



City of Portland, Oregon
Bureau of Development Services
Land Use Services
FROM CONCEPT TO CONSTRUCTION

Dan Saltzman, Commissioner
Paul L. Scarlett, Director
Phone: (503) 823-7300
Fax: (503) 823-5630
TTY: (503) 823-6868
www.portlandoregon.gov/bds

Date: April 4, 2016
To: Interested Person
From: Sylvia Cate, Land Use Services
503-823-7771 / Sylvia.Cate@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 mailed copy of this document is only a summary of the decision. 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 16-121556 AD

GENERAL INFORMATION

Applicant: Patrick Evans, Main Contact
SBA Communications Corp
3587 NE Joel Street
McMinnville, OR 97128

Property Owner: Ellingson Brothers LLC
2925 70th Ave E
Fife, WA 98424

Site Address: 3232 NW INDUSTRIAL ST

Legal Description: LOT 1, PARTITION PLAT 2003-112
Tax Account No.: R649834450
State ID No.: 1N1E29CA 00901
Quarter Section: 2825
Neighborhood: Northwest Industrial, contact John Savory at 503-241-1921.
Business District: Northwest Industrial, contact Harold Hutchinson at haroldh@nwindustrial.org.
District Coalition: Neighbors West/Northwest, contact Mark Sieber at 503-823-4212.
Plan District: Guilds Lake Industrial Sanctuary
Zoning: IH: Heavy Industrial
Case Type: AD: Adjustment
Procedure: Type II, an administrative decision with appeal to the Adjustment Committee.

Proposal:

The applicant requests an Adjustment to waive the required 5-foot buffer of L-3 landscaping around a leased and fenced area containing wireless telecommunications equipment and a monopole. The applicable landscape standard is found at 33.274.040.8.a.(1). Development standards for equipment located at grade depends upon the base zone and the configuration of the facility. In this specific instance, the facility was allowed by right in the Heavy Industrial zone and the required 5 foot deep landscaping was installed circa 2007. However, conditions

are such that the landscaping did not survive and the applicant notes that new landscaping installed will most likely not survive. The applicant proposes the existing fence in place of the landscaping.

Relevant Approval Criteria:

In order to be approved, this proposal must comply with the approval criteria of Title 33. Adjustment requests will be approved if the review body finds that the applicant has shown that approval criteria A. through F. of Section 33.805.040, Adjustment Approval Criteria, have been met.

ANALYSIS

Site and Vicinity: The site is a 171,786 square foot parcel developed with a 95,363 square foot building. The site is zoned Heavy Industrial and is surrounded by lands zoned Industrial in all directions. Northwest Saint Helens Road is to the south of the site, but separated from the rear lot line by a wide rail line right of way. NW St Helens Road runs along the base of steep hills to the southwest of the site. On the south side of St Helens Road are lands zoned Industrial. The nearest residentially zoned lands are approximately 450 feet away from the cell facility and are sparsely developed due to the challenging topography.

Zoning: The site is zoned IH, Heavy Industrial. This zone is one of the three zones that implement the Industrial Sanctuary map designation of the Comprehensive Plan. The zone provides areas where all kinds of industries may locate including those not desirable in other zones due to their objectionable impacts or appearance. The development standards are the minimum necessary to assure safe, functional, efficient, and environmentally sound development.

Land Use History: City records indicate there are no prior land use reviews for this site.

- Bureau of Transportation Engineering
- Water Bureau
- Fire Bureau
- Site Development Section of BDS
- Bureau of Environmental Services
- Life Safety Plans Examiner Section of BDS

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on March 7, 2016. No written responses have been received from either the Neighborhood Association or notified property owners in response to the proposal.

ZONING CODE APPROVAL CRITERIA**33.805.010 Purpose (Adjustments)**

The regulations of the zoning code are designed to implement the goals and policies of the Comprehensive Plan. These regulations apply city-wide, but because of the city's diversity, some sites are difficult to develop in compliance with the regulations. The adjustment review process provides a mechanism by which the regulations in the zoning code may be modified if the proposed development continues to meet the intended purpose of those regulations. Adjustments may also be used when strict application of the zoning code's regulations would preclude all use of a site. Adjustment reviews provide flexibility for unusual situations and allow for alternative ways to meet the purposes of the code, while allowing the zoning code to continue providing certainty and rapid processing for land use applications.

33.805.040 Approval Criteria

Adjustment requests will be approved if the review body finds that the applicant has shown that approval criteria A. through F. below have been met.

- A.** Granting the adjustment will equally or better meet the purpose of the regulation to be modified; and

Findings: The purpose of the regulation to be adjusted is found at 33.274.040.A, Purpose, which states:

The development standards:

- Ensure that Radio Frequency Transmission Facilities will be compatible with adjacent uses;
- Reduce the visual impact of towers and accessory equipment in residential and open space zones whenever possible; and
- Protect adjacent property from tower failure, falling ice, and other safety hazards.

The primary purpose for landscaping around a wireless facility is to screen the facility and soften the visual impacts of the facility. The screening can also help such facilities be more compatible with adjacent uses. The setback regulations address the protection of adjacent properties from tower failure and falling ice.

The existing facility is located behind a large industrial building in an area where there is little activity on the site. Further, due to its location, the base of the facility and the associated electrical equipment is not visible from NW Industrial Street. Similarly, given its location, adjacent properties are developed and oriented towards NW Industrial Street, so the facility is not visible except from the rear of these properties. Further, the adjacent rail line and the significant distance from the nearest residentially zoned lands, a sight obscuring fence provides an adequate level of screening and buffering, given the context and surrounding uses. However, the existing fence is in relatively poor condition and is covered with graffiti. With a condition of approval that the applicant replace the slats in the existing fence with new slats, the fencing equally meets the purpose of the landscaping regulation and therefore this criterion is met.

- B.** If in a residential zone, the proposal will not significantly detract from the livability or appearance of the residential area, or if in an OS, C, E, or I zone, the proposal will be consistent with the classifications of the adjacent streets and the desired character of the area; and

Findings: The facility is located the IH, Heavy Industrial zone. In this location, NW Industrial Street is a designated Community Transit Street and NW St Helens is a designated Transit Access Street. The facility itself generates approximately two vehicle trips an average of every six weeks and therefore is consistent with the street classifications.

The desired character of the area is a term defined by Title 33, *Zoning Code*, as:

Desired Character. The preferred and envisioned character (usually of an area) based on the purpose statement or character statement of the base zone, overlay zone, or plan district. It also includes the preferred and envisioned character based on any adopted area plans or design guidelines for an area.

The site is zoned Heavy Industrial, which has the following character statement:

Heavy Industrial. This zone is one of the three zones that implement the Industrial Sanctuary map designation of the Comprehensive Plan. The zone provides areas where all kinds of industries may locate including those not desirable in other zones due to their objectionable impacts or appearance. The development standards are the minimum necessary to assure safe, functional, efficient, and environmentally sound development.

The proposal to waive the landscaping requirement and utilize the existing fence for screening the facility is consistent with the desired character of the zone because the facility arguably has an objectionable appearance that fits within the surrounding industrial context of adjacent development and uses.

The site is also located within the Guild's Lake Industrial Sanctuary Plan District, the purpose of which is described at 33.531.010, *Purpose*:

The Guild's Lake Industrial Sanctuary plan district fosters the preservation and growth of this premier industrial area adjacent to Portland's central city. The plan district's large number of well-established industrial firms are dependent on the area's multimodal transportation system, including marine, rail, and trucking facilities, and on the ability of area streets to accommodate truck movements. Because of its proximity to inner-city neighborhoods with high concentrations of commercial and residential uses, the Guild's Lake Industrial Sanctuary is particularly vulnerable to impacts from, and redevelopment to, nonindustrial uses. The provisions of the plan district recognize that the displacement of industrial uses by inappropriate nonindustrial uses potentially threatens the integrity of this district and investments in public and private infrastructure. The provisions of this chapter protect the area from incompatible uses which threaten the district's integrity, stability and vitality and compromise its transportation system.

The requested adjustment is consistent with the purpose of the Guild's Lake Industrial Sanctuary plan district because the facility has virtually no impact on the area's multimodal transportation system. The existing facility is an industrial-looking development that is ordinarily allowed outright in all industrial zones. The facility does not displace other industrial uses by virtue of its location behind the building where little activity occurs on site. Waiving the landscaping around the facility in lieu of the existing fence will have no impact or effect on the plan district's integrity, stability or vitality.

For all these reasons, this criterion is met.

- C.** If more than one adjustment is being requested, the cumulative effect of the adjustments results in a project which is still consistent with the overall purpose of the zone; and

Findings: Only one adjustment is requested. This criterion is not applicable.

- D.** City-designated scenic resources and historic resources are preserved; and

Findings: City designated resources are shown on the zoning map by the 's' overlay; historic resources are designated by a large dot, and by historic and conservation districts. There are no such resources present on the site. Therefore, this criterion is not applicable.

- E.** Any impacts resulting from the adjustment are mitigated to the extent practical; and

Findings: There are no discernible impacts that would result from granting the requested adjustment. This criterion is met.

- F.** If in an environmental zone, the proposal has as few significant detrimental environmental impacts on the resource and resource values as is practicable;

Findings: Environmental overlay zones are designated on the Official Zoning Maps with either a lowercase "p" (Environmental Protection overlay zone) or a "c"

(Environmental Conservation overlay zone). As the site is not within an environmental zone, 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

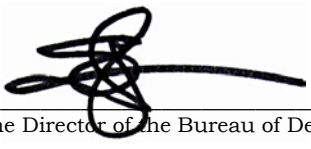
The applicant requests an Adjustment to waive the required 5-foot buffer of L-3 landscaping around a leased and fenced area containing wireless telecommunications equipment and a monopole. The applicable landscape standard is found at 33.274.040.8.a.(1). Development standards for equipment located at grade depends upon the base zone and the configuration of the facility. In this specific instance, the facility was allowed by right in the Heavy Industrial zone and the required 5 foot deep landscaping was installed circa 2007. However, conditions are such that the landscaping did not survive and the applicant notes that new landscaping installed will most likely not survive. The applicant proposes the existing fence in place of the landscaping. With a condition of approval, the proposal meets all of the applicable approval criteria and therefore should be approved.

ADMINISTRATIVE DECISION

Approval of:

- An Adjustment to waive all required landscaping 933.274.040.C.8.a.(1), per the approved site plans, Exhibits C-1, signed and dated March 31, 2016, subject to the following conditions:
 - A. As part of the building permit application submittal, the following development-related conditions (B) must be noted on each of the 4 required site plans or included as a sheet in the numbered set of plans. The sheet on which this information appears must be labeled "ZONING COMPLIANCE PAGE - Case File LU 16-121556 AD." All requirements must be graphically represented on the site plan, landscape, or other required plan and must be labeled "REQUIRED."
 - B. The applicant must replace all sight obscuring slats in the existing fence with new ones.

Staff Planner: Sylvia Cate

Decision rendered by:  **on March 31, 2016**
By authority of the Director of the Bureau of Development Services

Decision mailed: April 4, 2016

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 February 16, 2016, and was determined to be complete on **March 2, 2016**.

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 February 16, 2016.

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 further extended by the applicant, **the 120 days will expire on: June 30, 2016.**

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 Adjustment Committee, which will hold a public hearing. Appeals must be filed **by 4:30 PM on April 18, 2016** at 1900 SW Fourth Ave. Appeals can be filed at the Development Services Center Monday through Wednesday and Fridays between 8:00 am to 3:00 pm and on Thursdays between 8:00 am to 12:00 pm. After 3:00 pm Monday through Wednesday and Fridays, and after 12:00 pm on Thursdays, appeals must be submitted at the reception desk on the 5th 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 Adjustment Committee 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 Adjustment Committee 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 **April 19, 2016 – (the day following the last day to appeal)**.
- 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.

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.

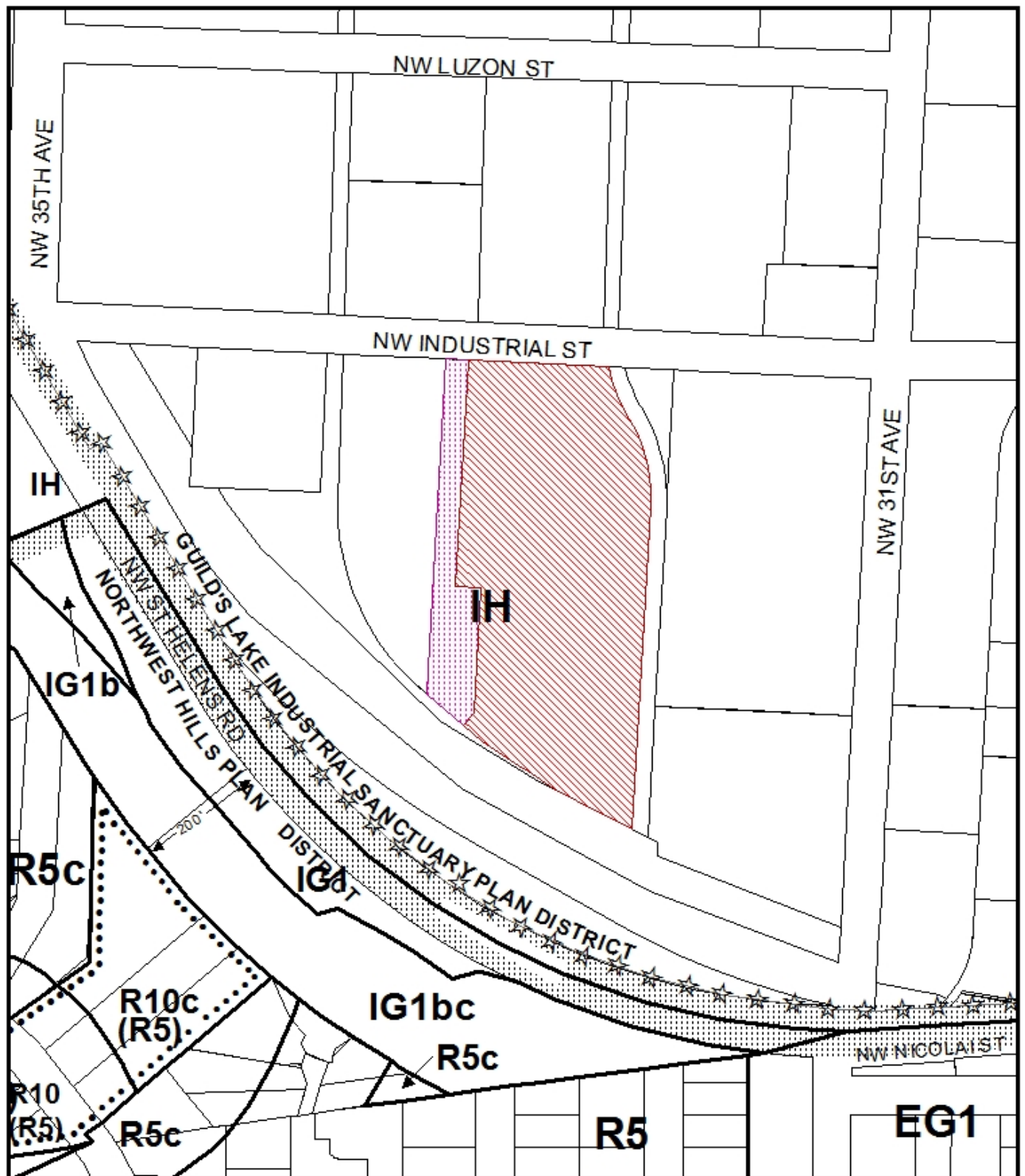
EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan (attached)
- D. Notification information:
 - 1. Mailing list

- 2. Mailed notice
- E. Agency Responses:
 - 1. Bureau of Environmental Services
 - 2. Bureau of Transportation Engineering and Development Review
 - 3. Water Bureau
 - 4. Fire Bureau
 - 5. Site Development Review Section of BDS
 - 6. Life Safety Plans Examiner Section of BDS
- F. Correspondence: *None received*
- 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

- ↑ NORTH
- Site
- Also Owned Parcels
- ☆ Recreational Trails

This site lies within the:
GUILD'S LAKE INDUSTRIAL SANCTUARY PLAN DISTRICT

File No.	<u>LU 16-121556 AD</u>
1/4 Section	<u>2825 2725</u>
Scale	<u>1 inch = 200 feet</u>
State Id	<u>1N1E29CA 901</u>
Exhibit	<u>B (Feb 18, 2016)</u>

OVERALL SITE PLAN

