

Staff Report

Category 1 Land Division, Community Service Conditional Use, Lot of Record Verification, Design Review, Variance, Forest Development Standards, Exception to the Secondary Fire Safety Zone

Case File: T3-2019-12391

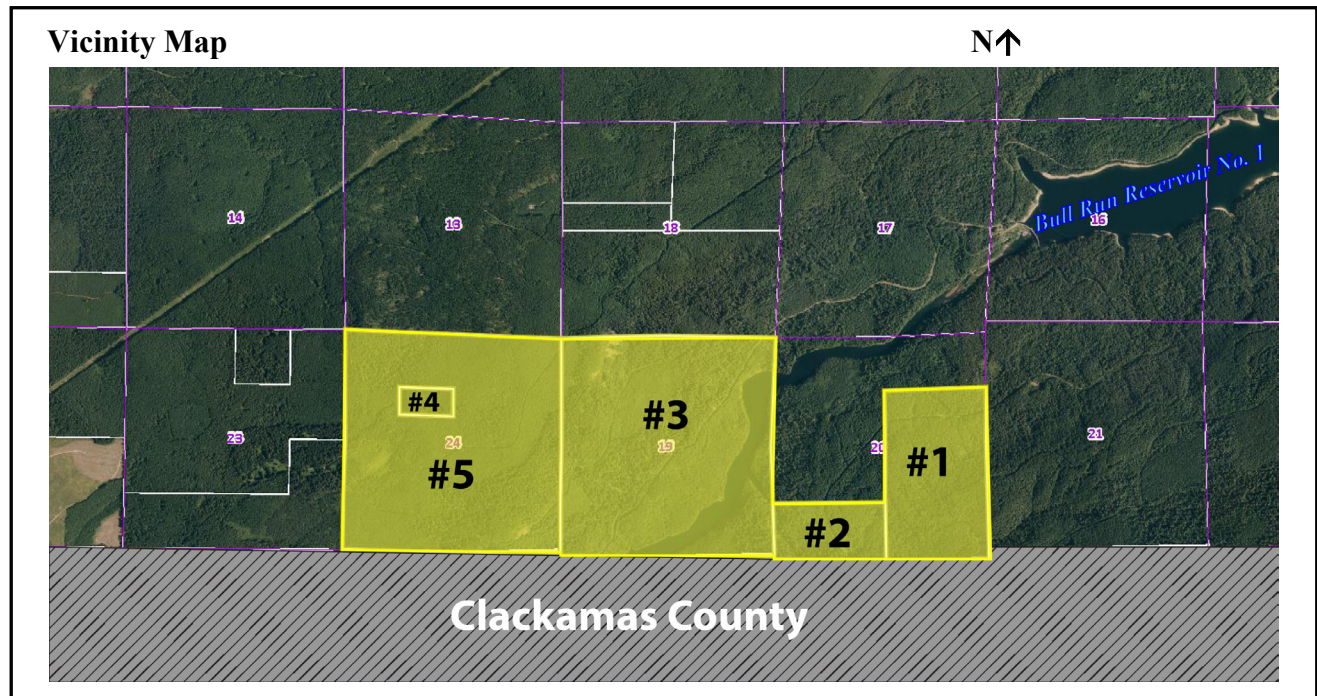
COVID-19 NOTICE:

Due to the County's Emergency Response to COVID-19, the referenced Hearing will be limited to remote participation. At this time Hearings are not available for in-person attendance.

Scheduled before one of the following County Hearings Officer's on **Friday, July 10, 2020, at 10:30 am** or soon thereafter. The hearing will be held virtually.

Location:	Property 1: 56150 National Forest Road #1200126, Sandy Tax Lot 2500, Section 20, Township 1 South, Range 6 East, W.M. Tax Account #R996200030	Property ID #R343058
	- and -	
	Property 2: Tax Lot 2400, Section 20, Township 1 South, Range 6 East, W.M. Tax Account #R996200010	Property ID #R343056
	- and -	
	Property 3: Tax Lot 2200, Section 19, Township 1 South, Range 6 East, W.M. Tax Account #R996190010	Property ID #R343055
	- and -	
	Property 4: Tax Lot 1000, Section 24, Township 1 South, Range 5 East, W.M. Tax Account #R995240090	Property ID #R343033
	- and -	
	Property 5: Tax Lot 900, Section 24, Township 1 South, Range 5 East, W.M. Tax Account #R995240010	Property ID #R343032
Applicant(s):	Robert Fraley, Senior Planner City of Portland – Water Bureau	Property Owner(s): City of Portland
Summary:	The applicant is requesting a Category 1 Land Division and modification of land use case #T3-2018-10227 that authorized a Microwave Communication Facility. The request for a Category 1 Land Division will require a Lot of Record verification and modify the Community Service Conditional Use, Design Review, Variance, Forest Development Standards, Exception to the Secondary Fire Safety Zone permits authorized in #T3-2018-10227. The modification to the conditional use is necessary due to the applicant's request to reduce the parcel containing the tower below the minimum lot size of 80 acres.	
Base Zone:	Commercial Forest Use (CFU-3)	Overlay: None

Site Size:	Property 1: 240.00 acres	Property 2: 80.00 acres	Property 3: 630.32 acres
	Property 4: 20.00 acres	Property 5: 620.00 acres	



Applicable Approval Criteria:

Multnomah County Code (MCC): Violations, Enforcement and Fines: MCC 39.1515 Code Compliance and Applications

Lot of Record: Lot of Record – General Provisions: MCC 39.3005 Lot of Record – Generally, Lot of Record Requirements Specific to Each Zone: MCC 39.3040 Lot of Record – Commercial Forest use - 3 (CFU-3)

Commercial Forest Use Districts (CFU): MCC 39.4080(A)(11) Conditional Uses, MCC 39.4100 Use Compatibility Standards, MCC 39.4105 Building Height Requirements, MCC 39.4110 Forest Practices Setbacks and Fire Safety Zones, MCC 39.4115 Development Standards for Dwellings and Structures, MCC 39.4120 Lot Size Requirements, MCC 39.4135 Access, MCC 39.4140 Lot Sizes for Conditional Uses, MCC 39.4145 Off-Street Parking and Loading, MCC 39.4155 Exceptions to Secondary Fire Safety Zones

Ground Disturbing Activity and Stormwater: MCC 39.6235 Stormwater Drainage Control

Parking, Loading, Circulation and Access: MCC 39.6500 through MCC 39.6600, more specifically MCC 39.6505 General Provisions, MCC 39.6520 Use of Space, MCC 39.6525 Location of Parking and Loading Spaces, MCC 39.6530 Improvements Required, MCC 39.6540 Joint Parking or Loading Facilities, MCC 39.6555 Design Standards: Scope, MCC 39.6560 Access, MCC 39.6565 Dimensional Standards, MCC 39.6570 Improvements, MCC 39.6575 Signs, MCC 39.6580 Design Standards: Setbacks, MCC 39.6590 Minimum Required Off-Street Parking Spaces, MCC 39.6595 Minimum Required Off-Street Loading Spaces

Exterior Lighting: MCC 39.6850 Dark Sky Lighting Standards

Community Service Uses: MCC 39.7500 through 39.7525, more specifically: MCC 39.7505 General Provisions, MCC 39.7510 Conditions and Restrictions, MCC 39.7515(A) through (H) Approval Criteria, MCC 39.7520 Uses, MCC 39.7525 Restrictions

Radio and Television Transmission Towers: MCC 39.7550 through MCC 39.7575, more specifically MCC 39.7560 Application Requirements, MCC 39.7565 Approval Criteria for New Transmission Towers, MCC 39.7570 Design Review, MCC 39.7570, MCC 39.7575 Radiation Standards

Design Review: MCC 39.8000 through MCC 39.8050, more specifically MCC 39.8020 Application of Regulations, MCC 39.8040 Design Review Criteria, MCC 39.8045 Required Minimum Standards, MCC 39.8050 Minor Exceptions: Yard, Parking, Sign, and Landscape Requirements

Adjustments and Variances: MCC 39.8200 Adjustments and Variances; Generally, MCC 39.8205 Scope, MCC 39.8215 Variance Approval Criteria

Parcels, Lots, Property Lines and Land Divisions: Purpose, Scope and Types of Land Divisions: MCC 39.9035 Category 1 Land Divisions, Land Divisions: MCC 39.9400 through MCC 39.9470, more specifically, MCC 39.9400 Criteria for Approval, Category 1 and Category 2 Tentative Plan and Future Street Plan, Standards for Land Divisions: MCC 39.9500 through MCC 39.9625, more specifically, MCC 39.9505 Land Suitability, MCC 39.9510 Lots and Parcels, MCC 39.5010

Comprehensive Plan Policies: Chapter 4 – Forest Land: Policy 4.3 and 4.6, Chapter 5 – Natural Resources: Policy 5.43, Chapter 6 – Historic and Cultural Resources: Policy 6.4, Chapter 11 – Public Facilities: Policy 11.12, 11.13, and 11.17

Recommended Hearing Officer Decision:

Staff recommends that the Hearings Officer approve, subject to conditions of approval, the Category 1 Land Division and Lot of Record Verification to subdivide the subject properties and a modification to the previous approval of a Community Service Conditional Use, Design Review, Forest Development Standards, Variances, and Exception to Secondary Fire Safety Zone permits to establish a microwave radio transmission tower facility in the Commercial Forest Use – 3 (CFU-3) zone.

If the Hearings Officer finds the proposed application is approvable, staff recommends the following Conditions of Approval:

1. Approval of this land use permit is based on the submitted written narrative(s) and plan(s). No work shall occur under this permit other than that which is specified within these documents. It shall be the responsibility of the property owner(s) to comply with these documents and the limitations of approval described herein.
2. Permit Expiration – This land use permit shall expire as follows:
 - a. Two years after the date of the final decision, unless the use or development was established according to all specifications and conditions of approval in the land use approval. For land divisions, “established” means the final deed or plat has been recorded with the county recorder.

Note: Expiration of an approval means that a new application is required for uses that are not established during the approval period. The property owner may request to extend the timeframe within which this permit is valid, as provided under MCC 39.1195, as applicable. The request for a permit extension must be submitted prior to the expiration of the approval period. Expiration is automatic. Failure to give notice of expiration shall not affect the expiration of an approval.

3. No building permit shall be issued or parcel sold, transferred or assigned until the partition plat has been approved by the Planning Director and County Surveyor and recorded with the public office responsible for public records. [MCC 39.9620(C)]
4. Prior to land use review for the final drawing of the subdivision plat, the property owner(s) or their representative(s) shall:
 - a. Record the Hearings Officer Decision, pages 1 through the conditions of approval, Exhibit A.20 (Sheet No. 5 and 6, reduced to 8.5” x 11”), and Exhibit A.33 (Sheet 1 of 2, reduced to 8.5” x 11”) with the County Recorder. The Hearings Officer Decision shall run with the land and the conditions shall be met by the current and all future property owners unless amended through a later decision by the authorized authority. Proof of recording shall be submitted to Multnomah County Land Use Planning prior to land use review for signing off the building permit. Recording shall be at the applicant’s expense. [MCC 39.1175]
 - b. Record a statement with the Division of Records (Division of Assessment, Recording, and Taxation) that the owner and the successors in interest acknowledge the rights of owners of nearby property to conduct forest operations consistent with the Forest Practices Act and Rules, and to conduct accepted farming practices. [MCC 39.4100(A)(2)]
 - c. Provide a statement that no domestic water supply facility will be provided to the purchaser of any lot depicted in the proposed subdivision plat, even though a domestic water supply source may exist. A copy of any such statement, signed by the property owner(s) and endorsed by the County, shall be filed by the property owner(s) or their representative(s) with the Real Estate Commissioner [MCC 39.9570 and ORS 92.090].

- d. Retain a surveyor to complete the instructions as described in "Finishing a Land Division" handout (Exhibit B.8 and Exhibit B.9) and submit to the County Surveyor a plat in accordance with the requirements of Oregon Revised Statutes (ORS), Chapters 92. [MCC 39.9605]
 - e. Ensure that all lots created are surveyed, monumented and platted, regardless of parcel area. [MCC 39.9605(B)]
5. At the time of land use review for final drawing of the subdivision plat, the property owner(s) or their representative(s) shall:
- a. Submit two (2) blue-line copies of the plat to the Planning Director, conforming to all applicable requirements as established by the Oregon Revised Statutes (ORS), Chapters 92 and 209. [MCC 39.9605(A)]
 - i. The Planning Director will determine whether the plat conforms to this decision and the conditions of approval contained herein. At such time, as the plat complies with this decision, a letter of zoning compliance will be provided by the Land Use Planning Division to the Multnomah County Surveyor. If the Planning Director determines that there is not such conformity, the applicant shall be so advised and afforded an opportunity to make corrections. When the plat is found to be in conformity, it shall be signed and dated by the Planning Director. [MCC 39.9605 and MCC 39.9620]
 - ii. After the Planning Director and County Surveyor have signed off on the Partition Plat, the property owners or their representative shall record the plat with the County Recorder's Office. [MCC 39.9620]

Note: State law requires that property taxes be paid before a plat can be recorded.

Note: The County Surveyor has a separate process and fee for their review. The County Recorder also has rules and a fee for recording documents.

- b. Ensure that the subdivision plat shows the following, if applicable:
 - i. Corners of adjoining subdivisions or partitions.
 - ii. The location, width and centerline of streets and easements abutting the boundaries of the land division.
 - iii. Any plat that includes land in areas of Special Flood Hazard or includes a water body or watercourse, as those features are described in MCC 39.2000, shall contain a plat note indicating that portions of the plat are subject to flooding and/or high water.
 - iv. The ownership of each private street shall be shown.
 - v. Other certifications required by law. [MCC 39.9610]
 - c. Provide, if needed, a copy of any deed restrictions applicable to the subdivision or partition, a copy of any dedication requiring separate documents, a copy of the future street plan, when required, as recorded according to MCC 39.9465(A), and a map, prepared by an Oregon licensed surveyor, of the subdivision plan or partition plat that depicts the normal flood plain or high water line for any water body or watercourse and the extent of areas of Special Flood Hazard as defined in MCC 39.5005. [MCC 39.9615]
6. As an on-going condition, the property owner(s) or their representative(s) shall:

- a. Maintain the tower so that it continues to meet Federal, State, and County non-ionizing electromagnetic radiation standards. The background radiation shall be measured prior to operation of the tower to establish base line data and periodic measurement shall be made to confirm the new source meets the required standards. [Condition of Approval #3 from T3-2018-10227 and MCC 39.7575(A)]
- b. Establish and maintain a minimum of two parking spaces for maintenance of the tower. [Condition of Approval #6 from T3-2018-10227 and MCC 39.7565(D)]
- c. Establish and maintain a primary fire safety zone and a secondary fire safety zone. [Condition of Approval #8 from T3-2018-10227, MCC 39.4110(D), MCC 39.4415(B)(2), and MCC 39.4415(B)(3)]
 - i. A primary fire safety zone is a fire break extending a minimum of 30 feet in all directions around the microwave radio transmission tower facility. All trees within this primary fire safety zone shall be spaced with greater than 15 feet between the crowns. The trees shall also be pruned to remove low branches with-in 8 feet of the ground as the maturity of the tree and accepted silviculture practices may allow. All other vegetation should be kept less than 2 feet in height. [Condition of Approval #8 from T3-2018-10227, MCC 39.4110(D), MCC 39.4415(B)(2), and MCC 39.4415(B)(3)]
 - ii. A secondary fire safety zone is a fire break extending a minimum of 100 feet in all directions, except as reduced through the approval of the Exception to the Secondary Fire Safety Zone, around the primary safety zone. The goal of this safety zone is to reduce fuels so that the overall intensity of any wildfire is lessened. Vegetation should be pruned and spaced so that fire will not spread between crowns of trees. Small trees and brush growing underneath larger trees should be removed to prevent the spread of fire up into the crowns of the larger trees. Assistance with planning forestry practices which meet these objectives may be obtained from the State of Oregon Department of Forestry or the local Rural Fire Protection District. [Condition of Approval #8 from T3-2018-10227, MCC 39.4110(D), MCC 39.4415(B)(2), and MCC 39.4415(B)(3)]
- d. Maintain the access roadways in accordance with the requirements of Sandy Fire, the fire service provider that serves the property. [MCC 39.4115(B)(3)(a)]
- e. Follow the following procedures if any Cultural Resources and/or Archaeological Resources are located or discovered on lots, including finding any evidence of historic campsites, old burial grounds, implements, or artifacts:
 - i. Halt Activities – All activities within 100 feet of the discovered cultural resource shall cease. The cultural resources shall remain as found; further disturbance is prohibited.
 - ii. Notification – The project applicant shall notify the County Planning Director and the State Historic Preservation Office (SHPO) within 24 hours of the discovery. If the cultural resources are prehistoric or otherwise associated with Native Americans, the project applicant shall also notify the Indian tribal governments within 24 hours.
 - iii. Survey and Evaluation – The applicant shall follow any and all procedures outlines by SHPO and if necessary obtain the appropriate permits (see ORS 273.705 and ORS 358.905 to 358.955).

- iv. All survey and evaluation reports and mitigation plans shall be submitted to the Planning Director and SHPO. Indian tribal governments also shall receive a copy of all reports and plans if the cultural resources are prehistoric or otherwise associated with Native Americans.
- v. Activities may recommence when SHPO requirements are satisfied.
[Comprehensive Plan Policy 6.4]

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*.

1.00 Project Description:

Staff: The City of Portland Water Bureau is requesting a Category 1 Land Division and modification of land use permit T3-2018-10227. The request for a Category 1 Land Division will result in a modification to the previous approval that authorized the microwave radio transmission tower facility (microwave communications tower) located on Tax Lot 2500, Township 1 South, Range 6 East, W.M. The applicant is proposing to reduce the unit of land containing the existing radio tower to 2.5 acres using the provision in MCC 39.4140 to create a substandard lot size for the conditional use.

The Category 1 Land Division will result in the reconfiguration of existing units of land into a four (4) lot subdivision lots. One of the lots is proposed to be below the 80-acre minimum lot size for new lots in the CFU-3 zone. All remaining lots will be over 80 acres in size.

2.00 Property Description & History:

Staff: The proposed Land Division and modification of land use permit T3-2018-10227 is located on five tax lots within the Bull Run Watershed. All of the properties are located in the Bull Run Watershed Management Unit (BRWMU) and have been used by the City of Portland and the greater region for a drinking water supply since 1895. The entire watershed has been managed under increasing levels of protection since it was established as a Forest Reserve in 1892. The Bull Run Watershed Management Unit (BRWMU) is approximately 147 square miles (94,080 acres). This application is comprised of five tax lots totaling approximately 1,250.32 acres of land within the BRWMU.

The subject properties are located within the Commercial Forest Use - 3 (CFU-3) zoning district in the East of Sandy River rural area. Multnomah County Division of Assessment, Recording, and Taxation indicates that the subject properties are all owned by the City of Portland. The properties have not had an extensive permit history. Below are the land use and building permits that are on record for the subject properties:

Case Number	Decision Date	Description
T3-2018-10227	06/12/2018	Community Service Conditional Use, Design Review, Forest Development Standards, Variances, and Exception to Secondary Fire Safety Zone Permits for a new microwave radio transmission tower facility on a property within the Commercial Forest Use Zone - 3 (CFU-3).

The most recent land use case, T3-2018-10227 was primarily concerned with tax lot 2500 (56150 National Forest Road #1200126). The land use case authorized the establishment of a microwave radio transmission tower facility. The applicant has met the conditions of approval of the decision

and has constructed the tower. The building permit was deemed final and closed by the City of Gresham on February 24, 2020.

3.00 Code Compliance and Applications Criteria:

3.01 § 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: As required, the County shall not make a land use decision approving development, allow for the division of land, 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. To be in full compliance means that there are no active code compliance cases open or active complaints currently pending. At this time, there are no active code compliance cases open or active complaints. Additionally, in reviewing the previous permit approval, the properties are in compliance with those approvals.

These criteria are met and the County can make a land use decision approving development and the division of land.

4.00 Lot of Record Criteria:

4.01 § 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.

Staff: Within the project area, all of the tax lots associated with this application are located in the Commercial Forest Use - 3 (CFU-3) zoning district.

Property 1: The applicant has provided an Indenture Deed located in Book 800, Pages 293-294 recorded on February 10, 1920 describing the property now known as tax lot 2500, Section 20, Township 1 South, Range 6 East, W.M. (Exhibit A.13 and A.14). At that time, the subject property was not subject to zoning; therefore, as described in 1922, the unit of land satisfied all applicable zoning laws. As the property has not changed configuration since that time and is currently 240 acres in size, the property continues to satisfy all applicable zoning laws.

Tax lot 2500, Section 20, Township 1 South, Range 6 East, W.M. satisfied all applicable zoning laws

Property 2: The applicant has provided a Bargain and Sale Deed located in Book 911, Pages 8-9 recorded on November 25, 1922 describing the property now known as tax lot 2400, Section 20, Township 1 South, Range 6 East, W.M. (Exhibit A.12). At that time, the subject property was not subject to zoning; therefore, as described in 1922, the unit of land satisfied all applicable zoning laws. As the property has not changed configuration since that time, it continues to satisfy all applicable zoning laws.

Tax lot 2400, Section 20, Township 1 South, Range 6 East, W.M. satisfied all applicable zoning laws

Property 3: The applicant has provided a Deed located in Book 246, Pages 418-419 recorded on December 22, 1897 describing the property now known as tax lot 2200, Section 19, Township 1 South, Range 6 East, W.M. (Exhibit A.10). At that time, the subject property was not subject to zoning; therefore, as described in 1897, the unit of land satisfied all applicable zoning laws. As the property has not changed configuration since that time and is currently 640 acres, it continues to satisfy all applicable zoning laws.

Tax lot 2200, Section 19, Township 1 South, Range 6 East, W.M. satisfied all applicable zoning laws

Property 4: The applicant has provided a reference to a deed recorded in Book 760, Page 157 on June 20, 1918 describing the property now known as tax lot 1000, Section 24, Township 1 South, Range 5 East, W.M. (Exhibit A.6). At that time, the subject property was not subject to zoning; therefore, as described in 1922, the unit of land satisfied all applicable zoning laws. As the property has not changed configuration since that time, it continues to satisfy all applicable zoning laws.

Tax lot 1000, Section 24, Township 1 South, Range 5 East, W.M. satisfied all applicable zoning laws.

Property 5: Tax Lot 900, Section 24, Township 1 South, Range 5 East, W.M is comprised of multiple parcels as described in the following deeds:

- Bargain and Sale Deed recorded in Book 760, Pages 156-157 on June 20, 1918. The units of land conveyed in that deed were 320 acres, 140 acres, and 100 acres (Exhibit A.6).
- Bargain and Sale Deed recorded in Book 803, Page 99 on February 4, 1920. The unit of land conveyed in that deed was comprised of 40 acres (Exhibit A.7).
- Deed recorded in Book 851, Page 167-168 on June 22, 1921. The unit of land conveyed in that deed was comprised of 20 acres (Exhibit A.8).

At the time, between 1918 and 1921, the subject units of land were not subject to zoning; therefore, these five units of land that are included in tax lot 900 satisfied all applicable zoning laws. As the properties have not changed configuration since that time, they continue to satisfy all applicable zoning laws.

The individual units of land contained within tax lot 900, Section 24, Township 1 South, Range 5 East, W.M. satisfied all applicable zoning laws.

(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.)**

Staff: As discussed previously, all of the units of land that are associated with this application were created through the recording of various deeds that were completed prior to October 19, 1978. *These recorded units of land satisfied all applicable land division laws at the time of their creation.*

(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: The location of this application is not congruent with an “acknowledged unincorporated community” boundary; therefore, this standard is not applicable. *This criterion is not applicable.*

4.02 § 39.3040 LOT OF RECORD – COMMERCIAL FOREST USE-3 (CFU-3).

(A) In addition to the standards in MCC 39.3005, for the purposes of the CFU-3 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 MCC 39.3070 Figure 1 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, urban, or Columbia River Gorge National Scenic Area zones (e.g. MUA-20, RR, SRC, R-10, GGA-40), 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.

Staff: Staff: As discussed previously, all of the units of land that are associated with this application were created through the recording of various deeds that were completed prior to October 19, 1978. *These recorded units of land satisfied all applicable land division laws at the time of their creation.*

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

(a) Where two contiguous parcels or lots are each developed with a lawfully established habitable dwelling, the parcels or lots shall be Lots of Record that remain separately transferable, even if they were held in the same ownership on February 20, 1990.

(b) 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: The parcels subject to this application do not contain lawfully established habitable dwellings nor were they subject to a “Lot of Exception” in the past. Therefore, these criteria are not applicable. *These criteria are not applicable.*

(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, F-2 minimum lot size increased, Ord. 115 & 116;**
- (3) October 6, 1977, MUF-20 and CFU-38 zones applied, Ord. 148 & 149;**
- (4) August 14, 1980, MUF-19 & 38 and CFU-80 zones applied, Ord. 236 & 238;**
- (5) February 20, 1990, Lot of Record definition amended, Ord. 643;**
- (6) January 7, 1993, MUF-19 & 38 zones changed to CFU-80, Ord. 743 & 745;**
- (7) August 8, 1998, CFU-3 zone applied, Ord. 916 (reenacted by Ord. 997);**
- (8) May 16, 2002, Lot of Record section amended, Ord. 982, reenacted by Ord. 997.**

Staff: The code section above is for informational purposes and not an approval criterion.

(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 39.4135, may be occupied by any allowed use, review use or conditional use when in compliance with the other requirements of this district.

Staff: As part of this application, the applicant is proposing a Category 1 Land Division, which will result in the nine Lots of Record discussed above being altered. The result being that the nine units of land s will be re-divided by a subdivision plat into four lots. These four new lots will be required to meet the applicable approval criteria in order to be approved.

(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: The subject properties in this application are each individual units of land described in a legal description and were created between 1897 and 1922. As discussed previously each of the units of land is an individual Lot of Record and not an area of land described as a tax lot solely for assessment and taxation purposes, an area of land created by the foreclosure of a security interest, a mortgage lot or an area of land created by court decree. *These criteria are met.*

Conclusion:

Presently, the nine individual units of land discussed above are each an individual Lot of Record. If the Category 1 Land Division and Conditional Use Permit modification is granted including the approval of a 2.5-acre lot for the radio tower pursuant to MCC 39.4140, the recording of the subdivision plat will create four new lots that will each be a Lot of Record.

5.00 Commercial Forest Use-3 Criteria:

5.01 § 39.4080 CONDITIONAL USES.

The following uses may be permitted when found by the approval authority to satisfy the applicable standards of this Chapter:

(A) The following Community Service Uses pursuant to all applicable approval criteria, including but not limited to the provisions of MCC 39.4100, MCC 39.4105, MCC 39.4110, MCC 39.4115, and MCC 39.7500 through MCC 39.7525. For purposes of this Section, the applicable criteria of MCC 39.7515 shall be limited to Subsections (A) through (H) of that Section.

(11) Radio and television transmission towers subject to the definitions, restrictions and standards in MCC 39.7515, 39.7520 (A) (8) and 39.7550 through 39.7575 and wireless communications facilities when found to satisfy the requirements of MCC 39.7700 through 39.7765.

Staff: The previous approved permit reviewed under land use case T3-2018-10227 was to authorize the establishment of a microwave radio transmission tower facility on a 240-acre unit of land (Property #1). The microwave radio transmission tower facility received final inspections for building, mechanical, and electrical permits between February 24, 2020 and March 26, 2020 (Exhibit A.35). At this time, the structure has been established and completed in accordance with the requirements of MCC 39.1185 and its approval, T3-2018-10227.

The applicant is now requesting to reduce the 240-acre unit of land into a 2.5-acre lot through a Category 1 Land Division. In order to obtain a lot size under the 80-acre minimum lot size of the CFU-3 zone, the applicant is proposing a modification to Community Service Conditional Use permit, T3-2018-10227 so that the radio tower remains in compliance with its approval and the provisions under MCC 39.4140 Lot Sizes for Conditional Uses can be granted. Therefore, this land use case will make findings on all applicable radio tower approval criteria as required above.

5.02 § 39.4100 USE COMPATIBILITY STANDARDS.

(A) Specified uses of MCC 39.4075 (D) and (E) and MCC 39.4080 (A), (B) and (C) may be allowed upon a finding that:

(1) The use will:

(a) Not force a significant change in, or significantly increase the cost of, accepted forestry or farming practices on surrounding forest or agricultural lands;

Staff: The findings from T3-2018-10227, as exhibited in Exhibit A.26 found that the microwave radio transmission tower facility met the criterion. As a specified use of MCC 39.4080(A), the microwave radio transmission tower facility needed to not force a significant change in, or significantly increase the cost of, accepted forestry or farming practices on the surrounding forest or agricultural lands. The finding from the previous case under Section 3.2, MCC 35.2045 stated,

“[there] is no farming in the area. The surrounding forest, 102 square miles of the Bull Run Watershed, has been managed as a forested watershed providing drinking water to the City of Portland since 1985. The proposed tower will help in the management of the Watershed Management Unit of the forest.”

In helping the City of Portland Water Bureau manage the watershed, the microwave radio transmission tower facility will not force a significant change in, or significantly increase the cost of, accepted forestry or farming practices on surrounding forest or agricultural lands. *This criterion is met.*

(b) Not significantly increase fire hazard, or significantly increase fire suppression costs, or significantly increase risks to fire suppression personnel; and

Staff: The findings from T3-2018-10227, as exhibited in Exhibit A.26 found that the microwave radio transmission tower facility met the criterion. The finding from the previous case under Section 3.2, MCC 35.2045 stated, “The subject site is relatively level [which] allow[s] for a 30-foot Primary Fire Safety Zone surrounding the tower site. The Secondary Fire Safety Zone can be maintained on site and on the adjacent property located in the Watershed Management Unit.” The finding also required a condition of approval that required that a primary and secondary fire safety zone be established and maintained. As such, the previous condition of approval from T3-2018-10227 will be continued as part of this application. *As conditioned, this criterion is met.*

(2) A statement has been recorded with the Division of Records that the owner and the successors in interest acknowledge the rights of owners of nearby property to conduct forest operations consistent with the Forest Practices Act and Rules, and to conduct accepted farming practices.

Staff: This criterion can be met through a condition of approval. *As conditioned, this criterion is met.*

5.03 § 39.4105 BUILDING HEIGHT REQUIREMENTS.

(A) Maximum structure height – 35 feet.

(B) Structures such as barns, silos, windmills, antennae, chimneys, or similar structures may exceed the height requirements.

Staff: The findings from T3-2018-10227, as exhibited in Exhibit A.26 are adopted by reference as no change is proposed in the height of the microwave tower or the accessory building that was associated with the tower.

5.04 § 39.4110 FOREST PRACTICES SETBACKS AND FIRE SAFETY ZONES.

The Forest Practice Setbacks and applicability of the Fire Safety Zones is based upon existing conditions, deviations are allowed through the exception process and the nature and location of the proposed use. The following requirements apply to all structures as specified:

Table 1.

Use	Forest Practice Setbacks			Fire Safety Zones
Description of use and location	Nonconforming Setbacks	Front Property Line Adjacent to County Maintained Road (feet)	All Other Setbacks (feet)	Fire Safety Zone Requirements (FSZ)
Other Accessory structures	N/A	30	130	Primary & Secondary required
Other Structures	N/A	30	130	Primary & Secondary required
Property Line Adjustment; Lot of Exception; Land Divisions.	May maintain current nonconforming setback to existing structures	30	30	On tracts with required Primary & Secondary FSZ as part of a land use decision, both shall be maintained.

(A) Reductions to a Forest Practices Setback dimension shall only be allowed pursuant to approval of an adjustment or variance.

Staff: The applicant originally requested a variance to the forest practice setback that was approved as part of the permit authorization in T3-2018-10227. The variance was to reduce the forest practice setback from 130 feet to 30 feet along the eastern property line of tax lot 2500 as the property does not abut a County Maintained Road. As the microwave radio transmission tower facility has received final inspections for building, mechanical, and electrical permits between February 24, 2020 and March 26, 2020, the structure has been established and completed (Exhibit A.35).

The applicant is requesting to create a 2.5-acre parcel for the tower and its accessory building. This land division that will alter the existing setback dimensions to the north, west, and south property lines for the tower and its accessory building. The application will need to meet the “other structures” and “other accessory structures”. The proposed Forest Practice Setbacks to the facility are:

Yard	Yard Requirement	Distance from fence surrounding tower facility to Property Line
Front (eastern property line)	30' ¹	30'
Side (northern property line)	130'	215'
Rear (western property line)	130'	180'
Side (southern property)	130'	215'
¹ Forest Practice Setback established by variance granted by T3-2018-10227		

After the creation of the new 2.5-acre lot, the tower and its accessory building will meet the required Forest Practice Setbacks as shown in the table above. *These criteria are met.*

(B) Exception to the Secondary Fire Safety Zone shall be pursuant to MCC 39.4155 only. No reduction is permitted for a required Primary Fire Safety Zone through a nonconforming, adjustment or variance process.

Staff: The applicant originally requested an Exception to the Secondary Fire Safety Zone that was approved as part of the permit authorization in T3-2018-10227 for the Secondary Fire Safety Zone (FSZ) on the east side of the property. The applicant is proposing to continue the reduction of the Secondary FSZ only on the eastern side of the facility. The Secondary FSZ has been reduced to zero for this eastern area. The Secondary FSZ will be provided on the north, south and western sides of the facility in the newly created 2.5-acre lot. The applicant is request that the approved FSZ be maintained as was required by T3-2018-10227. Additionally, any on-going conditions that related to the primary and secondary fire safety zone will also be carried over into this staff report. *As conditioned, this criterion is met.*

(C) The minimum forest practices setback requirement shall be increased where the setback abuts a street having insufficient right-of-way width to serve the area. The county Road Official shall determine the necessary right-of-way widths based upon the county “Design and Construction Manual” and the Planning Director shall determine any additional setback requirements in consultation with the Road Official.

Staff: As tax lot 2500 does not abut a County Road, this criterion to adjust the forest practice setback is not applicable. *This criterion is not applicable.*

(D) Fire Safety Zones on the Subject Tract.

(1) Primary Fire Safety Zone.

* * *

(2) Secondary Fire Safety Zone.

* * *

Staff: The tower facility on the proposed 2.5-acre lot meets the required Forest Practice Setbacks as discussed in finding above for all altered property lines. A 30-ft Primary Fire Safety Zone can be maintained around the entire facility on the new lot. An exception was granted for the entire Secondary FSZ on the eastern side of the facility by T3-2018-10227 and the applicant proposes to continue the exception. The Secondary FSZ can be provided on the north, south and western sides of the facility on the new lot. Planning staff recommends that the conditions related to the primary and secondary fire safety zone be carried over and applied to this decision by the Hearings Officer. *As conditioned, this criterion is met.*

5.05 § 39.4115 DEVELOPMENT STANDARDS FOR DWELLINGS AND STRUCTURES.

All dwellings and structures shall comply with the approval criteria in (B) through (D) below except as provided in (A). All exterior lighting shall comply with MCC 39.6850:

Staff: The approval criteria in (B) through (D) are discussed below. Additionally, the criteria that all exterior lighting shall comply with MCC 39.6850 was a condition of approval contained in T3-2018-10227. The applicant was required to provide a plan prior to building permit zoning review.

As the microwave radio transmission tower facility has been established and completed, the applicant has met the Condition of Approval. *This criterion is met.*

(A) For the uses listed in this subsection, the applicable development standards are limited as follows:

* * *

(3) Accessory buildings.

* * *

(b) Accessory buildings located farther than 100 feet from the existing dwelling: Shall meet the development standards of MCC 39.4115(B) and (C);

* * *

(B) New dwellings shall meet the following standards in (1) and (3) or (2) and (3); restored or replacement dwellings greater than 100-feet from an existing dwelling, and accessory buildings (or similar structures) greater than 100-feet from the existing dwelling shall meet the following standards in (1) and (3) or (2) and (3):

* * *

(2) The structure shall satisfy the following requirements:

- (a) It has the least impact on nearby or adjoining forest or agricultural lands and satisfies the standards in MCC 39.4110;**
- (b) Adverse impacts on forest operations and accepted farming practices on the tract will be minimized;**
- (c) The amount of forest land used to site the dwelling or other structure, access road, and service corridor is minimized;**
- (d) Any access road or service corridor in excess of 500 feet in length is demonstrated by the applicant to be necessary due to physical limitations unique to the property and is the minimum length required; and**

Staff: As a use, the microwave radio transmission tower facility is not being altered or changed, but instead the size of the lot surrounding the use, the applicant must demonstrate that the reduced lot size satisfies subsection MCC 39.4115(B)(2)(a). As discussed previously in Section 5.04, the facility meets the Forest Practice Setbacks and Fire Safety Zone requirements. In Section 5.02, the compatibility standards are met. The length of the service corridor is not being increased as it is not being modified from T3-2018-10227 (Exhibit A.26). Planning staff is recommending that multiple on-going conditions of approval from T3-2018-10227 be continued for this decision to ensure that MCC 39.4115(B)(2)(a) is met.

The approval criteria for MCC 39.4115(B)(2)(b) through (d) continue to be satisfied as discussed in T3-2018-10227. The Hearings Officer found that:

“There is no farming in the area. All adjoining lands are owned by the US Department of Agriculture (USFS) or the Portland Water Bureau and are managed by the Bull Run Watershed Management Unit as a 102 square mile watershed which has provided drinking water to the City of Portland and surrounding area since 1985. The proposed tower is a tool used in the management of the Watershed Management Unit of the forest and the management of the drinking water deliverance facilities. The tower will not force a significant change in, or significantly increase the cost of, accepted forestry or farming practices on surrounding lands” (Exhibit A.26).

Additionally, the Hearings Officer found:

“The amount of forest land used to site the structure, access road, parking and primary fire safety zone is minimized to about half an acre. The access for the site is taken from a Bull Run Watershed Management Unit existing management road that dead-ends at the east property. The access road to the site is about 30 long, is less than 500 feet in length. The proposal meets these standards.” (Exhibit A.26)

Except for the reduction in lot size from 240 acres to 2.5 acres there is no alteration to the facility, these criteria are met. *These criteria are met.*

(3) The risks associated with wildfire are minimized. Provisions for reducing such risk shall include:

- (a) Access roadways shall be approved, developed and maintained in accordance with the requirements of the structural fire service provider that serves the property. Where no structural fire service provider provides fire protection service, the access roadway shall meet the Oregon Fire Code requirements for fire apparatus access;**
- (b) Access for a pumping fire truck to within 15 feet of any perennial water source of 4,000 gallons or more within 100 feet of the driveway or road on the lot. The access shall meet the fire apparatus access standards of the Oregon Fire Code with permanent signs posted along the access route to indicate the location of the emergency water source;**

Staff: The proposed lot size modification to the radio tower does not alter the length or the construction of the access roadway from the US Forest Service road serving the site. The roadway remains in compliance with the existing findings from T3-2018-10227, which is in the record as Exhibit A.26. Staff recommends that the Hearings Officer maintain the condition of approval relating to the roadway as part of this decision. The condition of approval has been included as part of this Staff Report. *As conditioned, these criteria are met.*

(C) The dwelling or structure shall:

- (1) Comply with the standards of the applicable building code or as prescribed in ORS 446.003 through 446.200 relating to mobile homes;**
- (2) If a mobile home, have a minimum floor area of 600 square feet and be attached to a foundation for which a building permit has been obtained;**
- (3) Have a fire retardant roof; and**
- (4) Have a spark arrester on each chimney.**

Staff: The accessory building to the radio tower has a fire retardant roof. No modifications are proposed to the building. The original proposal for a microwave radio transmission tower facility that was reviewed in land use case T3-2018-10227 was approved by the Hearings Officer on June 12, 2018. The land use permit required a Condition of Approval that related to the criteria above. The applicant has met that condition of approval as the structures have obtained final inspections for building, mechanical, and electrical permits between February 24, 2020 and March 26, 2020 (Exhibit A.35). *These criteria are met.*

(D) The applicant shall provide evidence that the domestic water supply is from a source authorized in accordance with the Department of Water Resources Oregon Administrative

Rules for the appropriation of ground water (OAR 690, Division 10) or surface water (OAR 690, Division 20) and not from a Class 1 stream as defined in the Forest Practices Rules.

(1) If the water supply is unavailable from public sources, or sources located entirely on the property, the applicant shall provide evidence that a legal easement has been obtained permitting domestic water lines to cross the properties of affected owners.

(2) Evidence of a domestic water supply means:

(a) Verification from a water purveyor that the use described in the application will be served by the purveyor under the purveyor's rights to appropriate water; or

(b) A water use permit issued by the Water Resources Department for the use described in the application; or

(c) Verification from the Water Resources Department that a water use permit is not required for the use described in the application. If the proposed water supply is from a well and is exempt from permitting requirements under ORS 537.545, the applicant shall submit the well constructor's report to the county upon completion of the well.

Staff: The original proposal for a microwave radio transmission tower facility that was reviewed in land use case T3-2018-10227 did not propose use of water to support the microwave radio transmission tower facility. As no modification of the radio tower facility is proposed, these criteria are not applicable. *These criteria are not applicable.*

5.06 § 39.4120 LOT SIZE REQUIREMENTS.

(A) The minimum lot size for new parcels or lots shall be 80 acres, except as provided in MCC 39.4125, 39.4130, 39.4140, 39.3010, 39.3020, 39.3030, 39.3040, 39.3050 and 39.3060.

Staff: The applicant is requesting a Category 1 Land Division that will result in the modification of a nine (9) units of land being consolidated and reconfigured into a four (4) lot subdivision. The size of the new parcels will be:

- Lot 1 – 704.9 acres
- Lot 2 – 615.7 acres
- Lot 3 – 234.6 acres
- Lot 4 – 2.5 acres

As Lot 1 through 3 are over 80 acres, they meet the minimum lot size for new parcels. Lot 4 will be below the minimum lot size as provided in MCC 39.4140, which is discussed below in Section 5.08.

(B) That portion of a street which would accrue to an adjacent lot if the street were vacated shall be included in calculating the size of such lot.

Staff: The subject properties subject to the land division are not adjacent to a street that can be vacated, therefore the portion of the street does not need to be included in calculating the size of such lot. *This criterion is not applicable.*

(C) The minimum Front Lot Line Length is 50 feet, except for flag lots as provided in MCC 39.9510(D).

Staff: The subject properties subject to the land division all have a front lot length that are greater than 50 feet as shown in Exhibit A.33 on the Primary Plat for “Walker Prairie”. *This criterion is met.*

5.07 § 39.4135 ACCESS.

All lots and parcels in this base zone shall abut a public street or shall have other access deemed by the approval authority to be safe and convenient for pedestrians and for passenger and emergency vehicles. This access requirement does not apply to a preexisting lot and parcel that constitutes a Lot of Record described in MCC 39.3010(C), 39.3020(C), 39.3030(C), 39.3040(C), 39.3050(C) or 39.3060(C).

Staff: The applicant is proposing a land division as discussed in Section 11.00. The newly reconfigured parcels will all abut National Forest Service Roads as follows:

- Lot 1 - National Forest Road #1008 and #1010,
- Lot 2 - National Forest Road #10, #1008, and #1211,
- Lot 3 - National Forest Road #1211
- Lot 4 – National Forest Road #1200126

Each of these roads is a public street and is considered as safe and convenient for pedestrians, passenger vehicles, and emergency vehicles. *This criterion is met.*

5.08 § 39.4140 LOT SIZE FOR CONDITIONAL USES.

Lots less than the minimum specified in MCC 39.4120(A) may be created for the uses listed in MCC 39.4070(R) and 39.4080(A)(1) through (6), (9) through (13), and (16) and (B)(1) through (4), after approval is obtained pursuant to MCC 39.4100 and based upon:

Staff: The applicant is requesting a Category 1 Land Division that will result in the modification of a nine (9) units of land being consolidated and reconfigured into a four (4) lot subdivision. One of the subdivision lots will be 2.5 acres in size, which is below the minimum specified in MCC 39.4120(A). The proposed Lot 4 contains a microwave radio transmission tower facility, which is a use listed in MCC 39.4080(A)(9) through (13). As the Microwave radio transmission tower facility is a Community Service Conditional Use, the creation of Lot 4 is predicated on the approval obtained pursuant to MCC 39.4100, which the applicant has met as discussed in Section 5.02. *This criterion is met.*

(A) A finding that the new lot is the minimum site size necessary for the proposed use;

Staff: For a lot that is less than the minimum the applicant must demonstrate that the new lot is the minimum site size necessary for the proposed use. As discussed in the applicant’s narrative, exhibited as Exhibit A.29 on Page 36:

“Lot 4 is proposed to be 2.5 acres in size and is dimensioned to the minimum size needed for the site to accommodate the microwave [radio transmission] tower and comply with T3-2018-10227 and all required development standards in the CFU-3 zone...The proposed lot dimensions (450’ x 242’) ensure that in the unlikely event the tower should collapse, no

portion of the tower would land on adjacent USFS lands to the north, south, or west of the property...If the tower should fully collapse, the abutting property to the east is heavily forested, with no people or structures on it, so a collapsing tower or falling ice will pose no danger to human life or property.”

Additionally, as discussed by the applicant:

“The microwave tower is a locationally-dependent use, as it must be situated at an elevation that allows the tower to optimally communicate with other towers in the system without disruption. The creation of a smaller lot appropriately aligns the lot area to the use, as it dedicates the least amount of land needed to effectively operate and maintain the microwave tower use on the site while minimizing any future impacts to adjacent forest lands.”

Based on the reasoning above, Staff agrees that the lot is the minimum site size necessary for the proposed use, a microwave radio transmission tower facility. *This criterion is met.*

(B) The nature of the proposed use in relation to its impact on nearby properties; and

Staff: As the microwave radio transmission tower facility use has been established and constructed, the use should have very few impacts on nearby properties. The tower was reviewed in land use case #T3-2018-10227. In that case, the Hearings Officer found in Section 3.3.2.2 that the use would have the least impact on nearby or adjoining forest or agricultural lands and any adverse impacts on forest operations and accepted farming practices are minimized. As the applicant is not proposing any alterations to the use, the existing use should continue to have very few impacts on nearby properties. *This criterion is met.*

(C) Consideration of the purposes of this base zone.

Staff: The purpose of the base zone, Commercial Forest Use is to:

Conserve and protect designated lands for continued commercial growing and harvesting of timber and the production of wood fiber and other forest uses; to conserve and protect watersheds, wildlife habitats and other forest associated uses; to protect scenic values; to provide for agricultural uses; to provide for recreational opportunities and other uses which are compatible with forest use; implement applicable Comprehensive Plan policies, and to minimize potential hazards or damage from fire, pollution, erosion or urban development.

As discussed previously, the microwave radio transmission tower facility use is a Community Service Conditional Use that was approved by a Hearings Officer in land use case #T3-2018-10227. As the use was approved, the applicant needed to demonstrate that the use was compatible with forest use, which was discussed in T3-2018-10227 and in this Staff Report in Section 5.02 and 5.05. As a use is compatible with forest use, the creation of a lot below the minimum lot size is warranted. *This criterion is met.*

5.09 § 39.4145 OFF-STREET PARKING AND LOADING.

Off-street parking and loading permitted as an accessory use shall be provided as required by MCC 39.6500 through 39.6600.

Staff: The off-street parking and loading provisions of MCC 39.6500 to 39.6600 are discussed in Section 8.0.

5.10 § 39.4155 EXCEPTIONS TO SECONDARY FIRE SAFETY ZONES.

(A) The secondary fire safety zone for dwellings and structures may be reduced pursuant to the provisions of MCC 39.4155 (B) when:

- (1) The tract on which the dwelling or structure is proposed has an average lot width or depth of 330 feet or less, or**
- (2) The dwelling or structure will be located within 130 feet of the centerline of a public or private road serving two or more properties including the subject site; or**
- (3) The proposed dwelling or structure will be clustered with a legally existing dwelling or structure.**

Staff: The findings from T3-2018-10227, as exhibited in Exhibit A.26 found that the microwave radio transmission tower facility met these criteria to allow for the reduction of the Secondary Fire Safety Zone. As discussed in T3-2018-10227, the applicant met the standard as listed in subsection (A)(2). Although the lot will be altered in size as part of the Category 1 Land Division, the underlying reasoning in granting the Exception is still valid. T3-2018-10227 stated:

“The road accessing the property is a federal road, thus a public owned road by definition a public road. The Bull Run Watershed is closed to the general public...without permission it cannot be entered. The road can be used by the public whom have business or other authorization to enter the Bull Run Watershed. The proposed tower and accessory structures are to be located about 30 feet from the centerline of the access road. Staff finds that the road threshold criterion is met, thus an Exception is allowed.”

As shown by the applicant, the microwave radio transmission tower facility has been constructed. The tower facility received final inspections for building, mechanical, and electrical permits between February 24, 2020 and March 26, 2020 (Exhibit A.35). The distance of the tower and accessory buildings are located 30 feet from the centerline of a public road serving two or more properties. *The exception is allowed.*

(B) Exceptions to secondary fire safety zones shall only be granted upon satisfaction of the following standards:

- (1) If the proposed secondary fire safety zone is between 50 and 100 feet, the dwelling or structure shall be constructed in accordance with the International Fire Code Institute Urban-Wildland Interface Code Section 505 Class 2 Ignition Resistant Construction as adopted August, 1996, or as later amended, or**
- (2) If the proposed secondary fire safety zone is less than fifty feet, the dwelling or structure shall be constructed in accordance with the International Fire Code Institute Urban-Wildland Interface Code Section 504 Class 1 Ignition Resistant Construction as adopted August, 1996, or as later amended, and**
- (3) There shall be no combustible fences within 12 feet of the exterior surface of the dwelling or structure; and**

Staff: The Conditions of Approval from T3-2018-10227 required that the applicant meet these criteria as a Condition of Approval. The tower facility was reviewed by Planning Staff for compliance with the Conditions of Approval on August 11, 2018 and received final inspections for building, mechanical, and electrical permits between February 24, 2020 and March 26, 2020. As the applicant has met the Conditions of Approval and no modifications are proposed as part of this application, these criteria are met. *These criteria are met.*

* * *

(7) All accessory structures within 50 feet of a building shall have exterior walls constructed with materials approved for a minimum of one-hour-rated fire-resistive construction, heavy timber, log wall construction or constructed with noncombustible materials on the exterior side.

Staff: The Conditions of Approval from T3-2018-10227 required that the applicant construct the accessory structure based on International Fire Code Institute Urban-Wildland Interface Code Section 504 Class 1 Ignition Resistant Construction as a Condition of Approval. This type of construction provides the minimum requirement as discussed above. Additionally, as the applicant has met the Conditions of Approval and no modifications are proposed as part of this application, this criterion is met. *This criterion is met.*

(8) When a detached accessory structure is proposed to be located so that the structure or any portion thereof projects over a descending slope surface greater than 10 percent, the area below the structure shall have all underfloor areas enclosed to within 6 inches of the ground, with exterior wall construction in accordance with Section 504.5 of the International Fire Code Institute Urban-Wildland Interface Code Class 1 Ignition Resistant Construction as adopted August, 1996, or as later amended, or underfloor protection in accordance with Section 504.6 of that same publication. Exception: The enclosure may be omitted where the underside of all exposed floors and all exposed structural columns, beams and supporting walls are protected as required for exterior one-hour-rated fire-resistive construction or heavy-timber construction.

Staff: The findings from T3-2018-10227 found that this criterion was not applicable. As discussed in T3-2018-10227, the Decision stated, “None of the proposed structures will be located over descending slope surface greater than 10 percent. This criterion is not applicable.” There is no proposed change from the approval granted in T3-2018-10227 to the microwave transmission tower facility. *This criterion is not applicable.*

6.00 Community Service Uses Criteria

6.01 § 39.7505 GENERAL PROVISIONS.

(A) Community Service approval shall be for the specific use or uses approved together with the limitations or conditions as determined by the approval authority.

Staff: The previous permit reviewed under land use case T3-2018-10227 was to authorize the establishment of a microwave radio transmission tower facility, a community service conditional use. The land use case was approved on June 12, 2018 was for tax lot 2500, Township 1 South, Range 6 East, W.M. The microwave radio transmission tower facility received final inspections

for building, mechanical, and electrical permits between February 24, 2020 and March 26, 2020 (Exhibit A.35). At this time, the structure has been established and completed in accordance with the requirements of MCC 39.1185. The applicant is now requesting a Category 1 Land Division that will result in the modification of a previously approved Conditional Use permit. As the land division will alter the size of tax lot 2500, the land division will alter various findings from the previous case. Therefore, this land use case will make findings on all applicable approval criteria as required above due to the smaller size of tax lot 2500.

(B) Uses authorized pursuant to this section shall be subject to Design Review approval under MCC 39.8000 through 39.8050.

Staff: The design review provisions of MCC 39.8000 to 39.8050 are discussed in Section 9.0.

(C) A Community Service approval shall not be construed as an amendment of the Zoning Map, although the same may be depicted thereon by appropriate color designation, symbol or short title identification.

Staff: The code section above is not an approval criterion. The applicant is requesting a Land Division that results in a modification of a Community Service approval. The approval is not construed as an amendment of the Zoning map, nor is the applicant requesting an amendment of the zoning map.

6.02 § 39.7510 CONDITIONS AND RESTRICTIONS.

The approval authority may attach conditions and restrictions to any community service use approved. Conditions and restrictions may include a definite time limit, a specific limitation of use, landscaping requirements, parking, loading, circulation, access, performance standards, performance bonds, and any other reasonable conditions, restrictions or safeguards that would uphold the purpose and intent of this Chapter and mitigate any adverse effect upon the adjoining properties which may result by reason of the conditional use allowed.

Staff: The previous permit reviewed under land use case T3-2018-10227 authorize the community service use. As part of that Decision, the Hearings Officer recommended various conditions and restrictions. Many of those conditions and restrictions have been met through the issuance of a building permit; however, the previous case did contain on-going conditions and restrictions that are carried forward into this Staff Report.

6.03 § 39.7515 APPROVAL CRITERIA.

In approving a Community Service use, the approval authority shall find that the proposal meets the following approval criteria, except for transmission towers, which shall meet the approval criteria of MCC 39.7550 through 39.7575, wireless communications facilities, subject to the provisions of MCC 39.7705, and except for regional sanitary landfills, which shall comply with MCC 39.7600 through 39.7625.

- (A) Is consistent with the character of the area;**
- (B) Will not adversely affect natural resources;**
- (C) The use will not:**

- (1) Force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; nor
- (2) Significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.
- (D) Will not require public services other than those existing or programmed for the area;
- (E) Will be located outside a big game winter habitat area as defined by the Oregon Department of Fish and Wildlife or that agency has certified that the impacts will be acceptable;
- (F) Will not create hazardous conditions;
- (G) Will satisfy the applicable policies of the Comprehensive Plan;
- (H) Will satisfy such other applicable approval criteria as are stated in this Section.
- (I) In the West of Sandy River Rural Planning Area, the use is limited in type and scale to primarily serve the needs of the rural area.

Staff: The approval criteria above are limited in applicability. As required in MCC 39.4080(A):

The following Community Service Uses pursuant to all applicable approval criteria, including but not limited to the provisions of MCC 39.4100, MCC 39.4105, MCC 39.4110, MCC 39.4115, and MCC 39.7500 through MCC 39.7525. For purposes of this Section, the applicable criteria of MCC 39.7515 shall be limited to Subsections (A) through (H) of that Section.

Therefore, the application need only address subsections (A) through (H) of this Section. Additionally, as required above:

The approval authority shall find the proposal meet the following criteria, except for transmission towers, which shall meet the approval criteria of MCC 39.7550 through 39.7575

As this application includes a transmission tower, the applicant is only required to meet the approval criteria of MCC 39.7550 through 39.7575. Therefore, the approval criteria of subsections (A) through (H) of this Section are not applicable. *These criteria are not applicable.*

6.04 § 39.7520 USES.

(A) Except as otherwise limited in the EFU, all CFU and OR base zones, the following Community Service Uses and those of a similar nature, may be permitted in any base zone when approved at a public hearing by the approval authority.

Allowed Community Service Uses in the EFU, CFU and OR base zones are limited to those uses listed in each respective base zone.

(8) Radio and television transmission towers.

(a) VHF and UHF television towers, FM radio towers, two-way radio, common carrier, and cellular telephone towers, and fixed point microwave towers are permitted in any base zone, provided only self-supporting structures are permitted in the Exclusive Farm Use base zone.

Staff: The applicant is requesting a Land Division that results in a modification of a Community Service Use approval for a microwave radio transmission tower (Radio Transmission Tower). The

microwave radio transmission tower is allowed in all CFU base zones, if the use meets the requirements of this Section and MCC 39.7550 through 39.7575, which is discussed below.

6.05 § 39.7525 RESTRICTIONS.

A building or use approved under MCC 39.7520 through 39.7650 shall meet the following requirements:

(A) Minimum yards in EFU, CFU, MUA-20, RR, BRC, OCI, OR and PH-RC, UF-20, LR-10, Base zones:

- (1) Front yards shall be 30 feet.**
- (2) Side yards for one-story buildings shall be 20 feet; for two-story buildings, 25 feet.**
- (3) Rear yards shall be as required in the base zone.**

Staff: The applicant is requesting a Land Division that results in a modification the lot size of a Community Service Use. As discussed in Section 5.04, the applicant has met the required minimum yards in the CFU base zone as the microwave radio transmission tower facility has been established and constructed as proposed in T3-2018-10227. As was shown on the site plan, the building setbacks are shown below:

Yard	Yard Requirement	Distance from building/structure to Property Line	Encroachment
Front (eastern property line)	130'	30'	100'
Side (northern property line)	130'	215'	0'
Rear (western property line)	130'	180'	0'
Side (southern property)	130'	215'	0'

The tower facility meets the 30 feet minimum as required above and also meets the rear as required by the base zone. *This criterion is met.*

(B) Minimum yards in LR-7, LR-5 and MR-4 Base zones:

- (1) Front yards shall be 30 feet.**
- (2) Side yards for buildings 25 feet or less in height shall be 15 feet; for buildings over 25 feet in height, 20 feet.**
- (3) Rear yards shall be as required in the base zone.**

(C) Minimum yards in other base zones shall be as required in the base zone.

Staff: The previously approved Community Service Use is not located in the LR-7, LR-5 or MR-4 base zone; therefore, these criteria are not applicable. *These criteria are not applicable.*

(C) Minimum Site Size:

- (1) A day nursery or kindergarten shall provide not less than 100 square feet per child, of outdoor play area located other than in a required front yard.**

- (2) Primary (kindergarten through fourth grade), private and parochial schools shall be on sites of one acre for each 90 pupils or one acre for each three classrooms, whichever is greater.**
- (3) Elementary public schools shall be on sites of one acre for each 75 pupils or one acre for each two and one-half classrooms, whichever is greater.**
- (4) Churches shall be on sites of 15,000 square feet.**

Staff: The previously approved Community Service Use is not a day nursery or kindergarten; either a primary (kindergarten through fourth grade), private or parochial school; an elementary public schools; or a churches. Therefore, these criteria are not applicable. *These criteria are not applicable.*

(D) Off-street parking and loading shall be provided as required in MCC 39.6500 through 39.6600.

Staff: As required above, off-street parking and loading shall be provided as required in MCC 39.6500 through MCC 39.6600, which is discussed in Section 8.00.

(E) Signs for Community Service Uses pursuant to the provisions of MCC 39.6700 through 39.6820.

Staff: The applicant is not proposing any new signage as part of this application. As previously reviewed and approved in T3-2018-10227, the applicant proposed various safety signs that relate to State and Federal requirements. Those signs are exempt under MCC 39.6720(A) as those signs are not oriented or intended to be legible from a right of-way, private road or other private property. *This criterion is met.*

(F) In the MUA-20, RR, and BRC, SRC and RC base zones, the length of stay by a person or vehicle in a camp, campground, campsite or recreational vehicle park shall not exceed a total of 90 days during any consecutive 12 month period by an individual, group or family.

Staff: The properties subject to this application are not located MUA-20, RR, BRC, SRC, and RC base zones; therefore, this criterion is not applicable. *This criterion is not applicable.*

(G) Other restrictions or limitations of use or development not required under this subsection shall be provided in the base zone.

Staff: The other restrictions or limitations of use or development not required under this subsection are discussed in the base zone. Those other restrictions or limitations of use or development are discussed in Section 5.00.

7.00 Radio and Television Transmission Towers Criteria

7.01 § 39.7560 APPLICATION REQUIREMENTS.

An application for approval of a Community Service designation for a radio or television transmission tower shall contain at least the following information before it is complete:

- (A) Site plan or plans to scale specifying the location of towers(s), guy anchors (if any), transmission building and/or other accessory uses, access, parking, fences, landscaped areas,**

and adjacent land uses. Such plan shall also demonstrate compliance with MCC 39.7565 (I) and (J).

(B) Landscape plan to the scale indicating size, spacing and type of plantings required in 39.7565 (B).

(C) Report from a professional engineer licensed in the State of Oregon, documenting the following:

(1) Tower height and design, including technical, engineering, economic, and other pertinent factors governing selection of the proposed design. A cross-section of the tower structure shall be included.

(2) Total anticipated capacity of the structure, including number and types of antennas which can be accommodated.

(3) Evidence of structural integrity of the tower structure as required by the Building Official.

(4) Failure characteristics of the tower and demonstration that site and setbacks are of adequate size to contain debris.

(5) Ice hazards and mitigation measures which have been employed, including increased setbacks and/or deicing equipment.

(D) Statements from the F.A.A, O.S.A.D., and F.C.C., that the standards of MCC 39.7565 (G) are met or the required good faith, timely effort it achieve such responses.

(E) Written authorization from adjoining property owners, if needed, under MCC 39.7565 (J).

(F) Responses to the applicable Comprehensive Plan Policies.

Staff: The original proposal for a microwave radio transmission tower facility that was reviewed in T3-2018-10227 provided the application requirements required above. The applicant has resubmitted those documents as part of this application as Exhibit A.16, A.17, A.18, A.21, A.22, A.23, A.24, and A.29. *These criteria are met.*

7.02 § 39.7565 APPROVAL CRITERIA FOR NEW TRANSMISSION TOWERS.

New transmission towers base zone permitted under MCC 39.7520 (A) (8) (a) or (b) may be allowed, based on findings by the approval authority that the following criteria are met.

Staff: The applicant is not proposing a new transmission tower as the transmission tower (microwave radio transmission tower) was reviewed under land use case T3-2018-10227. The tower was approved by the Hearings Officer on June 12, 2018 and received final inspections for building, mechanical, and electrical permits between February 24, 2020 and March 26, 2020 (Exhibit A.26 and A.35). As the structure has been established and completed only the standards that related to setbacks are required to be re-reviewed due to the proposed Category 1 Land Division. Those criteria are discussed below; all other criteria are omitted as indicated by “* * *” because the applicant is not proposing any changes to the microwave radio transmission tower and previously meeting the approval criteria as found in T3-2018-10227. If there were any on-going conditions related to T3-2018-10227, those Conditions of Approval will be incorporated into this Staff Report as well.

(A) The site is of a size and shape sufficient to provide the following setbacks:

(1) For a tower located on a lot abutting an urban residential base zone or a public property or street, except a building-mounted tower, the site size standards of MCC

39.7565 (I) and (J) are met as to those portions of the property abutting the residential or public uses.

(2) For all other towers, the site shall be of sufficient size to provide the setback required in the base zone between the base of the tower, accessory structures and uses, and guy anchors, if any, to all abutting property lines.

Staff: The findings from T3-2018-10227, as exhibited in Exhibit A.26 found that the microwave radio transmission tower facility met the criteria under subsection (A)(1). The finding stated, “The proposed tower is on a parcel that abuts public property (USFS) and a USFS road. See finding MCC 35.6115 (I) below, MCC 35.6115 (J) is not applicable because there are no guy-wires.” As such, the criteria for MCC 39.7565(I) are discussed below.

* * *

(I) Site size and tower setbacks:

(1) The site shall be of a size and shape sufficient to provide an adequate setback from the base of the tower to any property line abutting an urban residential base zone, public property, or public street. Such setback shall be sufficient to:

- (a) Provide for an adequate vegetative, topographic or other buffer, as provided in MCC 39.7565 (C) and (B),**
- (b) Preserve the privacy of adjoining residential property,**
- (c) Protect adjoining property from the potential impact of tower failure and ice falling from the tower by being large enough to accommodate such failure and ice on the site, based on the engineer's analysis required in MCC 39.7560 (C) (4) and (5), and**
- (d) Protect the public from NIER in excess of the standard of MCC 39.7575 (A).**

Staff: The findings from T3-2018-10227, as exhibited in Exhibit A.26 found that the microwave radio transmission tower facility met the above criteria. As a use, the microwave radio transmission tower facility is not being altered or changed, but instead the size of the lot surrounding the use. As such the applicant must demonstrate that the reduced lot size satisfies subsection MCC 39.7565(I).

As found in T3-2018-10227, the Decision stated:

“The adjacent property is owned by the US Forest Service and is managed along with the subject property by the Bull Run Watershed Management Unit as forestlands...The adjacent area is a forested area. Due to limited access to the watershed, no people should be present to be harmed by a tower collapse” (Exhibit A.26).

The decision also found that the applicant met the burden of proof to provide for adequate vegetative, topographic and other buffer as provided in MCC 39.7565(B) and (C). To meet that burden, the applicant was required to meet multiple conditions of approval to allow for the establishment and construction of the tower. Additionally, as the area is managed as forestland; there are no adjoining residential properties within the vicinity and the forest will screen the microwave radio transmission tower. *These criteria are met.*

(2) A site is presumed to be of sufficient size when it:

- (a) Meets the requirements of (1) (c) and (d) above,**
- (b) Provides a setback equal to 20 percent of the height of the tower to any property line abutting an urban residential base zone, public property, or public street, and**
- (c) Provides a setback equal to or exceeding the rear yard setback required for the adjoining property where the adjoining property is not in an urban residential base zone nor a public property or a public street.**

Staff: The site is of sufficient size. As discussed in T3-2018-10227, the Decision found that the site met the requirements of (1)(c) and (d) as they related to tower failure and NIER. Contained in that Decision as well as within the exhibits for this staff report was an analysis by E. Robin Smyth, Oregon State Register Profession Engineer that discussed NIER exposure (A.21, A.22, A.23, A.24, and A.26). As the tower received approval of a variance to reduce the setback to 30 feet, and the applicant has established and constructed the tower in accordance with T3-2018-10227, the tower does not need to meet subsection (2)(a). Lastly, the tower does meet the rear yard setback as discussed in Section 5.04. *These criteria are met.*

* * *

(4) Structures and uses associated with the transmission use other than the transmission tower shall be located to meet the setbacks required in MCC 39.7525.

Staff: As discussed in Section 6.05, the structures and uses associated with the transmission use met the setbacks required in MCC 39.7525. *This criterion is met.*

* * *

7.03 § 39.7570 DESIGN REVIEW.

The use shall comply with the design review provisions of MCC 39.8000 to 39.8050. This may be implemented as a condition of approval.

Staff: The design review provisions of MCC 39.8000 to 39.8050 are discussed in Section 9.0.

7.04 § 39.7575 RADIATION STANDARDS.

Non-ionizing electromagnetic radiation standards.

* * *

Staff: The original proposal for a microwave radio transmission tower facility that was reviewed in land use case T3-2018-10227 was approved by the Hearings Officer on June 12, 2018. The microwave radio transmission tower facility received final inspections for building, mechanical, and electrical permits between February 24, 2020 and March 26, 2020 (Exhibit A.35). As the structure has been established and completed in accordance with the conditions of approval from T3-2018-10227 and no modification of the radio tower facility is proposed, this Staff Report is adopting the findings from T3-2018-10227, as exhibited in Exhibit A.26, by reference as the standards in Multnomah County Code Chapter 35 were renumbered as part of the consolidation of rural area plans into Chapter 39. *These criteria are met.*

8.00 Parking, Loading, Circulation and Access Criteria

8.01 § 39.6505 GENERAL PROVISIONS.

In the event of the erection of a new building or an addition to an existing building, or any change in the use of an existing building, structure or land which results in an intensified use by customers, occupants, employees or other persons, off-street parking, loading and traffic circulation and access (whether pedestrian, vehicular or otherwise) shall be provided according to the requirements of this Section Subpart. For nonconforming uses, the objectives of this Subpart shall be evaluated under the criteria for the Alteration, Modification, and Expansion of Nonconforming Uses.

Staff: The original proposal for a microwave radio transmission tower facility that was reviewed in land use case T3-2018-10227 required the creation of two parking spaces. The land use permits were approved by the Hearings Officer on June 12, 2018. The microwave radio transmission tower facility received final inspections for building, mechanical, and electrical permits between February 24, 2020 and March 26, 2020 (Exhibit A.35). As the structure has been established and completed in accordance with the conditions of approval from T3-2018-10227 and no modification of the radio tower facility is proposed, this Staff Report is adopting the findings from T3-2018-10227, as exhibited in Exhibit A.26, by reference as the standards in Multnomah County Code Chapter 35 were renumbered as part of the consolidation of rural area plans into Chapter 39. *These criteria are met.*

9.00 Design Review Criteria

9.01 § 39.8020 APPLICATION OF REGULATIONS.

- (A) Except those exempted by MCC 39.8015, the provisions of MCC 39.8000 through 39.8050 shall apply to all conditional and community service uses, and to specified uses, in any base zone.**
- (B) Uses subject to Design Review that require the creation of fewer than four new parking spaces pursuant to MCC 39.6590 shall only be subject to the following Design Review approval criteria: MCC 36.8040(A)(1)(a) and (1)(c), (4) and (7), except when located in the RC, BRC, OR, OCI, PH-RC or SRC zone base zones.**

Staff: The original proposal for a microwave radio transmission tower facility that was reviewed in T3-2018-10227 incorrectly required that the application meet all of the standards within the Design Review section of Multnomah County code. As required by MCC 35.7020 at that time, all conditional and community service uses are subject to the provisions of MCC 35.7000 through 35.7060. However, MCC 35.7020(B) stated:

MCC 35.7020(B) Uses subject to Design Review that require the creation of fewer than four new parking spaces pursuant to MCC 35.4205 shall only be subject to the following Design Review approval criteria: MCC 35.7050(A)(1)(a) and (1)(c), (4) and (7), except when located in the SRC zone districts.

As approved in T3-2018,10227, the microwave radio transmission tower facility only required the creation of two parking spaces, therefore as required of MCC 35.7020 and now MCC 39.8020, the

approval criteria should have been limited to MCC 35.7050(A)(1)(a) and (1)(c), (4) and (7) or under the applicable code today, MCC 3[9].8040(A)(1)(a) and (1)(c), (4) and (7).

The findings for MCC 35.7050(A)(1)(a) and (1)(c), (4) and (7), from T3-2018-10227, as exhibited in Exhibit A.26 are adopted by reference as no change is proposed microwave radio transmission tower facility. Further, the microwave radio transmission tower facility received final inspections for building, mechanical, and electrical permits between February 24, 2020 and March 26, 2020 (Exhibit A.35). As the structure has been established and completed in accordance with the requirements of MCC 39.1185, it has met the conditions of approval from T3-2018-10227. *These criteria are met.*

10.00 Adjustments and Variances Criteria

10.01 § 39.8205 SCOPE.

* * *

(B) Dimensional standards that may be modified under a Variance review are yards, setbacks, forest practices setbacks, buffers, minimum front lot line length, building height, sign height, flag lot pole width, cul-de-sac length, cul-de-sac turnaround radius, and dimensions of a private street, except the following:

- (1) Reduction of resource protection setback requirements within the Significant Environmental Concern (SEC) and Willamette River Greenway (WRG) Overlays; and**
- (2) Modification of fire safety zone standards given in Commercial Forest Use base zones; and**
- (3) Increase to any billboard height or any other dimensional sign standard.**

(C) The dimensional standards listed in (A) and (B) above are the only standards eligible for Adjustment or Variance under these provisions. Adjustments and Variances are not allowed for any other standard including, but not limited to, minimum lot area, modification of a threshold of review (e.g. cubic yards for a Large Fill), modification of a definition (e.g. 30 inches of unobstructed open space in the definition of yard), modification of an allowed density in a Planned Development or houseboat moorage, or to allow a land use that is not allowed by the Base zone.

Staff: The original proposal for a microwave radio transmission tower facility that was reviewed in land use case T3-2018-10227 was approved by the Hearings Officer on June 12, 2018. The microwave radio transmission tower facility received final inspections for building, mechanical, and electrical permits between February 24, 2020 and March 26, 2020 (Exhibit A.35). As the structure has been established and completed in accordance with the conditions of approval from T3-2018-10227 and no modification of the radio tower facility is proposed, this Staff Report is adopting the findings from T3-2018-10227, as exhibited in Exhibit A.26, by reference as the standards in Multnomah County Code Chapter 35 were renumbered as part of the consolidation of rural area plans into Chapter 39.

The applicant is now seeking review and approval of a Category 1 Land Division. The Land Division will result in a reduction in the size of the lot, which will alter some of the dimensional standards for which the microwave radio transmission tower was approved. The microwave radio transmission tower sought two variances in T3-2018-10227. Those dimensional standards are unchanged as a result of the proposed land division, as the eastern property line is not being

relocated. As was approved in T3-2018-10227, the tower height to setback from the eastern property line was approved at 30 feet and the forest practice setback was reduced to 30 feet. As the tower facility has been established and constructed, the variance approval criteria do not need to be re-reviewed showing the proposal meets the approval criteria.

11.00 Land Divisions Criteria

11.01 § 39.9035 CATEGORY 1 LAND DIVISIONS.

The following proposals are designated Category 1 Land Divisions:

(A) A Rural Area subdivision;

(B) An Urban Area subdivision of more than 10 lots;

(C) Except as provided in subpart (3) below, a Rural or Urban Area partition which creates a new street, and an Urban Area subdivision of 10 lots or less when the Planning Director determines that:

(1) The proposal includes the continuation of an existing or planned street to adjacent property, or,

(2) The proposal either eliminates or makes impractical the continuation of an existing street or the provision of needed access to adjacent property.

(3) Exception: A land division described in subsection (1) or (2) above is designated a Category 2 Land Division when, as determined by the Planning Director, the proposed street layout is consistent with a street pattern adopted as part of the Comprehensive Plan or with a future street plan approved under MCC 39.9400 through 39.9470.

(D) A subdivision or partition associated with an application affecting the same property for any action requiring a public hearing under this Chapter; and

(E) Any other land division proposal which, as determined by the Planning Director, will have a substantial impact on the use or development of nearby property such that determination at a public hearing is required, considering:

(1) The nature of nearby land uses or the pattern of existing land divisions in relation to the applicable elements of the Comprehensive Plan;

(2) Plans or programs for the extension of the street or utility systems on or near the proposed division; or

(3) Physical characteristics of the tract or nearby area such as steep slopes, a history of flooding, poor drainage, landslides or other existing or potential hazards.

Staff: The applicant is requesting a Rural Area Subdivision. As defined in MCC 39.055, a subdivision and subdivide are:

Subdivision means either an act of subdividing land or an area or a tract of land subdivided as defined in this Chapter.

Subdivide land means to divide an area or tract of land into four or more lots within a calendar year when such area or tract of land exists as a unit or contiguous units of land under a single ownership at the beginning of such year.

As shown on the preliminary plat, the applicant is proposing to divide the tract of land into four or more lots within a calendar year. As such, this application is subject to a Category 1 Land Division, which is discussed within this Section below.

**11.02 § 39.9400 CRITERIA FOR APPROVAL, CATEGORY 1 AND CATEGORY 2
TENTATIVE PLAN AND FUTURE STREET PLAN.**

In granting approval of a Category 1 or Category 2 tentative plan, the approval authority shall find that:

(A) The tentative plan or future street plan is in accordance with the applicable elements of the Comprehensive Plan;

Staff: The applicant has provided a tentative plan showing the preliminary plat. The applicable elements of the Comprehensive Plan are discussed in Section 12.

(B) Approval will permit development of the remainder of the property under the same ownership, if any, or of adjoining land or of access thereto, in accordance with this and other applicable ordinances;

Staff: As required above, in granting approval of the Category 1 tentative plan, the approval will continue the permit development of the remainder of the property under the same ownership as allowed in the base zone of Commercial Forest Use – 3 (CFU-3). At this time the applicant already has an approval of a Community Service Conditional Use permit for a microwave radio transmission tower facility on what will become Lot 4. *This criterion is met.*

(C) The tentative plan [or future street plan] complies with the applicable provisions, including the purposes and intent of this Ordinance.

Staff: The applicant has provided a tentative plan showing the preliminary plat. The applicable provisions including the purpose and intent of this ordinance are discussed in this Section below.

(D) The tentative plan or future street plan complies with the Zoning Code or a proposed change thereto associated with the tentative plan proposal;

Staff: The applicant has provided a tentative plan showing the preliminary plat. Whether the plan complies with the Zoning Code is discussed in this Section below.

(E) If a subdivision, the proposed name has been approved by the County Surveyor and does not use a word which is the same as, similar to or pronounced the same as a word in the name of any other subdivision in Multnomah County, except for the words town, city, place, court, addition or similar words, unless the land platted is contiguous to and platted by the same applicant that platted the subdivision bearing that name or unless the applicant files and records the consent of the party that platted the subdivision bearing that name and the block numbers continue those of the plat of the same name last filed.

Staff: The applicant has provided a tentative plan showing the proposed name. The applicant proposes to name the subdivision, “Walker Prairie” (Exhibit A.33). There does not appear to be another subdivision with this name within Multnomah County. However, to ensure that this criterion is met, the applicant will be required to follow all requirements needed to record the plat with the County Surveyor.

(F) The streets are laid out and designed so as to conform, within the limits of MCC 39.9520 and 39.9525 and the Multnomah County Road Rules and Design and Construction Manual, to the plats of subdivisions and maps of partitions already approved for adjoining property unless the approval authority determines it is in the public interest to modify the street pattern; and,

(G) Streets held for private use are laid out and designed so as to conform with MCC 39.9520 and 39.9525 and the Multnomah County Road Rules and Design and Construction Manual, and are clearly indicated on the tentative plan and all reservations or restrictions relating to such private streets, including ownership, are set forth thereon.

Staff: The applicant is not proposing to alter any streets as part of this subdivision. The newly configured lots have federal (forest service) roads traversing through them. Those federal roads will not be altered and are not subject to the Multnomah County Road Rules or Multnomah County Design and Construction Manual. As the street pattern is already established in accordance with US Forest Service National Road Specifications, it is in the public interest to continue this street pattern. Lastly, as there are no streets held for private use and all roads within the subdivision are Forest Service federal roads, subsection (G) is not applicable. *These criteria are met.*

(H) Approval will permit development to be safe from known flooding and flood hazards. Public utilities and water supply systems shall be designed and located so as to minimize or prevent infiltration of flood waters into the systems. Sanitary sewer systems shall be designed and located to minimize or prevent:

- (1) The infiltration of flood waters into the system; and**
- (2) The discharge of matter from the system into flood waters.**

Staff: As required the approval of this land division must be safe from known flooding and flood hazards in addition to minimizing or preventing infiltration of flood waters into public utilities and water supply systems. As no development is proposed as part of this land division, there should not be any flooding and flood hazards or infiltration of flood waters into public utilities and water supply systems. Additionally, the applicant has provided a Septic Review Certification reviewed by Lindsey Reschke, Multnomah County Sanitarian on February 4, 2020 that states that the subdivision is, "Approved - No impact" (Exhibit A.34). *These criteria are met.*

11.03 § 39.9505 LAND SUITABILITY.

A land division shall not be approved on land found by the approval authority to be both unsuitable and incapable of being made suitable for the intended uses because of any of the following characteristics:

- (A) Slopes exceeding 20%;**
- (B) Severe soil erosion potential;**
- (C) Within the 100-year flood plain;**
- (D) A high seasonal water table within 0-24 inches of the surface for three or more weeks of the year;**
- (E) A fragipan or other impervious layer less than 30 inches from the surface;**
- (F) Subject to slumping, earth slides or movement;**
- (G) Pre-existing field drains or other subsurface drainage systems.**

Staff: As required the approval of this land division must cannot be permitted if the land is both unsuitable and incapable of being made suitable for the intended uses. As discussed in Property Description in Section 2.00, the properties that are party to this land division are all part of the Bull Run Water Management Unit (BRWMU). As discussed by the applicant, the BRWMU is:

“Approximately 147 square miles in size...City land management activities are limited to those necessary to protect water quality and operate the water supply and hydroelectric power facilities...The BRWMU Agreement guides long term cooperative management and protection of the watershed...The overall goal of the Bull Run Watershed Management Unit is to serve as the primary water supply for the City of Portland and its service areas, with the principal objective of the production of “pure, clear, raw potable water” (preamble to Public Law 95-200)...The Bull Run watershed is informally treated as one large parcel for purposes of land management and stewardship. The Water Bureau is responsible for developing and maintaining a Habitat Conservation Plan to protect federally-listed fish species, monitoring stream flow and water quality, providing security services and controlling access, managing vegetation along all roadways and facilities, and maintaining the roads and culverts within the watershed” (Exhibit A.84).

Based on this understanding of the intended use, which is an Allowed Use pursuant to MCC 39.4070(E), the land within the subdivision is suitable for division because while there are areas where slopes exceed 20% and could be subject to slumping, earth slides or movement, the land use of conserving soil, air and water quality and to provide for wildlife and fisheries resources can still be provided on the land. *These criteria are met.*

11.04 § 39.9510 LOTS AND PARCELS.

The design of lots and parcels shall comply with the following:

(A) The size, shape, width, orientation and access shall be appropriate:

- (1) To the types of development and uses contemplated;**
- (2) To the nature of existing or potential development on adjacent tracts;**
- (3) For the maximum preservation of existing slopes, vegetation and natural drainage;**
- (4) To the need for privacy through such means as transition from public to semi-public to private use areas and the separation of conflicting areas by suitable distances, barriers or screens; and**
- (5) To the climactic conditions including solar orientation and winter wind and rain.**

Staff: As design of the lots are appropriate to criteria above. The lots that are party to this land division are all part of the Bull Run Water Management Unit (BRWMU). As part of a larger management unit, the design of the lots are quite large; with the exception of Lot 4. For Lots 1 through 3, the lots are 704.4. acres, 615.7 acres, and 234.6 acres. Those lots are designed for the use contemplated, which is allowed under MCC 39.4070(E). The use under MCC 39.4070(E) is:

“Uses to conserve soil, air and water quality and to provide for wildlife and fisheries resources, including a public or private wildlife and fisheries resources conservation area.”

As discussed by the applicant, the BRWMU is managed to, “protect federally-listed fish species, monitoring stream flow and water quality, providing security services and controlling access,

managing vegetation along all roadways and facilities, and maintaining the roads and culverts within the watershed,” which align with MCC 39.4070(E). The smaller lot, Lot 4, is also sized to be appropriate to the type of development and use contemplated. The Lot currently contains a microwave radio transmission tower facility that was reviewed in land use case T3-2018-10227 and was approved by the Hearings Officer on June 12, 2018 (Exhibit A.26). As the Lot contains this facility, the Lot was reduced to the minimize size necessary to contain the forest practices setbacks and fire safety zones.

All of the lots within the subdivision, as part of the BRWMU will see very little development. As it is managed to provide clean water for the City of Portland, existing slopes, vegetation and natural drainage will be preserved. Additionally, as all of the surrounding land outside of the subdivision is owned by the public, the privacy of semi-public and private areas will not be encroached upon. *These criteria are met.*

(B) The side lot lines shall be perpendicular to the front lot line or radial to the curve of a street, to the extent practicable.

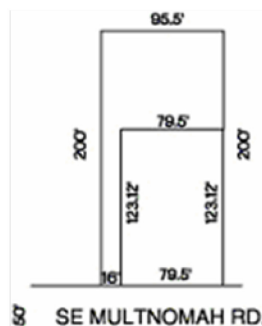
Staff: As shown on the tentative plan of the preliminary subdivision plat all of the lots are square or rectangle, which means that all of the lines are perpendicular to each other (Exhibit A.33). *This criterion is met.*

(C) Double frontage or reverse frontage lots or parcels shall be provided only when essential for separation of land uses from arterials or to overcome specific disadvantages of topography or orientation.

Staff: As shown on the tentative plan of the preliminary subdivision plat the applicant is not proposing double frontage lot as multiple roads bisect each of the lots and do not run parallel to the either side of opposing lot lines (Exhibit A.33). The applicant is also not proposing any reverse frontage lots as part of this subdivision. *This criterion is met.*

(D) A land division may include creation of a flag lot with a pole that does not satisfy the minimum frontage requirement of the applicable base zone, subject to the following:

(1) When a flag lot does not adjoin another flag lot, as shown in MCC 39.9510 Figure 1, the pole portion of the flag lot shall be at least 16 feet wide.



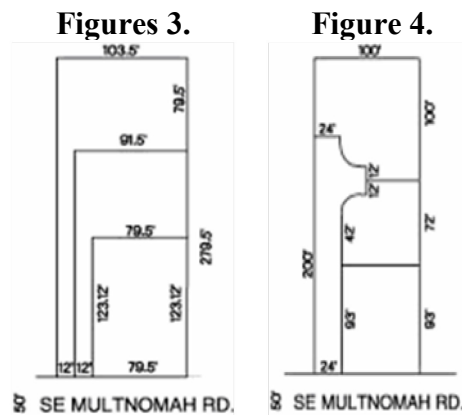
(2) Where two flag lots are placed back to back as shown in MCC 39.9510 Figure 2, the pole portion of each flag lot shall be at least 12 feet wide.

Figure 2.



Staff: As shown on the tentative plan of the preliminary subdivision plat the applicant is not proposing any flag lots, therefore this criterion is not applicable. *This criterion is not applicable.*

(E) Within a land division, flag lots shall not be stacked one behind the other as shown in MCC 39.9510 Figure 3. Instead, a private accessway shall be used as shown in MCC 39.9510 Figure 4.



Staff: As shown on the tentative plan of the preliminary subdivision plat the applicant is not proposing any flag lots, therefore this criterion is not applicable. *This criterion is not applicable.*

11.05 § 39.9515 ACREAGE TRACTS.

Where a tract of land is to be divided into lots or parcels capable of redivision in accordance with this or any other ordinance, the approval authority shall require an arrangement of lots, parcels and streets which facilitates future redivision. In such a case, building setback lines may be required in order to preserve future rights-of-way or building sites.

Staff: The tract of land to be divided is capable of redivision. As shown on the tentative plan of the preliminary subdivision plat, Lot 1 through 3 are all larger than 160 acres, therefore allowing them to be divided into multiple 80 acre lots. the applicant is not proposing any flag lots; therefore, this criterion is not applicable. *This criterion is not applicable.*

11.06 § 39.9520 STREET LAYOUT.

(A) Except as otherwise provided in subsections (B) and (C) of this Section, the arrangement of streets in a land division shall be designed:

- (1) To conform to the arrangement established or approved in adjoining land divisions;**
- (2) To continue streets to the boundary of any adjoining undivided tract where such is necessary to the proper development of the adjoining land;**
- (3) To assure the maximum possible preservation of existing slopes, vegetation and natural drainage;**
- (4) To limit unnecessary through traffic in residential areas;**
- (5) To permit surveillance of street areas by residents and users for maximum safety;**
- (6) To assure building sites with appropriate solar orientation and protection from winter wind and rain;**
- (7) To assure storm water drainage to an approved means of disposal; and**
- (8) To provide safe and convenient access.**

(B) Where topography or other conditions make conformance to the existing street pattern or continuance to an adjoining tract impractical, the street layout shall conform to an alternate arrangement authorized by the approval authority.

(C) Where a street layout affecting the proposed land division has been established by the Comprehensive Plan, the arrangement of streets in the land division shall conform to the established layout.

Staff: The applicant has provided a tentative plan showing the proposed street layout. In comparing the existing conditions to the proposed tentative plan, the applicant is not proposing to alter any streets as part of this subdivision (Exhibit A.30 and A.33). The newly configured lots have federal (forest service) roads traversing through them. The National Forest Service Roads are as follows:

- Lot 1 - National Forest Road #1008 and #1010,
- Lot 2 - National Forest Road #10, #1008, and #1211,
- Lot 3 - National Forest Road #1211
- Lot 4 – National Forest Road #1200126

These roads conform to the established arrangement as the street pattern was already established in accordance with US Forest Service National Road Specifications. The streets also continue to the boundary of the adjoining undivided tracts and provide continuous routes of travel through the existing land pattern of the area. As the subdivision is located in the BRWMU, no residential traffic is permitted through this area; therefore, surveillance is not necessary by residents and users. *These criteria are met.*

(D) A half street may be permitted only where appropriate to the future division of adjoining undeveloped property, provided that when possible, additional dedicated right-of-way exceeding one-half of a street may be required to provide adequate width to accommodate two-way vehicle traffic.

Staff: The applicant is not requesting or required to provide a half street, as the roads within the land division conform to the requirements of the US Forest Service National Road Specifications. Therefore, this criterion is not applicable as no right-of-way is being requested by the County. *This criterion is not applicable.*

(E) When necessary for adequate protection of existing or proposed land uses or to afford separation of through and local traffic, a land division abutting or containing an existing or

proposed arterial may be required to include, among other things, a frontage street, reverse frontage lots with extra depth, or screen plantings in a non-access reservation along a property line.

Staff: The applicant has provided a tentative plan showing the proposed street layout. The street layout does not include any arterials as the roads that are within the newly configured lots are established US Forest Service National Road Specifications. Therefore, this criterion is not applicable as no arterials are being proposed. *This criterion is not applicable.*

11.07 § 39.9525 STREET DESIGN.

The width, design and configuration of all streets in or abutting the land division shall comply with applicable ordinance standards as follows:

(A) For a public street, in accordance with the Multnomah County Road Rules and Design and Construction Manual; and

(B) For a private street, in accordance with the Multnomah County Road Rules and Design and Construction Manual, subject to the following additional requirements:

(1) Accessways shall be designed in accordance with Permit Requirements for Accessway Construction published by the Multnomah County Department of Community Services Transportation Division. Accessways shall have a maximum length of 300 feet.

(C) A cul-de-sac shall be as short as possible and shall have a maximum length of 400 feet and serve building sites for not more than 18 dwelling units. A cul-de-sac shall terminate with a turnaround having a radius of 50 feet.

Staff: The subject Lots that are part of the Land Division are not required with applicable ordinance standards for width, design, and configuration. The proposed land division is located entirely within the administrative boundaries of the US Forest Service – Mt. Hood National Forest. As such, the streets within the land division are subject to United States Department of Agriculture - Forest Service Land and Resource Management Plan: Mt. Hood National Forest and United States Department of Agriculture - Forest Service Specifications for Construction of Roads & Bridges, Document #EM-7700-100 last revised on August 1996. Therefore, these criteria for width, design, and configuration are not applicable. *These criteria are not applicable.*

11.08 § 39.9530 STREET RESERVE STRIPS.

The land division shall provide for the appropriate extension or widening of streets serving the division or for allocating the improvement costs among future land divisions. A reserve strip or street plug may be required for such purposes. The control and disposition of reserve strips or plugs shall be placed within the jurisdiction of the County.

Staff: The County is not requesting a reserve strip or plug as the subject Lots are located entirely within the administrative boundaries of the US Forest Service – Mt. Hood National Forest. As such, the streets within the land division are subject to United States Department of Agriculture - Forest Service Land and Resource Management Plan: Mt. Hood National Forest and United States Department of Agriculture - Forest Service Specifications for Construction of Roads & Bridges, Document #EM-7700-100 last revised on August 1996. As the applicant is not proposing any changes to the roads located within the land division, the County is not requesting reserve strips or plugs. *This criterion is not applicable.*

11.09 § 39.9535 TEMPORARY TURNAROUNDS.

A temporary turnaround shall be provided on any street that is appropriate for continuation, either within the land division or beyond, when the street serves more than six interior lots.

Staff: The County is not requiring temporary turnarounds as the subject Lots are located entirely within the administrative boundaries of the US Forest Service – Mt. Hood National Forest. As such, the streets within the land division are subject to United States Department of Agriculture - Forest Service Land and Resource Management Plan: Mt. Hood National Forest and United States Department of Agriculture - Forest Service Specifications for Construction of Roads & Bridges, Document #EM-7700-100 last revised on August 1996. As the applicant is not proposing any changes to the roads located within the land division, the County is not requesting temporary turnarounds. *This criterion is not applicable.*

11.10 § 39.9540 STREET NAMES.

Names for public streets shall conform to the street naming system of Multnomah County. In order to discourage unnecessary traffic, the nature of a private street, a dead end street or a cul-de-sac shall be identified by a sign approved as to design, content and placement by the County Engineer.

Staff: The National Forest Service Roads within the subdivision are all named as follows:

- Lot 1 - National Forest Road #1008 and #1010,
- Lot 2 - National Forest Road #10, #1008, and #1211,
- Lot 3 - National Forest Road #1211
- Lot 4 – National Forest Road #1200126

As no new roads are being proposed, this criterion is not applicable. *This criterion is not applicable.*

11.11 § 39.9545 REQUIRED IMPROVEMENTS.

Improvements in a land division shall be made in accordance with the provisions of MCC 39.9550 through 39.9590 and 39.9600.

Staff: As discussed subsequently, if any required improvements are needed, they will be discussed below.

11.12 § 39.9550 STREETS, SIDEWALKS, PEDESTRIAN PATHS AND BIKEWAYS.

(A) Sidewalks shall be required in Urban Area public streets in accordance with the provisions of the Multnomah County Road Rules and Design and Construction Manual.

(B) A sidewalk shall be required along any private street serving more than six dwelling units.

(C) A pedestrian path located outside a street right-of-way may be substituted for a required sidewalk when it serves the same circulation function.

(D) Where a pedestrian path and bikeway is part of an approved plan for the area or has been approved on adjoining property, the approval authority may require the provision of a pedestrian path or bikeway within the land division.

(E) In order to provide for an appropriate circulation system, the approval authority may require a pedestrian path and bikeway across an unusually long or oddly-shaped block.

(F) The width, design and configuration of sidewalks and pedestrian paths and bikeways shall comply with applicable standards, as follows:

(1) In a public right-of-way, in accordance with the Multnomah County Road Rules and Design and Construction Manual; and

(2) On private property, as approved by the Planning Director in accordance with the Design Review provisions of this Chapter.

(G) Any street, pedestrian path or bikeway shall be improved as follows:

(1) In a public street, in accordance with this Chapter and the Multnomah County Road Rules and Design and Construction Manual; and

(2) In a private street, in accordance with this Chapter and the Multnomah County Road Rules and Design and Construction Manual;

(H) Underground utilities and street lighting facilities, sanitary sewers, storm drains and water mains located in a street shall be installed prior to the surfacing of the street.

Staff: As the proposed land division is not located within an urban area, these criteria are not applicable. *This criterion is not applicable.*

11.13 § 39.9555 EASEMENTS.

Easements shall be provided and designed according to the following:

(A) Along the front property line abutting a street, a five foot utility easement shall be required. The placement of the utility easement may be modified as requested by a public or private utility provider. Utility infrastructure may not be placed within one foot of a survey monument location noted on a subdivision or partition plat.

(B) Where a tract is traversed by a water course such as a drainage way, channel or stream, a storm water easement or drainage right-of-way adequate to conform substantially with the lines of the water course shall be provided. In a Drainage District or Water Control District, such easement or right-of-way shall be approved by the District Board, in accordance with ORS 92.110. If not within such District, approval shall be by the County Engineer.

(C) Easements for pedestrian paths and bikeways shall be not less than 10 feet in width.

Staff: No easements shall be required as part of this land division as the land division is occurring within administrative boundaries of the US Forest Service – Mt. Hood National Forest. As such, the streets within the land division are subject to United States Department of Agriculture - Forest Service Land and Resource Management Plan: Mt. Hood National Forest and United States Department of Agriculture - Forest Service Specifications for Construction of Roads & Bridges, Document #EM-7700-100 last revised on August 1996. As staff has not received comments from the Forest Service requesting easements, no easements will be required. *This criterion is not applicable.*

11.14 § 39.9560 STREET TREES.

Street trees shall be planted by the applicant according to the street tree planting plan and schedule approved by the County Engineer as an element of the tentative plan. Trees which have not survived for one year after initial planting shall be replaced by the applicant within four months of loss.

Staff: No street trees are required to be planted as the land division is occurring within administrative boundaries of the US Forest Service – Mt. Hood National Forest. As such, the streets within the land division are subject to United States Department of Agriculture - Forest Service Land and Resource Management Plan: Mt. Hood National Forest and United States Department of Agriculture - Forest Service Specifications for Construction of Roads & Bridges, Document #EM-7700-100 last revised on August 1996. As staff has not received comments from the Forest Service requesting street trees, no street trees will be required. *This criterion is not applicable.*

11.15 § 39.9565 STREET LIGHTING.

Street lighting shall be provided in all Urban Area subdivisions in accordance with the requirements of the Multnomah County Road Rules and Design and Construction Manual.

Staff: The proposed land division is not occurring within an Urban Area subdivision; therefore, street lighting is not required and this criterion is not applicable. *This criterion is not applicable.*

11.16 § 39.9570 WATER SYSTEM.

The provision of domestic water to every lot or parcel in a land division shall comply with the requirements of Subsections (4)(a), (b), or (c) of ORS 92.090 and the following:

(A) Water mains, service and fire hydrants shall meet the requirements of the Water District and shall be located as follows:

- (1) In a public street, in accordance with the Multnomah County Road Rules and Design and Construction Manual; and**
- (2) In a private street, as approved by the approval authority.**

Staff: As required above, the applicant must comply with the requirements of subsections (4)(a), (b), or (c) of ORS 92.090. As no certificate has been provided by the applicant, the applicant will be required to provide a statement that no domestic water supply facility will be provided to the purchaser of any lot depicted in the proposed subdivision plat, even though a domestic water supply source may exist. A copy of any such statement, signed by the subdivider and endorsed by the city or county, shall be filed by the subdivider with the Real Estate Commissioner. *As conditioned, this criterion is met.*

11.17 § 39.9575 SEWAGE DISPOSAL.

The provision for the disposal of sewage from every lot or parcel in a land division shall comply with the requirements of Subsections (5)(a), (b) or (c) of ORS 92.090 and the following:

(A) Except as provided in Subsection (B) of this Section, a sanitary sewer line shall be installed to serve every lot or parcel in a land division by extension of an existing sewer line:

- (1) In a public street, in accordance with the Multnomah County Road Rules and Design and Construction Manual; and**

- (2) In a private street, as approved by the approval authority.
- (B) Where sanitary sewer is not available to the site or where the State Department of Environmental Quality determines that it is impractical to serve any lot or parcel by an existing sewer system, a private sewage disposal system approved by the Department shall be provided. All lots or parcels in a proposed land division which will utilize private subsurface sewage disposal system shall apply for and obtain approval of a Land Feasibility Study confirming the ability to utilize the system prior to tentative plan approval. In such cases, the approval authority may require that a sanitary sewer line, with branches to the right-of-way line for connection to a future sewer system, be constructed and sealed.
- (C) Where a private subsurface sewage disposal system is used, the parcel or lot shall contain adequate land area to accommodate both a primary and reserve septic system drainfield area, and for surface and storm drainage systems.

Staff: As required, the approval of this land division must meet the provisions for the disposal of sewage from every lot in a land division. As there is no sanitary sewer line, the applicant has provided a Septic Review Certification reviewed by Lindsey Reschke, Multnomah County Sanitarian on February 4, 2020 that states that the subdivision is, "Approved - No impact" (Exhibit A.34). As the agent for the State Department of Environmental Quality, the Multnomah County Sanitarian has confirmed the ability to utilize a system if needed on the lot as each lot contains adequate land area to accommodate both a primary and reserve septic system drainfield area, and for surface and storm drainage systems. *These criteria are met.*

11.18 § 39.9580 SURFACE DRAINAGE AND STORM WATER SYSTEMS.

Surface drainage and storm water control systems shall be provided as required by this section.

(A) On-site water disposal or retention facilities shall be adequate to insure that surface runoff rate or volume from the new parcels after development is no greater than that before development.

(B) Drainage facilities shall be constructed as follows:

- (1) In a public street, in accordance with the Multnomah County Road Rules and Design and Construction Manual; and
- (2) In a private street and on lots or parcels, in accordance with the plans prepared by an Oregon licensed and registered professional engineer and approved by the approval authority.

Staff: The applicant is not proposing any new impervious structures or development; therefore, no surface drainage and storm water control system are necessary for this land division as the lots are naturally draining into the forest land that comprise the BRWMU and Mt. Hood National Forest. *These criteria are not applicable.*

11.19 § 39.9585 ELECTRICAL AND OTHER WIRES.

Wires serving within a land division, including but not limited to electric power, communication, street lighting and cable television wires, shall be placed underground. The approval authority may modify or waive this requirement in acting on a tentative plan upon a finding that underground installation:

- (A) Is impracticable due to topography, soil or subsurface conditions;

- (B) Would result in only minor aesthetic advantages, given the existence of above-ground facilities nearby; or**
(C) Would be unnecessarily expensive in consideration of the need for low-cost housing proposed on the lots or parcels to be served.

Staff: Due to the size and acreage of the proposed land division, the requirement to underground wires is waived. As designed the lots are quite large; with the exception of Lot 4. For Lots 1 through 3, the lots are 704.4. acres, 615.7 acres, and 234.6 acres. To require undergrounding of wires would result in only a minor aesthetic advantage as all of the Lots are heavily forested. *This criterion is met.*

11.20 § 39.9587 REQUIRED IMPROVEMENTS.

Improvements in a land division shall be made in accordance with the provisions of MCC 39.9587 through 39.9590 and 39.9600.

Staff: As discussed subsequently, if any required improvements are needed, they will be discussed below.

11.21 § 39.9588 STREETS, SIDEWALKS, PEDESTRIAN PATHS AND BIKEWAYS, WATER SYSTEM, SEWAGE DISPOSAL, SURFACE DRAINAGE AND STORM WATER SYSTEMS.

(A) Any street, pedestrian path or bikeway shall be improved as follows:

- (1) In a public street — in accordance with this Chapter and the Street Standards Code and Rules; and,**
- (2) In a private street — in accordance with the Street Standards Code and Rules.**
- (3) Underground utilities and street lighting facilities, storm drains and water mains located in a street shall be installed prior to the surfacing of the street.**

(B) Water mains, service and fire hydrants shall meet the requirements of the Water District and shall be located as follows:

- (1) In a public street - in accordance with the Street Standards Code and Rules; and**
- (2) In a private street - as approved by the approval authority.**

(C) A sewage disposal system approved by the State Department of Environmental Quality, shall be provided. All lots or parcels in a proposed land division which will utilize private subsurface sewage disposal system shall apply for and obtain approval of a Land Feasibility Study confirming the ability to utilize the system prior to tentative plan approval. In such cases, the approval authority may require that a sanitary sewer line, with branches to the right-of-way line for connection to a future sewer system, be constructed and sealed.

(D) Drainage facilities shall be constructed as follows:

- (1) In a public street - in accordance with the Street Standards Code and Rules; and**
- (2) In a private street and on lots or parcels - in accordance with the plans prepared by an Oregon licensed and registered professional engineer and approved by the approval authority.**

Staff: As discussed above the applicant is not required to make many of the improvements as outlined in the subsection above. The proposed land division is occurring within administrative boundaries of the US Forest Service – Mt. Hood National Forest. As such, the streets within the land division are subject to United States Department of Agriculture - Forest Service Land and

Resource Management Plan: Mt. Hood National Forest and United States Department of Agriculture - Forest Service Specifications for Construction of Roads & Bridges, Document #EM-7700-100 last revised on August 1996. As the land is subject to forest service requirements, the streets are not subject to the Street Standards Code and Rules and no underground utilities, street lighting facilities, storm drains, water mains, or drainage facilities are required. Lastly, the applicant has provided a Septic Review Certification reviewed by Lindsey Reschke, Multnomah County Sanitarian on February 4, 2020 that states that the subdivision is, "Approved - No impact" (Exhibit A.34). As the agent for the State Department of Environmental Quality, the Multnomah County Sanitarian has confirmed the ability to utilize a system if needed on the lot as each lot contains adequate land area to accommodate both a primary and reserve septic system drainfield area, and for surface and storm drainage systems. *These criteria are met.*

11.22 § 39.9590 OTHER UTILITIES.

Other utilities, including electric, gas, street lighting and cable television facilities shall be provided as required by this Ordinance and as follows:

(A) In a public street, in accordance with the Multnomah County Road Rules and Design and Construction Manual; and

(B) In a private street, as approved by the approval authority.

Staff: No other utilities, including electric, gas, street lighting and cable television facilities are required as part of this land division. As the land division is occurring within administrative boundaries of the US Forest Service – Mt. Hood National Forest, the streets within the land division are subject to United States Department of Agriculture - Forest Service Land and Resource Management Plan: Mt. Hood National Forest and United States Department of Agriculture - Forest Service Specifications for Construction of Roads & Bridges, Document #EM-7700-100 last revised on August 1996. As staff has not received comments from the Forest Service requesting utilities, including electric, gas, street lighting and cable television facilities, none will be required. *This criterion is not applicable.*

11.23 § 39.9605 FINAL DRAWING AND PRINTS.

(A) Two prints of the subdivision or partition plat shall accompany the final drawing, conforming to all applicable requirements as established by the Oregon Revised Statutes (ORS), Chapters 92 and 209.

(B) Notwithstanding optional provisions in ORS Chapter 92, all parcels created shall be surveyed, monumented and platted, regardless of parcel area.

Staff: As required above, a condition of approval will be required that two prints of the subdivision shall accompany the final drawing. The final drawing shall conform to all applicable requirements of ORS 92 and 209. Additionally, all lots created as part of this land division shall be surveyed, monumented and platted. *As conditioned, these criteria are met.*

11.24 § 39.9610 INFORMATION REQUIRED ON SUBDIVISION PLAT OR PARTITION PLAT.

In addition to the information required to be shown on the tentative plan, the following shall be shown on the subdivision plat or partition plat:

(A) Corners of adjoining subdivisions or partitions.

(B) The location, width and centerline of streets and easements abutting the boundaries of the land division.

(C) Any plat that includes land in areas of Special Flood Hazard or includes a water body or watercourse, as those features are described in MCC 39.2000, shall contain a plat note indicating that portions of the plat are subject to flooding and/or high water.

(D) The ownership of each private street shall be shown.

(E) Other certifications required by law.

Staff: As required above, a condition of approval will be required that the subdivision plat show the following if applicable:

- Corners of adjoining subdivisions or partitions.
- The location, width and centerline of streets and easements abutting the boundaries of the land division.
- Any plat that includes land in areas of Special Flood Hazard or includes a water body or watercourse, as those features are described in MCC 39.2000, shall contain a plat note indicating that portions of the plat are subject to flooding and/or high water.
- The ownership of each private street shall be shown.
- Other certifications required by law.

As conditioned, these criteria are met.

11.25 § 39.9615 SUPPLEMENTAL INFORMATION WITH SUBDIVISION PLAT OR PARTITION PLAT.

The following shall accompany the subdivision plat or partition plat, as appropriate:

(A) A copy of any deed restrictions applicable to the subdivision or partition.

(B) A copy of any dedication requiring separate documents.

(C) A copy of the future street plan, when required, as recorded according to MCC 39.9465(A).

(D) As used in this section, "lot" means a unit of land that is created by a subdivision of land, and a "tract" will be considered a lot, except for street plugs.

(E) A map, prepared by an Oregon licensed surveyor, of the subdivision plan or partition plat that depicts the normal flood plain or high water line for any water body or watercourse and the extent of areas of Special Flood Hazard as defined in MCC 39.5005.

Staff: As required above, a condition of approval will be required that the subdivision plat show the following if applicable:

- A copy of any deed restrictions applicable to the subdivision or partition.
- A copy of any dedication requiring separate documents.
- A copy of the future street plan, when required, as recorded according to MCC 39.9465(A).
- A map, prepared by an Oregon licensed surveyor, of the subdivision plan or partition plat that depicts the normal flood plain or high water line for any water body or watercourse and the extent of areas of Special Flood Hazard as defined in MCC 39.5005.

As conditioned, these criteria are met.

11.26 § 39.9620 TECHNICAL REVIEW AND APPROVAL OF SUBDIVISION PLAT OR PARTITION PLAT.

(A) The subdivision plat or partition plat and all required material shall be filed with the Planning Director for final approval. Within 10 business days of filing, the Planning Director shall determine whether the material conforms with the approved tentative plan and with the applicable requirements of this Ordinance. If the Planning Director determines that there is not such conformity, the applicant shall be so advised and afforded an opportunity to make corrections. When the plat is found to be in conformity, it shall be signed and dated by the Planning Director.

Staff: As required above, a condition of approval will be required that the subdivision plat and all required materials shall be filed with the Planning Director for final approval. If the Planning Director determines that there is not such conformity, the applicant shall be so advised and afforded an opportunity to make corrections. When the plat is found to be in conformity, it shall be signed and dated by the Planning Director. *As conditioned, this criterion is met.*

(B) On a subdivision plat, the approval signature of the Chair of the Board of County Commissioners or the Chair's delegate, shall be required to certify that the plat is approved.

Staff: The code section above is for informational purposes outlining the required approval signature to certify the plat is approved. It is not an approval criterion.

(C) No building permit shall be issued or parcel sold, transferred or assigned until the partition plat has been approved by the Planning Director and County Surveyor and recorded with the public office responsible for public records.

Staff: As required above, a condition of approval will be required that No building permit shall be issued or parcel sold, transferred or assigned until the partition plat has been approved by the Planning Director and County Surveyor and recorded with the public office responsible for public records. *As conditioned, this criterion is met.*

12.00 Comprehensive Plan Policy Criteria

12.01 Chapter 4 – Forest Land:

4.3 Require that applications for new development comply with Lot of Record standards described in the CFU zoning code.

Staff: The applicant has complied with the Lot of Record standards as discussed in Section 4.00. *This criterion is met.*

4.6 If current statewide planning regulations of Commercial Forest Use lands are changed, Multnomah County should not allow new subdivision lots of less than 80 acres in the CFU district in order to preserve forest practices and natural resources such as wildlife habitat, streams, and scenic views, to the extent allowed by law.

Staff: It does not appear that the current statewide planning regulation of Commercial Forest Use lands have not been changed since the adoption of the Comprehensive Plan in October 1, 2016. As

such the applicant has met the standards to create a subdivision lot that is less than 80 acres as discussed in Section 5.06, 5.08, and 11.00. *This criterion is met.*

12.02 Chapter 5 – Natural Resources

5.43 Require outdoor lighting to be low intensity and designed in a manner that minimizes the amount of light pollution.

Staff: As required in T3-2018-10227, a condition of approval was required that all exterior lighting shall comply with MCC 39.6850. The applicant was required to provide a plan prior to building permit zoning review that demonstrated that the outdoor lighting be low intensity and designed in a manner that minimizes the amount of light pollution. As the microwave radio transmission tower facility has been established and completed, the applicant has met the Condition of Approval. *This criterion is met.*

12.03 Chapter 6 – Historic and Cultural Resources

6.4 Require reporting of the discovery of Native American artifacts and other cultural resources to SHPO and the Native American tribes.

Staff: This Comprehensive Plan policy can be met with a Condition of Approval. *As conditioned, this criterion is met.*

12.04 Chapter 11 – Public Facilities

11.12 A water supply system for new development shall be by either of the following methods:

- 1. Connection to a public water system having adequate capacity to serve the development and all other system customers**
- 2. A private water system that produces safe drinking water with sufficient volume and pressure to meet applicable Building Code and Fire Protection Code**

Staff: The applicant is not requesting new development as part of this application. The previous permit reviewed under land use case T3-2018-10227 was to authorize the establishment of a microwave radio transmission tower facility. As part of that authorization no water supply system was proposed. *This criterion is met.*

11.13 Wastewater disposal for new development shall be by any of the following methods:

- 1. Connection to a public sewer system having adequate capacity to serve the development and all other system customers**
- 2. A private system that meets Oregon Department of Environmental Quality regulations**

Staff: The applicant is not requesting new development as part of this application. The previous permit reviewed under land use case T3-2018-10227 was to authorize the establishment of a microwave radio transmission tower facility. As part of that previous authorization, the applicant met the private wastewater disposal system requirement. *This criterion is met.*

13.00 Conclusion

Based on the findings and other information provided above, the applicant has carried the burden necessary for the Category 1 Land Division and Lot of Record Verification to subdivide the subject properties and a modification to the previous approval of a Community Service Conditional Use, Design Review, Forest Development Standards, Variances, and Exception to Secondary Fire Safety Zone permits to establish a microwave radio transmission tower facility in the Commercial Forest Use – 3 (CFU-3) zone. This approval is subject to the conditions of approval established in this report.

14.00 Exhibits

‘A’ Applicant’s Exhibits

‘B’ Staff Exhibits

‘C’ Procedural Exhibits

‘D’ Comments Received

Exhibits with a “*” after the exhibit # have been included as part of the mailed decision. All other exhibits are available for review in Case File T3-2019-12391 at the Land Use Planning office.

Exhibit #	# of Pages	Description of Exhibit	Date Received / Submitted
A.1	4	General Application Form and ACH Deposit	09/04/2019
A.2	83	Narrative	09/04/2019
A.3	1	Appendix A: General Application Form	09/04/2019
A.4	1	Lot of Record Tax lots Map (11” x 17”)	09/04/2019
A.5	12	Appendix B: Ticor Title Preliminary Report	09/04/2019
A.6	2	Bargain and Sale Deed recorded in Book 760, Page 156-157 on November 25, 1922	09/04/2019
A.7	1	Bargain and Sale Deed recorded in Book 803, Page 99 on February 4, 1920	09/04/2019
A.8	2	Bargain and Sale Deed recorded in Book 851, Page 167-168 on June 22, 1921	09/04/2019
A.9	4	Warranty Deed recorded as Instrument #2004-121621 on July 02, 2004	09/04/2019
A.10	2	Deed recorded in Book 246, Page 418-419 on December 22, 1897	09/04/2019
A.11	1	Deed with unknown Book, Page and Recording Date	09/04/2019
A.12	2	Bargain and Sale Deed recorded in Book 911, Page 8-9 on November 25, 1922	09/04/2019
A.13	1	Bargain and Sale Deed recorded in Book 800, Page 294 on February 10, 1920	09/04/2019
A.14	1	Indenture Deed recorded in Book 800, Pages 293 on February 10, 1919	09/04/2019
A.15	8	Appendix C: Pre-Application Conference Notes	09/04/2019
A.16	3	Appendix D-1: Federal Aviation Administration - Determination of No Hazard to Air Navigation	09/04/2019
A.17	1	Appendix D-2: Oregon Department of Aviation – Aeronautical Study	09/04/2019
A.18	1	Appendix D-3: TOWAIR Determination Results	09/04/2019

A.19	3	Appendix D-4: Fire Service Agency Review	09/04/2019
A.20	12	Appendix E: Approved Plans signed by George Plummer on July 11, 2018 -- Microwave Replacement Project – Camp Creek Tower (reduced to 8.5” x 11”) <ul style="list-style-type: none"> - Sheet No. 1 of 12: Title Sheet - Sheet No. 2 of 12: General Notes & Legend - Sheet No. 3 of 12: Special Inspections - Sheet No. 4 of 12: Overall Site Plan - Sheet No. 5 of 12: Enlarged Site Plan - Sheet No. 6 of 12: Elevations - Sheet No. 7 of 12: Grading & Erosion Control Plan - Sheet No. 8 of 12: Canopy Details - Sheet No. 9 of 12: Shelter Foundation Plan - Sheet No. 10 of 12: Compound Details - Sheet No. 11 of 12: Liquid Propane Gas Details - Sheet No. 12 of 12: Grounding Plan Details 	09/04/2019
A.21	26	Appendix F: Communication Tower Design Calculations	09/04/2019
A.22	5	Appendix G: Microwave Dish Information	09/04/2019
A.23	12	Appendix H: Equipment Building Plans (reduced to 8.5” x 11”)	09/04/2019
A.24	12	Appendix H: Equipment Building Plans (reduced to 11” x 17”)	09/04/2019
A.25	2	Appendix I: Preliminary Subdivision Plat (reduced to 11” x 17”) <ul style="list-style-type: none"> - Sheet No. 1 of 2: Preliminary Subdivision Plat - Sheet No. 2 of 2: Preliminary Subdivision Plat 	09/04/2019
A.26	30	Hearings Officer Decision for T3-2018-10227	09/04/2019
A.27	2	Appendix I: Preliminary Subdivision Plat (24” x 18”) <ul style="list-style-type: none"> - Sheet No. 1 of 2: Preliminary Subdivision Plat - Sheet No. 2 of 2: Preliminary Subdivision Plat 	09/04/2019
A.28	6	Cover Letter in response to Incomplete Letter dated on October 4, 2019	01/23/2020
A.29	84	Revised Application Narrative	01/23/2020
A.30	1	Existing Conditions – Bull Run Land Exchange (11” x 17”)	01/23/2020
A.31	1	Proposed Land Division – Bull Run Land Exchange (11” x 17”)	01/23/2020
A.32	1	Bull Run Land Exchange – City of Portland Microwave Site (11” x 17”))	01/23/2020
A.33	2	Preliminary Subdivision Plat (reduced to 11” x 17”) <ul style="list-style-type: none"> - Sheet 1 of 2: Preliminary Plat for Walker Prairie - Sheet 2 of 2: Preliminary Plat for Walker Prairie 	01/23/2020
A.34	4	E-mail from Robert Fraley and Septic Review Certification	02/04/2020
A.35	1	E-mail from Applicant showing final approval and inspection of building (structural), electrical, mechanical permits	06/02/2020

‘B’	#	Staff Exhibits	Date
B.1	2	Department of Assessment, Recording, and Taxation (DART): Property Information for 1S6E20 -02500 (Alt Acct #R996200030)	08/23/2019
B.2	2	Department of Assessment, Records and Taxation (DART): Property Information for 1S6E20 -02400 (Alt Acct #R996200010)	08/23/2019
B.3	2	Department of Assessment, Records and Taxation (DART): Property Information for 1S6E19 -02200 (Alt Acct #R996190010)	08/23/2019
B.4	2	Department of Assessment, Recording, and Taxation (DART): Property Information for 1S5E24 -00900 (Alt Acct #R995240010)	08/23/2019
B.5	2	Department of Assessment, Recording, and Taxation (DART): Property Information for 1S5E24 -01000 (Alt Acct #R995240090)	08/23/2019
B.6	1	Department of Assessment, Recording, and Taxation (DART): Property Information with 1S6E -02400, 1S6E -02500, and 1S6E19 -02200 (Alt Acct #R996200030, R996200010, and R996190010) highlighted	08/23/2019
B.7	1	Department of Assessment, Recording, and Taxation (DART): Property Information with 1S5E24 -01000 and -00900 (Alt Acct #R995240090 and R995240010) highlighted	08/23/2019
B.8	1	Applicant’s Instruction for Finishing a Land Division handout	06/19/2020
B.9	1	Surveyor’s Instruction for Finishing a Land Division handout	06/19/2020
‘C’	#	Administration & Procedures	Date
C.1	5	Incomplete Letter	10/04/2019
C.2	1	Applicant’s Acceptance of 180 Day Clock	10/14/2019
C.3	1	Complete Letter (Day 1)	02/19/2020
C.4	1	Request for Extension of the 150-Day Deadline	05/18/2020
C.5	10	Notice of Public Hearing and Mailing List	06/19/2020
C.6	54	Staff Report	07/03/2020