

NOTICE OF DECISION

Case File: T2-2021-14907 **Permit:** Lot of Record Verification
Applicants: Tracy Brown **Owners:** T&K Sester Family
Location: 34519 SE Lusted Rd, Gresham
Map, Tax Lot: 1S4E15C-00400, 1S4E15C-00500 & 1S4E15C-00600
Tax Account #R994150110, R994150120 & R994150130
Property ID #R341821, R341822 & R341823
Base Zone: Exclusive Farm Use (EFU)
Overlays: Significant Environmental Concern for wildlife habitat (SEC-h) and water resources (SEC-wr)
Proposal Summary: The applicant is requesting a Lot of Record Verification for the above properties. A Lot of Record Verification determines that a property was lawfully established in compliance with zoning and land division laws at the time of its creation or reconfiguration and meets the County's aggregation requirements.

Determination:

1. The unit of land contained in tax lot 1S4E15C-00400 is a separate Lot of Record.
2. The two units of land contained in tax lots 1S4E15C-00500 & 1S4E15C-00600 are aggregated into a single Lot of Record.

This decision is final at the close of the appeal period, unless appealed. The deadline for filing an appeal is Thursday, December 30, 2021 at 4:00 pm.

Opportunity to Review the Record: The complete case file, including the Planning Director Decision containing Findings, Conclusions, Conditions of Approval, and all evidence associated with this application is available by contacting the case planner. Copies of all documents are available at the rate of \$0.40/per page. For further information, contact Lisa Estrin, Staff Planner at 503-977-0167 or via email at lisa.m.estrin@multco.us.

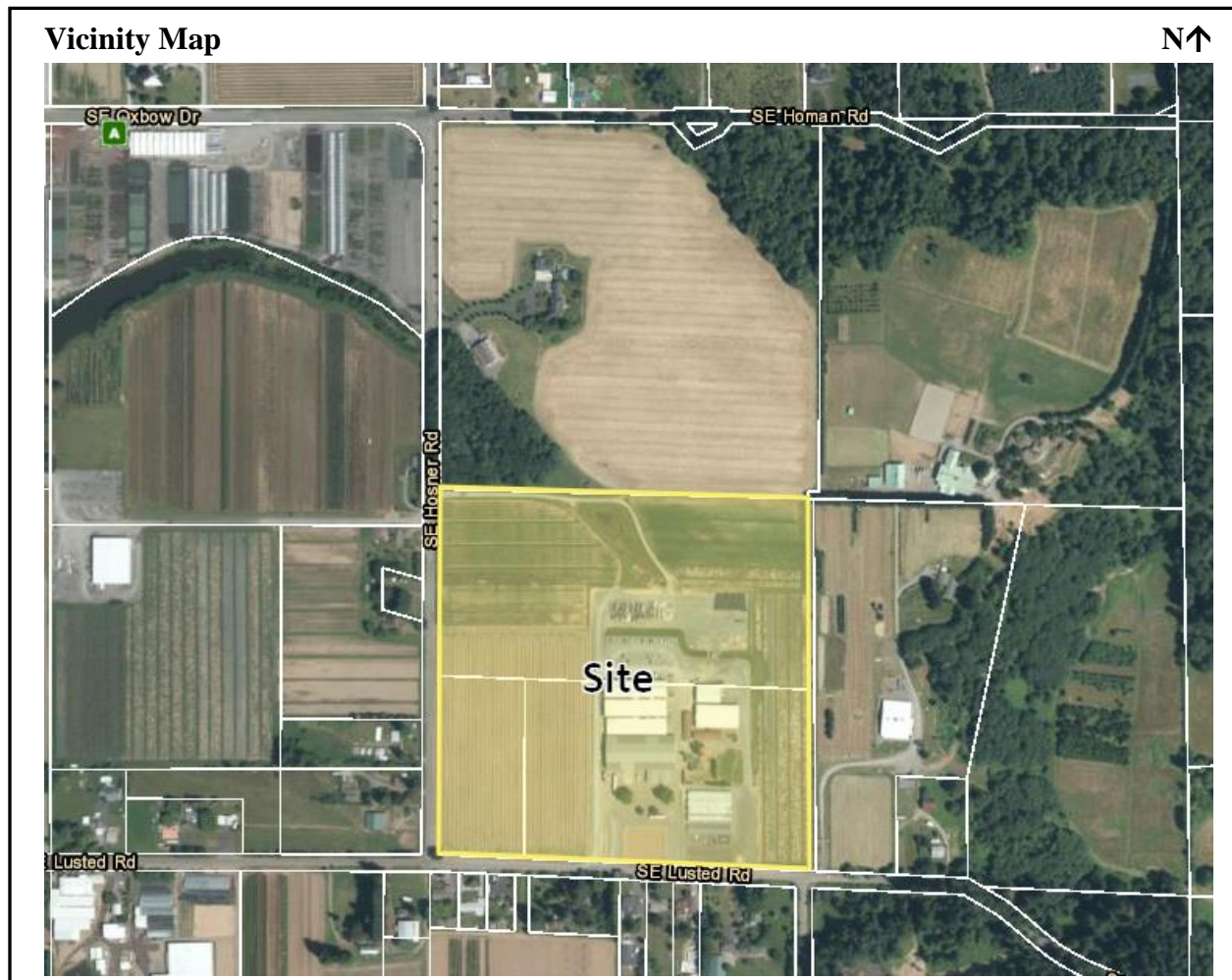
Opportunity to Appeal: An appeal requires a \$250.00 fee and must state the specific legal grounds on which it is based. To obtain appeal forms or information on the procedure, contact the Land Use Planning office at 1600 SE 190th Avenue (Phone: 503-988-3043). This decision is not appealable to the Land Use Board of Appeals until all local appeals are exhausted.

Issued by: _____

By: Lisa Estrin, Senior Planner

For: Carol Johnson, Planning Director AICP

Date: Thursday, December 16, 2021



Applicable Approval Criteria:

For this application to be approved, the proposal will need to meet applicable approval criteria below:

Multnomah County Code (MCC): MCC 39.1515 Code Compliance and Applications, MCC 39.2000 Definitions, MCC 39.3005 Lot of Record – Generally, MCC 39.3070 Lot of Record – EFU

Copies of the referenced Multnomah County Code sections are available by contacting our office at (503) 988-3043 or by visiting our website at <https://multco.us/landuse/zoning-codes/> under the link:

Chapter 39 - Zoning Code

Notice to Mortgagee, Lien Holder, Vendor, or Seller:

ORS Chapter 215 requires that if you receive this notice it must be promptly forwarded to the purchaser.

Findings of Fact

FINDINGS: Written findings are contained herein. The Multnomah County Code (MCC) criteria and Comprehensive Plan Policies are in **bold** font. Staff analysis and comments are identified as ‘**Staff:**’ and address the applicable criteria. Staff comments may include a conclusionary statement in *italic*.

1.0 Project Description:

Staff: The applicant requests a Lot of Record Verification for the three tax lots identified as 1S4E15C-00400 (TL 400), 1S4E15C-00500 (TL 500) & 1S4E15C-00600 (TL 600). The application does not propose any new development at this time.

Through the Lot of Record Verification process, the County reviews the creation or reconfiguration of each parcel, lot, or unit of land involved in the request. The County then verifies that the creation or reconfiguration of the parcel, lot, or unit of land satisfied all applicable zoning laws and all applicable land division laws in effect on the date of its creation or reconfiguration. In the EFU/CFU zone, the County also considers adjacent ownership on February 20, 1990 in determining whether a parcel, lot, or unit of land is a Lot of Record on its own. If the parcel, lot, or unit of land met all applicable zoning laws, applicable land division laws and meets the aggregation requirements, it may be determined to be a Lot of Record.

2.0 Property Description & History:

Staff: The subject properties is located in unincorporated east Multnomah County in the area known as the West of Sandy River. The property is zoned Exclusive Farm Use (EFU) and is located outside of Metro’s Urban Growth Boundary (UGB).

3.0 Public Comment:

Staff: Staff mailed a notice of application and invitation to comment on the proposed application to the required parties per MCC 39.1105 as Exhibited in C.2. Staff did not receive any written comments from the public during the 14-day comment period.

4.0 Code Compliance and Applications Criteria:

4.1 § 39.1515 CODE COMPLIANCE AND APPLICATIONS.

Except as provided in subsection (A), the County shall not make a land use decision approving development, including land divisions and property line adjustments, or issue a building permit for any property that is not in full compliance with all applicable provisions of the Multnomah County Zoning Code and/or any permit approvals previously issued by the County.

(A) A permit or other approval, including building permit applications, may be authorized if:

- (1) It results in the property coming into full compliance with all applicable provisions of the Multnomah County Zoning Code. This includes sequencing of permits or other approvals as part of a voluntary compliance agreement; or**
- (2) It is necessary to protect public safety; or**
- (3) It is for work related to and within a valid easement over, on or under an affected property.**

(B) For the purposes of this section, Public Safety means the actions authorized by the permit would cause abatement of conditions found to exist on the property that endanger the life, health, personal property, or safety of the residents or public. Examples of that situation include but are not limited to issuance of permits to replace faulty electrical wiring; repair or install furnace equipment; roof repairs; replace or repair compromised utility infrastructure for water, sewer, fuel, or power; and actions necessary to stop earth slope failures.

Staff: This standard provides that the County shall not make a land use decision approving development for a property that is not in full compliance with County Code or previously issued County approvals, except in the following instances: approval will result in the property coming into full compliance, approval is necessary to protect public safety, or the approval is for work related to or within a valid easement.

This standard was originally codified in the Zoning Code chapter related to land use application procedures and, by its terms, expressly applies to the application review process. Although now codified in the enforcement Part of the Zoning Code as a result of the more recent code consolidation project, the language and intent was not changed during that project and remains applicable to the application review process and not to the post-permit-approval enforcement process.

Importantly, a finding of satisfaction of this standard does not mean that a property is in full compliance with the Zoning Code and all prior permit approvals (and, accordingly, does not preclude future enforcement actions relating to uses and structures existing at the time the finding is made). Instead, a finding of satisfaction of this standard simply means that there is not substantial evidence in the record affirmatively establishing one or more specific instances of noncompliance. As such, an applicant has no initial burden to establish that all elements of the subject property are in full compliance with the Zoning Code and all previously approved permits; instead, in the event of evidence indicating or establishing one or more specific instances of noncompliance on the subject property, the applicant bears the burden to either rebut that evidence or demonstrate satisfaction of one of the exceptions in MCC 39.1515.

As noted in Section 1.0 above, this application is a request for a Lot of Record Verification, which does not require the County to approve development, a land division, a property line adjustment, or a building permit. *Therefore, this standard is not applicable.*

5.0 Lot of Record Criteria:

5.1 MCC 39.3005 - LOT OF RECORD – GENERALLY.

(A) An area of land is a “Lot of Record” if it meets the standards in Subsection (B) of this Section and meets the standards set forth in this Part for the Zoning District in which the area of land is located.

(B) A Lot of Record is a parcel, lot, or a group thereof that, when created or reconfigured, either satisfied all applicable zoning laws and satisfied all applicable land division laws, or complies with the criteria for the creation of new lots or parcels described in MCC 39.9700. Those laws shall include all required zoning and land division review procedures, decisions, and conditions of approval.

(a) “Satisfied all applicable zoning laws” shall mean: the parcel, lot, or group thereof was created and, if applicable, reconfigured in full compliance with all zoning minimum lot size, dimensional standards, and access requirements.

(b) “Satisfied all applicable land division laws” shall mean the parcel or lot was created:

- 1. By a subdivision plat under the applicable subdivision requirements in effect at the time; or**
- 2. By a deed, or a sales contract dated and signed by the parties to the transaction, that was recorded with the Recording Section of the public office responsible for public records prior to October 19, 1978; or**
- 3. By a deed, or a sales contract dated and signed by the parties to the transaction, that was in recordable form prior to October 19, 1978; or**
- 4. By partitioning land under the applicable land partitioning requirements in effect on or after October 19, 1978; and**
- 5. “Satisfied all applicable land division laws” shall also mean that any subsequent boundary reconfiguration completed on or after December 28, 1993 was approved under the property line adjustment provisions of the land division code. (See Date of Creation and Existence for the effect of property line adjustments on qualifying a Lot of Record for the siting of a dwelling in the EFU and CFU districts.)**

(c) Separate Lots of Record shall be recognized and may be partitioned congruent with an “acknowledged unincorporated community” boundary which intersects a Lot of Record.

- 1. Partitioning of the Lot of Record along the boundary shall require review and approval under the provisions of the land division part of this Chapter, but not be subject to the minimum area and access requirements of this district.**
- 2. An “acknowledged unincorporated community boundary” is one that has been established pursuant to OAR Chapter 660, Division 22.**

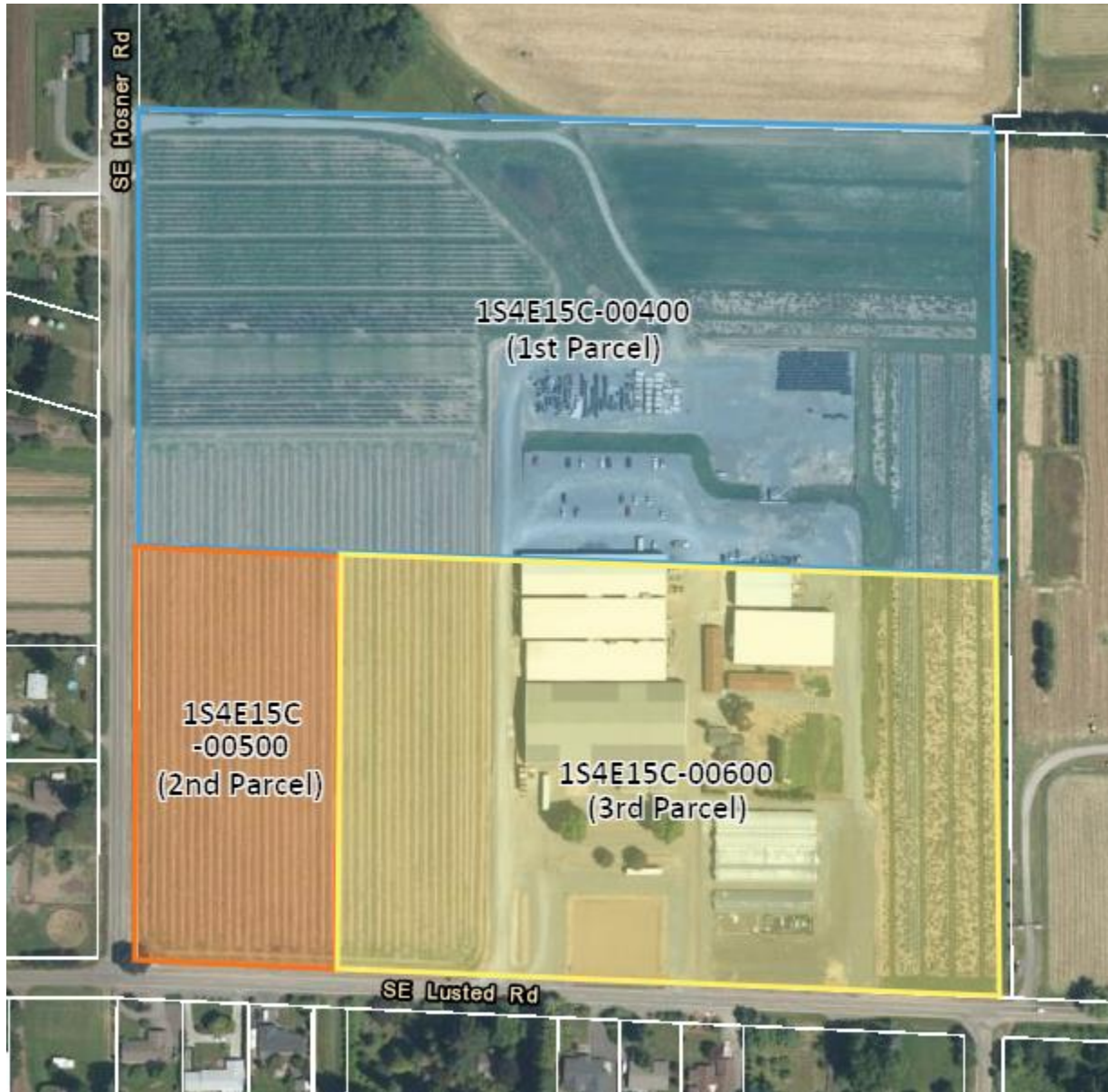
Staff: To qualify as a Lot of Record, the properties involved, when created or reconfigured, must meet MCC 39.3005(B) of this section and meet the Lot of Record standards set forth in the Exclusive Farm Use (EFU) zoning district. More specifically, section (B) above requires demonstration that the subject parcel or lot (a) satisfied all applicable zoning laws and (b) satisfied all applicable land division laws. The Lot of Record standards set forth in the EFU district establish additional requirements unique to the district, which are evaluated in Sections 5.2 of this decision. The findings below analyze whether the Lot of Record provisions in section (B) have been met.

This Lot of Record Verification request involves three separate units of land (parcel). Planning staff will refer to each parcel by its shortened tax lot number (TL 400, TL 500, TL 600). While a tax lot is for taxation purposes only, it is an easy way to describe the area of land that is described by a *metes and bounds* description in a deed. Below, Planning staff discuss each

individual parcel and whether it met the applicable requirements at the time of its creation. At the commencement of each discussion, planning staff will identify the parcel being discussed. The applicant provided a number of deed(s) (Exhibit A.3 through A.23) to support the Lot of Record request.

First Parcel:

Tax Lot 1S4E15C-00400 (TL 400) is the first parcel considered in this decision. The graphic below shows the tax lot highlighted in blue.



The earliest deed provided by the applicant for TL 400 was recorded on February 15, 1956 (Exhibit A.3) and contains a legal description matching the current configuration of TL 400 (Exhibit A.10). In 1956, the County had adopted an Interim Zoning Ordinance (adopted August 4, 1955) (Exhibit B.5) that applied to unincorporated Multnomah County from its western borders to the west side of the Sandy River. This Ordinance had a minimum lot size of 7,000

sq. ft. The minimum average lot width at the building line needed to be 60 feet. The minimum average lot depth was 80 feet. Lots needed to abut a public road or have other access approved.

TL 400 is 20.24+/- acres (19.86 acres without right-of-way), abuts SE Hosner Rd (a public road), and has an average lot width of 1,336.42+/- feet and average lot depth of 667+/- feet (Exhibits A.3 & B.6).

Tax Lot 400 complied with all applicable zoning laws at the time of its creation or reconfiguration.

Second Parcel:

Tax Lot 1S4E15C-00500 (TL 500) is the second parcel considered in this decision. The graphic above shows the tax lot highlighted in orange.

The earliest deed provided by the applicant for TL 500 was recorded on January 29, 1957 (Exhibit A.11) and contains a legal description matching the current configuration of TL 500 (Exhibit A.17). In 1957, the County had adopted an Interim Zoning Ordinance (adopted August 4, 1955) (Exhibit B.5) that applied to unincorporated Multnomah County from its western borders to the west side of the Sandy River. This Ordinance had a minimum lot size of 7,000 sq. ft. The minimum average lot width at the building line needed to be 60 feet. The minimum average lot depth was 80 feet. Lots needed to abut a public road or have other access approved.

TL 500 is 4.99 acres (4.34 acres without right-of-way), abuts SE Lusted Road & SE Hosner Road (public roads), and has an average lot width of 330 feet and average lot depth of 659.6+/- feet (Exhibits A.11 & B.6).

Tax Lot 500 complied with all applicable zoning laws at the time of its creation or reconfiguration.

Third Parcel:

Tax Lot 1S4E15C-00600 (TL 600) is the third parcel considered in this decision. The graphic above shows the tax lot highlighted in yellow.

The earliest deed provided by the applicant for TL 600 was recorded on March 30, 1960 (Exhibit A.18) and contains a legal description matching the current configuration of TL 600 (Exhibit A.23). Starting in July 1958, TL 600 was zoned Agricultural District (F-2) (Exhibit B.8). The F-2 zone had a minimum lot size of 2 acres. There was no requirement for road frontage or minimum front lot line length or lot width.

TL 600 is 15 acres (14.32 acres without right-of-way), abuts SE Lusted Road (a public road), and has an average lot width of 990 feet and average lot depth of 660 +/- feet (Exhibits A.3 & B.6).

Tax Lot 600 complied with all applicable zoning laws at the time of its creation or reconfiguration.

Until October 19, 1978, the process to divide a property required a deed or sales contract dated and signed by the parties to the transaction. The document needed to be in recordable form or recorded with the County Recorder prior to October 19, 1978. As evidenced by the deeds recorded in 1956 (TL 400), 1957 (TL 500) and 1960 (TL 600) (Exhibit A.3, A.11 & A.18), the applicable land division laws were satisfied for the creation or reconfiguration for each of the three parcels involved in this verification request.

Based upon the above, the three tax lots (TL 400, TL 500 and TL 600) satisfied all applicable zoning and land division laws when they were created or reconfigured in their respective years.

5.2 MCC 39.3070 LOT OF RECORD – EXCLUSIVE FARM USE (EFU).

(A) In addition to the standards in MCC 39.3005, for the purposes of the EFU district a Lot of Record is either:

(1) A parcel or lot which was not contiguous to any other parcel or lot under the same ownership on February 20, 1990, or

(2) A group of contiguous parcels or lots:

(a) Which were held under the same ownership on February 20, 1990; and

(b) Which, individually or when considered in combination, shall be aggregated to comply with a minimum lot size of 19 acres, without creating any new lot line.

1. Each Lot of Record proposed to be segregated from the contiguous group of parcels or lots shall be a minimum of 19 acres in area using existing legally created lot lines and shall not result in any remainder individual parcel or lot, or remainder of contiguous combination of parcels or lots, with less than 19 acres in area. See Examples 1 and 2 in this subsection.

2. There shall be an exception to the 19 acre minimum lot size requirement when the entire same ownership grouping of parcels or lots was less than 19 acres in area on February 20, 1990, and then the entire grouping shall be one Lot of Record. See Example 3 in this subsection.

3. Three examples of how parcels and lots shall be aggregated are shown in Figure 1 below with the solid thick line outlining individual Lots of Record:

4. The requirement to aggregate contiguous parcels or lots shall not apply to lots or parcels within exception or urban zones (e.g., MUA-20, RR, RC, SRC, BRC, R-10), but shall apply to contiguous parcels and lots within all farm and forest resource zones (i.e. EFU and CFU), or

(3) A parcel or lot lawfully created by a partition or a subdivision plat after February 20, 1990.

(4) Exception to the standards of (A)(2) above:

(a) Where approval for a “Lot of Exception” or a parcel smaller than 19 acres under the “Lot size for Conditional Uses” provisions has been given by the Hearing Authority and the parcel was subsequently lawfully created, then the parcel shall be a Lot of Record that remains separately transferable, even if the parcel was contiguous to another parcel held in the same ownership on February 20, 1990.

Staff: Tax Lots 400, 500 and 600 are three contiguous parcels. Tax lot 400 is 20.24+/- acres. Tax lot 500 is 4.99+/- acres and tax lot 600 is 15 acres. On February 20, 1990, the three tax lots were held by Moller’s Nursery Inc. (Exhibit B.4). Pursuant to MCC 39.3070(A)(2)(b), each Lot of Record proposed must be a minimum of 19 acres in area using existing legally created lot lines and shall not result in any remainder contiguous parcels with less than 19 acres in area. TL 500 and TL 600 are each under 19 acres and contiguous. They are not by themselves able to stand alone as individual Lots of Record due to their size. Combined TL 500 and 600 is 19.99 acres. TL 400 is also over 19 acres at 20.24 acres.

Based upon each parcel's lot size, two separate Lots of Record exist. Tax lots 500 and 600 when combined are one Lot of Record and must continue to be sold together in the future. Tax lot 400 is its own Lot of Record based on MCC 39.3070(A)(2)(a) and (b).

(B) In this district, significant dates and ordinances applicable for verifying zoning compliance may include, but are not limited to, the following:

- (1) July 10, 1958, F-2 zone applied;**
- (2) December 9, 1975, RL-C zone applied, F-2 minimum lot size increased, Ord. 115 & 116;**
- (3) October 6, 1977, MUA-20 and EFU-38 zones applied, Ord. 148 & 149;**
- (4) August 14, 1980, zone change from MUA-20 to EFU-38 for some properties, zone change from EFU-38 to EFU-76 for some properties. Ord. 236 & 238;**
- (5) February 20, 1990, lot of record definition amended, Ord. 643;**
- (6) April 5, 1997, EFU zone repealed and replaced with language in compliance with 1993 Oregon Revised Statutes and 1994 Statewide Planning Goal 3 Oregon Administrative Rules for farmland, Ord. 876;**
- (7) May 16, 2002, Lot of Record section amended, Ord. 982, reenacted by Ord. 997;**

(C) A Lot of Record which has less than the minimum lot size for new parcels, less than the front lot line minimums required, or which does not meet the access requirements of MCC 39.4260 may be occupied by any allowed use, review use or conditional use when in compliance with the other requirements of this district.

Staff: Section (B) is for information purposes. The minimum lot size for new parcels in the EFU zone is 80 acres. The Lot of Record containing TL 500 and 600 is below the minimum lot size for new parcels and is subject to (C) above. The Lot of Record for TL 400 is also below the minimum lot size and is subject to (C) above. Each Lot of Record may be occupied by any allowed, review or conditional use when in compliance with the other requirements of this district provided it remains a Lot of Record. *Criteria met.*

(D) The following shall not be deemed a Lot of Record:

- (1) An area of land described as a tax lot solely for assessment and taxation purposes;**
- (2) An area of land created by the foreclosure of a security interest;**
- (3) A Mortgage Lot.**
- (4) An area of land created by court decree.**

Staff: As discussed above under section 5.1, tax lots 400, 500 and 600, respectively, are not an area of land described as a tax lot solely for assessment and taxation purposes. Each tax lot contains a legal parcel. Each parcel was created in compliance with zoning and land division laws at the time, and are not mortgage lots, created by foreclosure or created by a court decree. *Criteria met.*

Based on the findings in 5.1 & 5.2, tax lot 400 (TL 400) is a separate Lot of Record from tax lot 500 and 600. Tax lot 500 (TL 500) and 600 (TL 600) are aggregated into a single Lot of Record and can be transferred separately from TL 400. TL 500 and 600 must continue to remain aggregated under the same ownership to be maintain as a Lot of Record.

6.0 Exhibits

‘A’ Applicant’s Exhibits

‘B’ Staff Exhibits

‘C’ Procedural Exhibits

All exhibits are available for review by contacting staff planner Lisa Estrin at lisa.m.estrin@multco.us. Please refer to the case file #T2-2021-14907 in your email.

Exhibit #	# of Pages	Description of Exhibit	Date Received / Submitted
A.1	1	General Application Form	07/26/21
A.2	1	Sester Narrative	07/26/21
<i>Deeds for Tax Lot 1S4E15C-00400 (1956 – 1964)</i>			
A.3	1	Warranty Deed recorded in Book 1769, Page 383 on February 15, 1956 – 1 page [Vaeretti to Moller]	07/26/21
A.4	1	Deed recorded in Book 1964, Page 298 on July 13, 1959 – 1 page [Moller to Moller’s Nursery LTD]	07/26/21
A.5	1	Deed recorded in Book 2205, Page 335 on January 30, 1964 – 1 page [Moller’s Nursery LTD to Moller’s Nursery Inc.]	07/26/21
<i>Deeds for Tax Lot 1S4E15C-00400 (1998 - 2018)</i>			
A.6	3	Warranty Deed recorded at 98-046904 on March 25, 1998 – 3 pages [G&S Moller & Moller’s Nursery Inc to J&B Holmlund & N&H Holmlund]	07/26/21
A.7	3	Warranty Deed recorded at 98-112610 on June 26, 1998 – 3 pages [J&B Holmlund to N&H Holmlund]	07/26/21
A.8	3	Warranty Deed recorded at 2010-089500 on July 21, 2010 – 3 pages [N&H Holmlund to Bottomley Evergreens of OR LP]	07/26/21
A.9	14	Joint Water Use and Access Easement recorded at 2018-070802 on July 5, 2018 – 14 pages [N&H Holmlund & Bottomley Evergreens of OR LP]	07/26/21
A.10	3	Warranty Deed recorded at 2018-070799 on July 5, 2018 – 3 pages [Bottomley Evergreens of OR LP to T&K Sester Family LLC]	07/26/21
<i>Deeds for Tax Lot 1S4E15C-00500 (1957 - 1964)</i>			
A.11	1	Warranty Deed recorded in Book 1827, Page 150 on January 29, 1957 – 1 page [F & V Eder to M Moller]	07/26/21

A.12	1	Deed recorded in Book 1964, Page 297 on July 13, 1959 – 1 page [M Moller to Moller’s Nursery LTD]	07/26/21
A.13	1	Deed recorded in Book 2205, Page 334 on January 30, 1964 – 1 page [Moller’s Nursery LTD to Moller’s Nursery LLC]	07/26/21
<i>Deeds for Tax Lot 1S4E15C-00500 (1998 - 2018)</i>			
A.14	3	A.6.3 – Warranty Deed recorded at 98-046904 on March 25, 1998 – 3 pages [G&S Moller & Moller’s Nursery Inc to J&B Holmlund & N&H Holmlund]	07/26/21
A.15	3	A.6.2 – Warranty Deed recorded at 98-112611 on June 26, 1998 – 3 pages [J&B Holmlund to N&H Holmlund]	07/26/21
A.16	3	Warranty Deed recorded at 2010-089500 on July 21, 2010 – 3 pages [N & H Holmlund to Bottomley Evergreens LP]	07/26/21
A.17	3	A.6.4 – Warranty Deed recorded at 2018-070799 on July 5, 2018 – 3 pages [Bottomley Evergreens LLC to T&K Sester Family LLC]	07/26/21
<i>Deeds for Tax Lot 1S4E15C-00600 (1960 - 1964)</i>			
A.18	1	A.7.2 – Warranty Deed recorded in Book 2001, Page 657 on March 30, 1960 – 1 page [Jackson to Moller]	07/26/21
A.19	1	A.7.1 – Deed recorded in Book 2205, Page 333 on January 30, 1964 – 1 page [Moller to Moller’s Nursery Inc.]	07/26/21
<i>Deeds for Tax Lot 1S4E15C-00600 (1998 - 2018)</i>			
A.20		A.8.3 – Warranty Deed recorded at 98-046904 on March 25, 1998 – 3 pages [G & S Moller & Moller’s Nursery to J & B Holmlund & N & H Holmlund]	07/26/21
A.21		A.8.2 – Warranty Deed recorded at 98-112612 on June 26, 1998 – 3 pages [J & B Holmlund to N & H Holmlund]	07/26/21
A.22		A.8.1 Warranty Deed recorded at 2010-089500 on July 21, 2010 – 3 pages [Holmlund to Bottomley Evergreens of OR]	07/26/21
A.23		A.8.4 - Warranty Deed recorded at 2018-070799 on July 5, 2018 – 3 pages [Bottomley Evergreens of OR to T&K Sester Family LLC]	07/26/21
A.24	3	Email from Marisol Cervantes to Tbrownplan@gmail.com dated May 26, 2021	07/26/21
‘B’	#	Staff Exhibits	Date
B.1	2	Assessment and Taxation Property Information for 1S4E15C-00400 (R994150110 / R341821)	07/23/21

B.2	2	Assessment and Taxation Property Information for 1S4E15C-00500 (R994150120 / R341822)	07/23/21
B.3	2	Assessment and Taxation Property Information for 1S4E15C-00600 (R994150130)	07/23/21
B.4	2	February 20, 1990 Ownerships on Adjacent Tax Lots	8/25/21
B.5	18	Interim Zoning Ordinance (Adopted August 4, 1955)	12/08/21
B.6	1	1S4E15C Tax Lot Map	12/08/21
B.7	1	1962 Zoning Map for 1S4E15	12/09/21
B.8	2	1960 Zoning Districts and Lot Sizes	12/09/21
'C'	#	Administration & Procedures	Date
C.1	1	Complete letter (day 1)	8/25/21
C.2	3	Opportunity to Comment and mailing list	11/19/21
C.3	13	Administrative Decision and mailing list	12/16/21