued

NEIGHBORHOOD: Kenton, East Columbia (West, Central Columbia Corridor)

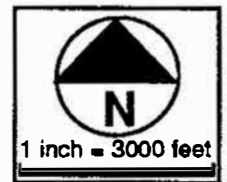
ZONING*: M1, M2(1,n), C2, C2(1,n), R10(1,n)

COMPREHENSIVE PLAN: Industrial, Commercial, Residential

DATE OF INVENTORY: September 1988

OWNERSHIP: Private, Port of Portland, State of Oregon

* The lower case symbols represent overlay zones. All upper case symbols represent base zones. See Appendix B for a description of each zone.



CLASSIFICATION:** Riverine, Lower Perennial/Tidal,
Unconsolidated Shore, Sand, Permanently
Flooded.

Riverine, Lower Perennial/Tidal,
Unconsolidated Shore, Sand, Seasonally
Flooded.

Palustrine, Emergent Wetland, Persistent,
Seasonally Flooded.

Palustrine, Scrub-Shrub, Broad-leaf
Deciduous, Seasonally and Intermittently
Flooded.

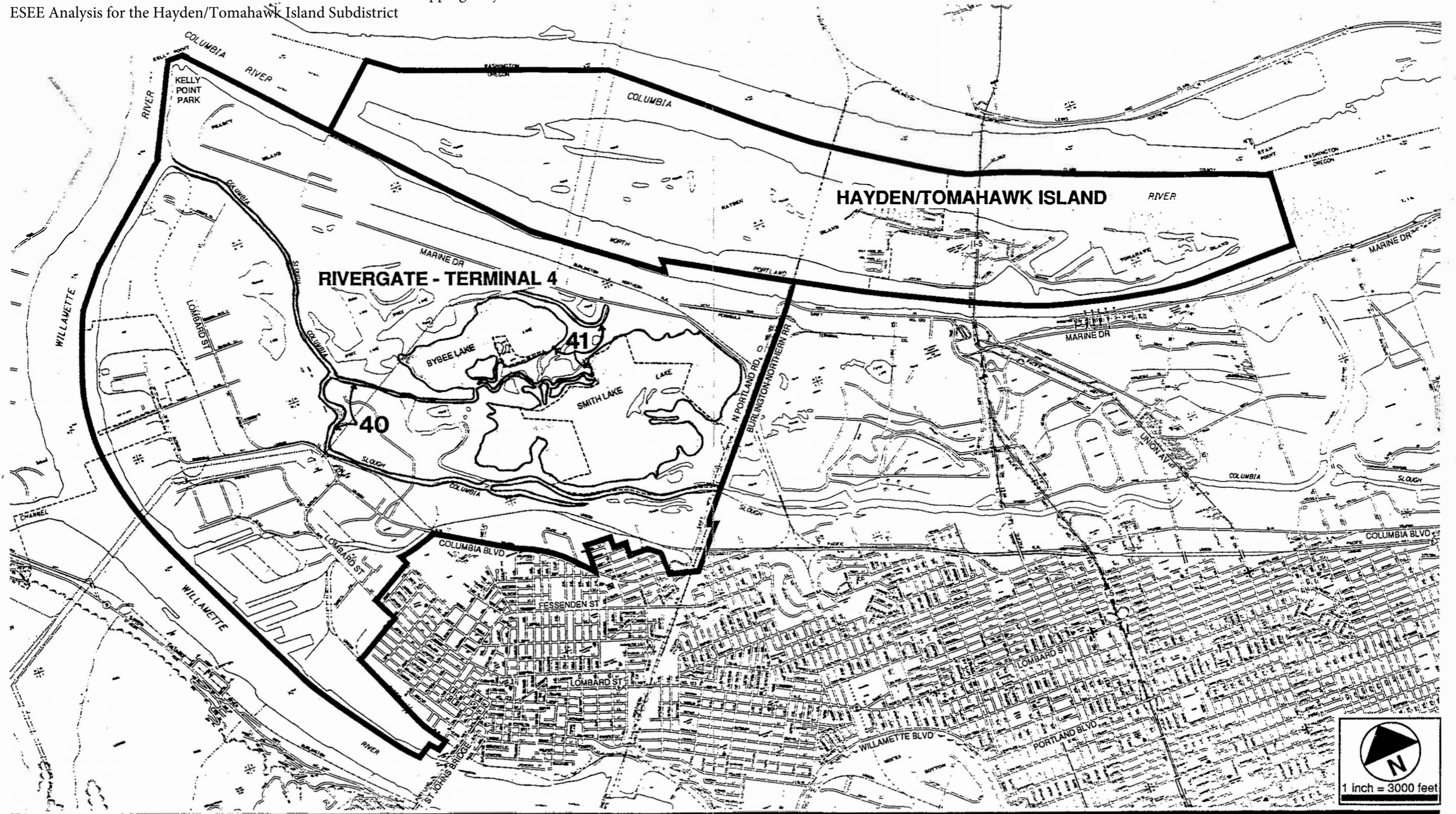
Palustrine, Forested, Broad-leaf Deciduous,
Seasonally and Intermittently Flooded.

** In addition, uplands may be present.

OBSERVATIONS AND COMMENTS: This is a highly disturbed, largely developed portion of the Columbia River. Levees maintained by the drainage districts, which extend along the length of the site, must be kept clear of large trees and protected from erosion. This results in vegetation that is primarily grasses and shrubs, with occasional small groves of trees.

Open recreational activities, including launching ramps, beaches, and bicycle paths are the predominant activity along the eastern portion. Commercial and industrial activities including moorages, and residential development are in the central and western sections of the site.

WILDLIFE HABITAT INVENTORY SCORE: 18



**COLUMBIA CORRIDOR:
RIVERGATE - TERMINAL 4
& HAYDEN/TOMAHAWK ISLAND**

**INVENTORIED
WATER FEATURES**

Site	Level of Protection	Values to be Protected
55,	en	High quality uplands and wetlands for all of Smith and Bybee Lakes, the Ramsey Lake mitigation area, and the blind slough south of the Columbia Slough containing wapato wetlands for all values identified in the summary WF41 table.* Drainageway functions, including fish habitat, drainage, flood storage, desynchronization, erosion control, sediment trapping, and pollution and nutrient retention and removal for the same area.
	ec	The remainder of the inventory site for all values identified in the summary table.* Drainageway functions, including fish habitat, drainage, flood storage, desynchronization, erosion control, sediment trapping, and pollution and nutrient retention and removal for the same area.

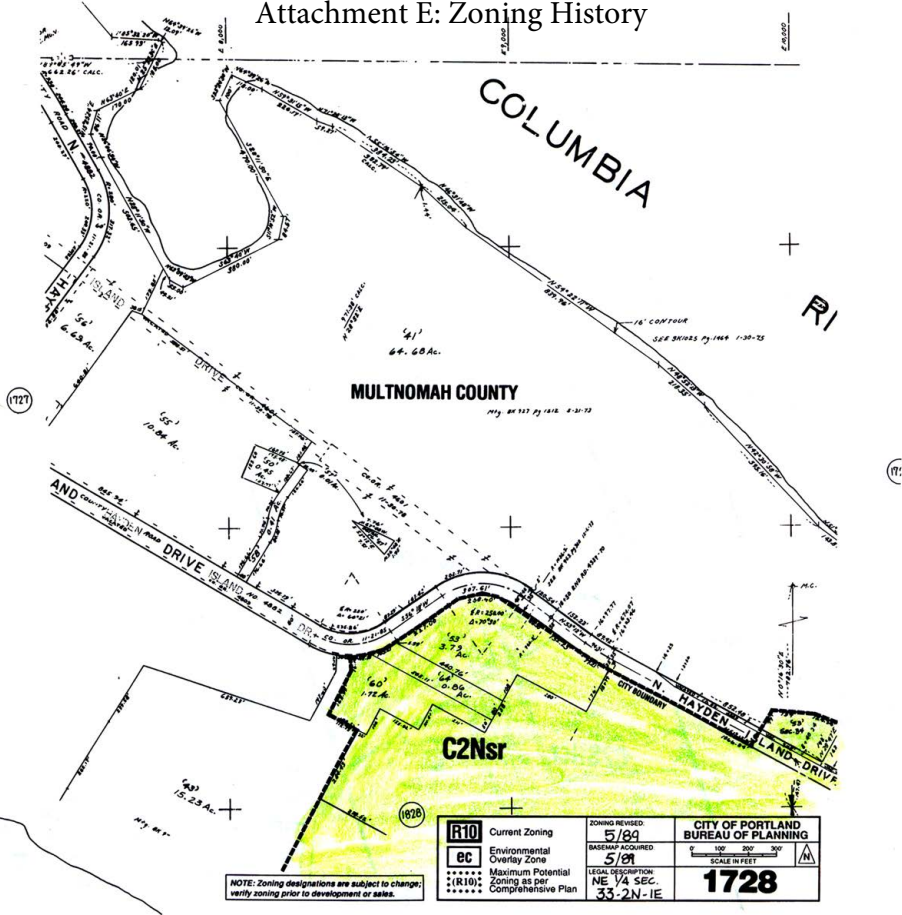
54 none at this time

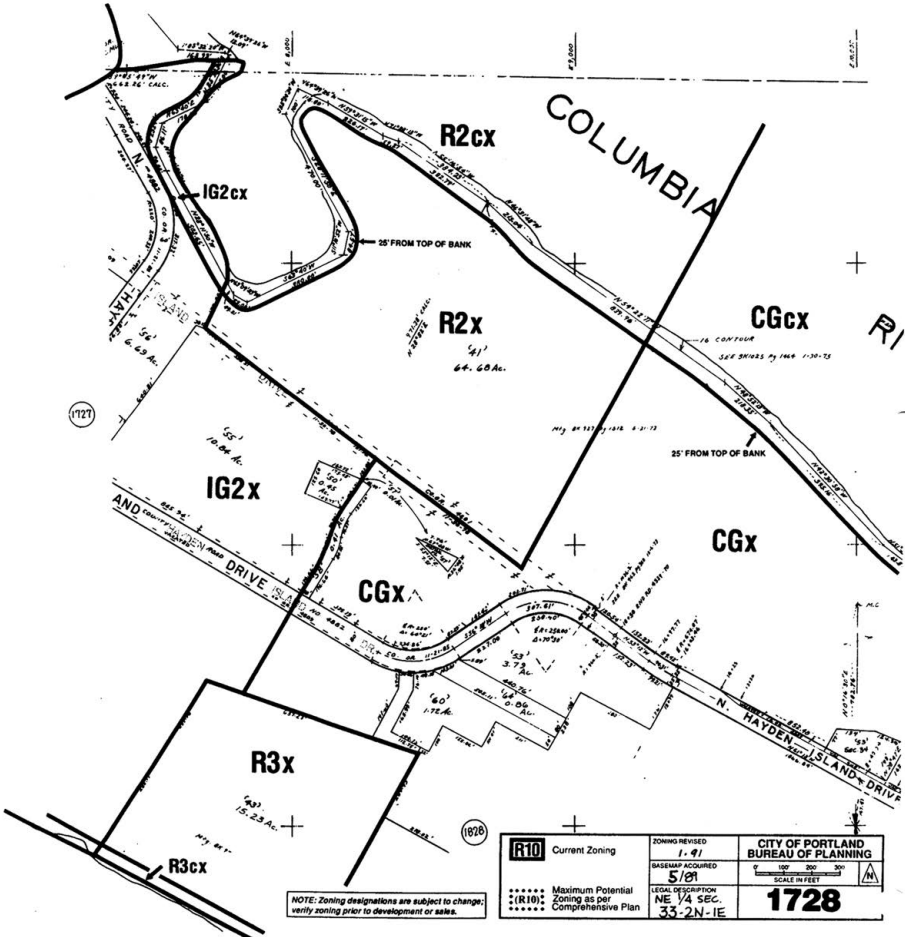
Columbia River and Bankline

ec	Riparian strip for wildlife habitat, visual amenity, erosion control. Drainageway functions, including fish habitat, drainage, flood storage, desynchronization, erosion control, sediment trapping, and pollution and nutrient retention and removal for the same area.
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* The Summary Table is located in the front of the Inventory Section of this report.

Attachment E: Zoning History

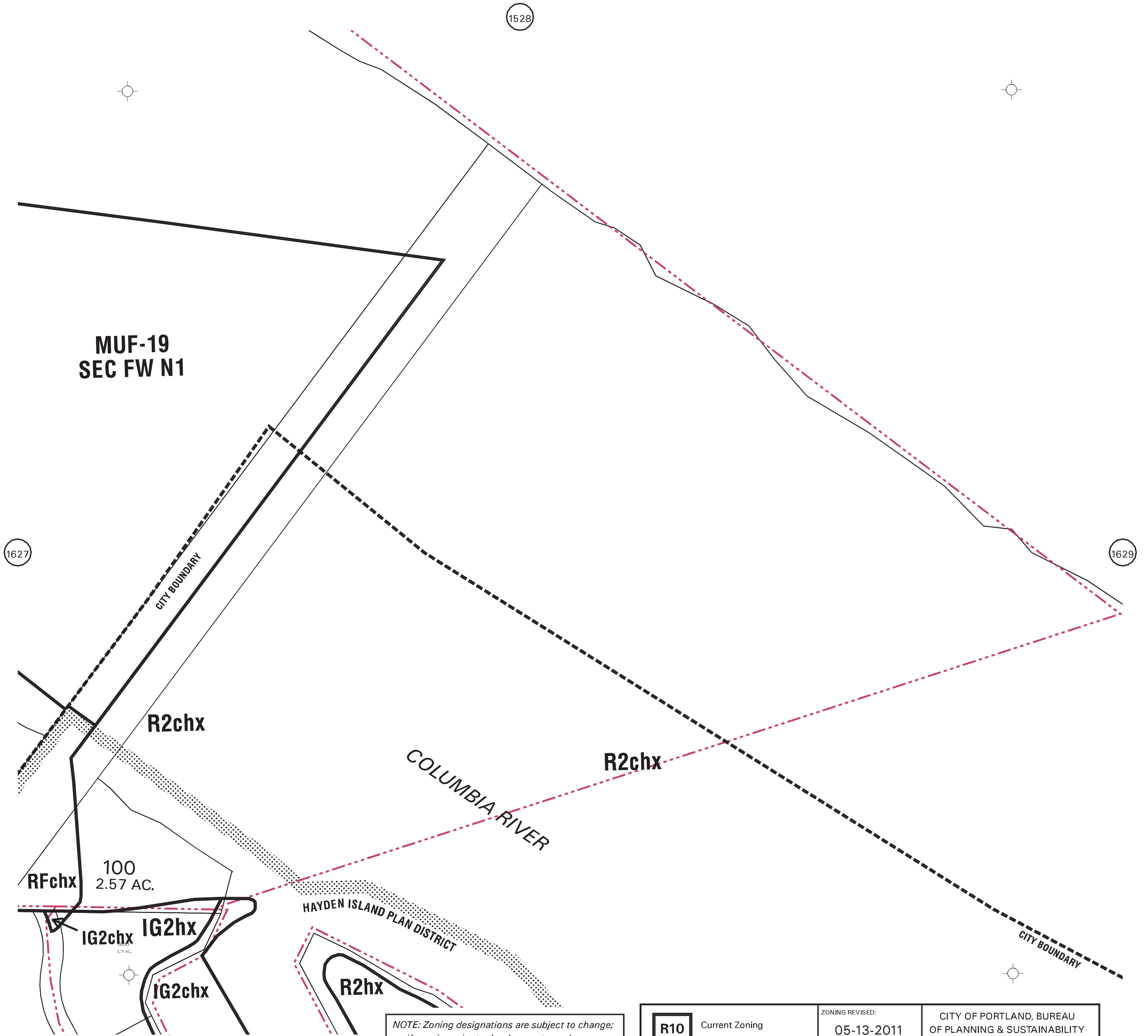




NOTE: Zoning designations are subject to change; verify zoning prior to development or sales.

R10 Current Zoning Maximum Potential Zoning as per Comprehensive Plan	ZONING REVISED	1/91	CITY OF PORTLAND BUREAU OF PLANNING 0 100 200 300 FEET SCALE IN FEET
	BASEMAP ACQUIRED	5/01	
	LEGAL DESCRIPTION	NE 1/4 SEC. 33-2N-1E	
	1728		

**MUF-19
SEC FW N1**



1627

1528

1629

RFchx
100
2.57 AC.

IG2chx
2.79 AC.

IG2chx

IG2hx




R2chx

R2chx




HAYDEN ISLAND PLAN DISTRICT

R2hx

NOTE: Zoning designations are subject to change; verify zoning prior to development or sales.

-  Plan District Boundary
-  Historic or Conservation District or N.R.M.P. Boundary
-  Zoning Line

1728

<p>R10 Current Zoning</p> <p> Maximum Potential Zoning as per Comprehensive Plan</p> <p> State ID Map Boundary</p>	<p>ZONING REVISED: 05-13-2011</p>	<p>CITY OF PORTLAND, BUREAU OF PLANNING & SUSTAINABILITY</p>	
	<p>BASEMAP ACQUIRED: 07 - 2010</p>	<p>0' 100' 200' 300' SCALE IN FEET</p>	<p></p>
	<p>LEGAL DESCRIPTION: SE 1/4 SEC. 28 - 2N - 1E</p>	<p>1628</p>	

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Attachment F: Recommended Corrections

Legend

- property
- Action**
- Corrected conservation zone (c)
- Existing conservation zone (c)
- ordinary high water
- waterbodies
- taxlots
- Portland City Boundary

