

NOTICE OF DECISION

Case File: T2-2019-11543

Permit: Lot of Record Determination and Significant Environmental Concern

Applicant(s): Columbia River Estuary Study **Owner(s):** Port of Portland & Metro Taskforce – Tom Josephson

Location: Government Island
Tax Lot 100, Section 12, Township 1 North, Range 2 East, WM
Tax Lot 100, Section 13, Township 1 North, Range 2 East, WM
Tax Lot 200, Section 18, Township 1 North, Range 3 East, WM
Tax Lot 100, Section 17, Township 1 North, Range 3 East, WM
Alt. Acct: R942120040, R942130050, R943180050, & R943170010
Property ID: R317100, R317101, R320231, & R320226

Zoning: Commercial Forest Use (CFU) **Overlays:** Significant Environmental Concern


Proposal Summary: Permit a restoration project on Government Island to remove a water control structure to allow fish access, reconnecting historic natural stream system swales and wetland with the river. Includes installing beaver dam analogs and habitat logs, realigning riprap, placement of round river rock and replanting vegetation with native plant species, may include other unlisted restoration best management practices.

Decision: Approved with Conditions

This decision is final and effective at the close of the appeal period, unless appealed. The deadline for filing an appeal is May 31, 2019 at 4:00 pm.

Opportunity to Review the Record: The complete case file, including the Planning Director Decision containing Findings, Conclusions, Conditions of Approval, and all evidence associated with this application is available for review at the Land Use Planning office. Copies of all documents are available at the rate of \$0.30/per page. For further information, contact George Plummer, Planner at (503) 988-0202 (8 am to 4 pm Tuesday through Friday) or george.a.plummer@multco.us

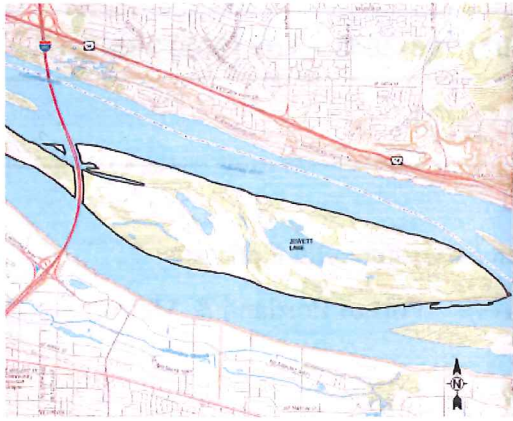
Opportunity to Appeal: An appeal requires a \$250.00 fee and must state the specific legal grounds on which it is based. To obtain appeal forms or information on the procedure, contact the Land Use Planning office at 1600 SE 190th Avenue (Phone: 503-988-3043). This decision is not appealable to the Land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

Issued By: 
George A. Plummer, Planner

For: Adam Barber, Planning Director

Date: May 17, 2019

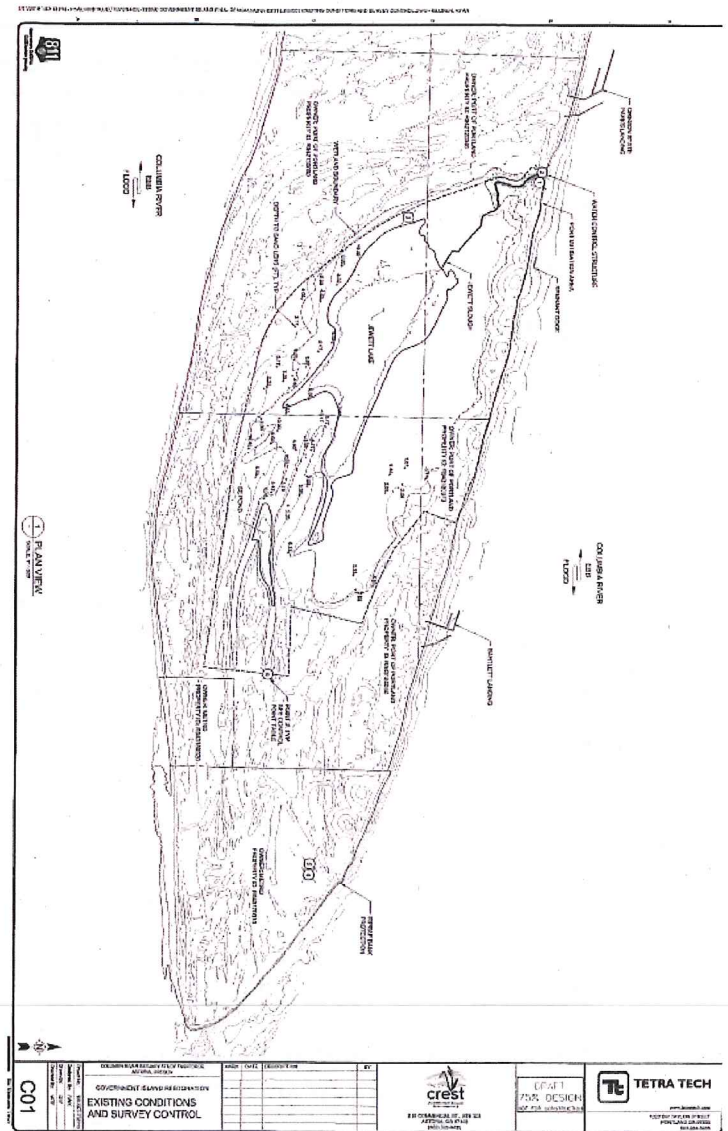
Vicinity Map



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

Applicable Approval Criteria: Multnomah County Code (MCC): MCC 39.3005 Lot of Record Generally, MCC 39.3010: CFU Lot of Record, MCC 39.5500-.5535: SEC General, & MCC 39.5540: SEC Criteria.

Copies of the referenced Multnomah County Code sections are available by contacting our office at (503) 988-3043 or by visiting our website at <https://multco.us/landuse/zoning-codes/> under the link Chapter 39 Zoning Code and Chapter 37: Administration & Procedures.



Please read your land use decision, and the conditions of approval. Make certain that the project meets the Conditions of Approval.

Conditions of Approval

The conditions listed are necessary to ensure that approval criteria for this land use permit are satisfied. Where a condition relates to a specific approval criterion, the code citation for that criterion follows in parenthesis.

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. [MCC 39.1105(B)]

2. This land use permit expires two years from the date the decision is final pursuant to MCC 39.1185(A) as applicable if unless the use or development was established according to all specifications and conditions of approval in the land use approval. [MCC 39.1185(A)]

Note: The property owner may request to extend the timeframe within which this permit is valid, as provided under MCC 39.1195, as applicable. The application request for a permit Time Extension must be submitted prior to the expiration of the approval period.

3. Prior to and during construction, the applicant shall ensure that Best Practices Sediment and Erosion Measures are installed and practiced throughout the project. [MCC 39.5540(G)]
4. The applicant shall meet ODFW requirements including in-water work period. [MCC 39.1105(B)]
5. If any cultural resources and/or archaeological resources are located or discovered on the property during this project, including finding any evidence of historic campsites, old burial grounds, implements, or artifacts, the following procedures shall be implemented [MCC 39.5540(H)]:

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.

- (a) Halt Construction – All construction activities within 100 feet of the discovered cultural resource shall cease. The cultural resources shall remain as found; further disturbance is prohibited.
 - (b) Notification – The project applicant shall notify the County Planning Director and 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. This includes the Yakama Nation, contact Cultural Specialist for the Cultural Resources Program at: (509) 865-5121 extension 4720; FAX number (509) 865-4664.
6. The following procedures shall be in effect if human remains are discovered during excavation or construction (human remains means articulated or disarticulated human skeletal remains, bones, or teeth, with or without attendant burial artifacts) [MCC 39.5540(H)]:
 - (a) Halt Activities – All survey, excavation, and construction activities shall cease. The human remains shall not be disturbed any further.
 - (b) Notification – Local law enforcement officials - County Sheriff, the Multnomah County Planning Director, and the Indian tribal governments shall be contacted immediately.
 - (c) Inspection – The State Medical Examiner shall inspect the remains at the project site and determine if they are prehistoric/historic or modern. Representatives from the Indian tribal governments shall have an opportunity to monitor the inspection.
 - (d) Jurisdiction – If the remains are modern, the appropriate law enforcement officials will assume jurisdiction and the cultural resource protection process may conclude.

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

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

Findings of Fact

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

1. PROJECT DESCRIPTION

Staff: The applicant, Columbia River Estuary Study Task (CREST), requests permit approval for a restoration project on Government Island. to remove a water control structure to allow fish access, reconnecting historic natural stream system swales and wetland with the river. Includes installing beaver dam analogs and habitat logs, realigning riprap, placement of round river rock and replanting vegetation with native plant species, may include other unlisted restoration best management practices.

2. PROPERTY DESCRIPTION & HISTORY

Staff: The project is located on publicly owned land on Government Island. It includes four large acreage properties made up of several Government Lots. The Island has limited public access, confined to areas of a couple beach landing for boats. These areas are managed by Oregon State Parks and Recreation Department.

The proposed project area, the Jewitt Lake stream system, was modified at sometime in the distant past with water control system including a dam and rip-rap. This resulted in excluding fish access between the lake and the Columbia River due to the dam and the disconnected swales that lead to the lake now blocked by rip-rap.

The proposed stream restoration will improve the water quality in the Jewitt Lake stream system and create habitat for fish and wildlife by removing “manmade” barriers restoring the stream to the historic natural water flows. The proposed project will remove the dam, realign the rip-rap, provide woody structure in the stream/swales for fish and wildlife habitat, some recontouring of banks, placement of round rocks for stream beds and replanting native vegetation.

There are no compliance issues that have come to our attention.

3. COMMERCIAL FOREST USE ZONE

Allowed Uses

MCC 39.4070 The following uses and their accessory uses are allowed, subject to all applicable supplementary regulations contained in MCC Chapter 39.

* * *

(E) 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.

Staff: The proposed stream restoration will improve the water quality in the Jewitt Lake stream system and create habitat for fish and wildlife by removing “manmade” barriers restoring the stream to the historic natural water flows and planting native riparian

vegetation. Other regulations that must be met are Lot of Record and Significant Environmental Concern (see the following findings). This standard is met.

4. LOT OF RECORD

Lot of Record – Generally

MCC 39.3005 (B) A Lot of Record is a parcel, lot, or a group thereof that, when created or reconfigured, either satisfied all applicable zoning laws and satisfied all applicable land division laws, or complies with the criteria for the creation of new lots or parcels described in MCC 39.9700. Those laws shall include all required zoning and land division review procedures, decisions, and conditions of approval.

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

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

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

Staff: The four properties that the proposed project will take place on are made up of several Government Lots. That applicant submitted County Assessment Parcel Record – Cartographic Unit card the four properties includes as Exhibits to this decision, listed below:

Exhibit A.5: County Assessment Parcel Record – Cartographic Unit card for Tax Lot 100 (1N2E12) with a copy of a deed recorded on 11/21/69 in Book 706 on Pages 359 – 361
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Exhibit A.6: County Assessment Parcel Record – Cartographic Unit card for Tax Lot 100 (1N2E13) with a copy of a deed recorded on 11/21/69 in Book 706 on Pages 359 – 361
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Exhibit A.7: County Assessment Parcel Record – Cartographic Unit card for Tax Lot 200 (1N3E18) with a copy of a deed recorded on 11/21/69 in Book 706 on Pages 359 – 361
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Exhibit A.8: County Assessment Parcel Record – Cartographic Unit card for Tax Lot 100 (1N3E17) with a copy of a deed recorded on 9/8/88 in Book 706 on Pages 359 – 361
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For the three properties described as Tax Lot 100 (1N2E12), Tax Lot 100 (1N2E13) and Tax Lot 200 (1N3E18) as Parcel I, II and III on deed recorded on 11/21/69 in Book 706 on Pages 359 – 361. Each of these properties are made up of several Government Lots. For the property described as Tax Lot 100 (1N3E17) the County Assessment Parcel Record – Cartographic Unit

card includes a deed from 1988, but the card also lists a deed recorded 1975 in Book 1048 on Page 1993. This property includes several Government Lots 1 through 6 and Lot 7, Section 7, except 144.48 acres washed away per survey from 1932.

All four of the properties meet the standard:

- (a) "Satisfied all applicable zoning laws"
- (b) "Satisfied all applicable land division laws"

The Government Lot pre-dated zoning and land division requirements and the deeds from 1969 and 1975 meet the zoning and land division requirements. *The four properties meet these standards*

LOT OF RECORD – COMMERCIAL FOREST USE (CFU).

MCC 39.3050 (A) In addition to the standards in MCC 39.3005, for the purposes of the CFU, 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.

Staff: All the subject properties exceed 19 acres, thus there are no aggregation requirements. The four properties on which the project is planned for meet Lot of Record Standards. *The four properties are Lots of Record meeting these standards.*

5. SIGNIFICANT ENVIRONMENTAL CONCERN

Criteria for Approval of SEC Permit

MCC 39.5540: The SEC designation shall apply to those significant natural resources, natural areas, wilderness areas, cultural areas, and wild and scenic waterways that are designated SEC on Multnomah County sectional zoning maps. Any proposed activity or use requiring an SEC permit shall be subject to the following:

- 5.1. (A) The maximum possible landscaped area, scenic and aesthetic enhancement, open space or vegetation shall be provided between any use and a river, stream, lake, or floodwater storage area.

Staff: The proposal is to restore the natural landscape of the along the historic stream on the island planting the riparian area with native species. *This standard is met.*

5.2. (B) Agricultural land and forest land shall be preserved and maintained for farm and forest use.

Staff: The property has historically been leased for grazing. That choice whether to farm is up to the property owner. The area around the restoration site is not farmed. The area is managed as wildlife habitat. Much of the property is managed as forest. The proposed project will preserve and maintain the land for farm and forest use should the owners choose to manage the property for those uses. *This standard is met.*

5.3. (C) A building, structure, or use shall be located on a lot in a manner which will balance functional considerations and costs with the need to preserve and protect areas of environmental significance.

Staff: No building is proposed. *This standard is not applicable for the proposed project.*

5.4. (D) Recreational needs shall be satisfied by public and private means in a manner consistent with the carrying capacity of the land and with minimum conflict with areas of environmental significance.

Staff: The applicant states that, "the work areas are located in portions of the island that is managed as natural habitat and no public access is allowed." The subject property has no recreation component. Other areas of the island are open for public recreation. *This standard is met.*

5.5. (E) The protection of the public safety and of public and private property, especially from vandalism and trespass, shall be provided to the maximum extent practicable.

Staff: The project area is closed to the public. This standard is not applicable for the proposed project.

5.6. (F) Significant fish and wildlife habitats shall be protected.

Staff: The proposed project is to enhance the fish and wildlife habitat. The construction will be done during the summer months when Jewett Lake and the wetlands are dry. The proposal includes the use of best management practices such as straw wattles and turbidity barriers for when the rain comes back. *This standard is met.*

5.7. (G) The natural vegetation along rivers, lakes, wetlands and streams shall be protected and enhanced to the maximum extent practicable to assure scenic quality and protection from erosion, and continuous riparian corridors.

Staff: The proposed project is to restore the natural stream system of Jewett Lake that originally existed on the island in the protected area to enhance the fish and wildlife habitat the maximum extent practicable. The project will create a continuous riparian corridor re-establishing the historic swale inlet from the river, removing artificial barriers such as previously placed fill, riprap and a dam then installing beaver dam analogs and habitat logs along the recreated historic swale downstream from the lake near the river and old dam site. The project includes planting native riparian vegetation along the riparian area of the stream system (Exhibit A.11).

The applicant states that care will be taken to protect the natural environment adjacent to the project. The proposal includes the use of best management practices for erosion control such as straw wattles, turbidly barriers, decomposing fabric soil wrapped lifts and replanting of natural vegetative ground cover for when the rain comes back. Erosion and Sediment Control and a Floodplain Development is required for this project. The applicant states that they will be applying with DEQ for a 1200C permit required for project with large soil disturbance areas. The applicant has submitted an application for these permits which will be review after this decision is issued. *This standard is met.*

5.8. (H) Archaeological areas shall be preserved for their historic, scientific, and cultural value and protected from vandalism or unauthorized entry.

Staff: There are no know archaeological areas. There is no public access to the site. A condition of approval can require any discovered archaeological areas site be protected and federal and state laws be met. *This standard is met through implementing the condition of approval is a site is discovered.*

5.9. (I) Areas of annual flooding, floodplains, water areas, and wetlands shall be retained in their natural state to the maximum possible extent to preserve water quality and protect water retention, overflow, and natural functions.

Staff: The applicant states,

“The reconnection of Jewett Lake and the historic swale to the Columbia River will greatly enhance the fish access and floodplain connectively. Water quality in the wetlands will improve as there becomes a more regular hydrologic exchange of water at the site. The project will provide an overall boost to the wetland and natural areas of the site.”

The applicant has submitted an application for a Floodplain Development permit for the stream alteration aspect of the project. The application includes, as required by MCC 39.504, certification by a State of Oregon Registered Professional that as hydraulic analysis demonstrated that:

- “(1) The flood carrying capacity for the altered or relocated portion of the watercourse will be maintained;
- (2) The area subject to inundation by the base flood discharge will not be increased;
- (3) The alteration or relocation will cause no measurable increase in base flood levels.”

The project is designed to re-establish the historic floodplain stream system that restores the natural state to the maximum possible which will preserve water quality and protect water retention, overflow, and natural functions. *This standard is met.*

5.10 (J) Areas of erosion or potential erosion shall be protected from loss by appropriate means. Appropriate means shall be based on current Best Management Practices and may include restriction on timing of soil disturbing activities.

Staff: The proposed project will occur during the summer dry season reducing erosion potential. The project includes erosion control best management practices such as turbidly barriers, straw wattles, decomposing fabric soil wrapped lifts and replanting of natural vegetative ground cover. The applicant has applied for a Sediment and Erosion Control permit.

The applicant states that they will be applying with DEQ for a 1200C permit required for project with large soil disturbance areas. *This standard is met.*

5.11. (K) The quality of the air, water, and land resources and ambient noise levels in areas classified SEC shall be preserved in the development and use of such areas.

Staff: The restoration project is designed to be low impact on the natural environment. The project will over time improve quality of the air, water, and land resources. The only change in ambient noise levels in the stream area may result from an increased population of wildlife, birds, animals and amphibians through preserving and improving natural area meeting the goals of the SEC overlay zone. This should not impact anyone negatively since the area is owned by METRO and the Port of Portland and does not have public access. *This standard is met.*

5.12. (L) The design, bulk, construction materials, color and lighting of buildings, structures and signs shall be compatible with the character and visual quality of areas of significant environmental concern.

Staff: The only structural materials will be the installation of the beaver dam analogs which are composed of imported (off-site) fir logs and rock salvaged from the water control structure removal. The soil wrapped lifts will use coir fabric that will decompose at the site. *This standard is met.*

5.13. (M) An area generally recognized as fragile or endangered plant habitat or which is valued for specific vegetative features, or which has an identified need for protection of the natural vegetation, shall be retained in a natural state to the maximum extent possible.

Staff: The applicant, CREST, has surveyed the site and found there is no known fragile or endangered plant habitat. The project is designed for protection of the natural vegetation, which shall be retained in a natural state to the maximum extent possible. *This standard is met.*

5.14. (N) The applicable policies of the Comprehensive Plan shall be satisfied.

Staff: Policies of the Comprehensive Plan embrace and encourage natural habitat restoration such as the proposed project. Policies of the Comprehensive Plan are implemented by the SEC code. The proposed project satisfies policies of the Comprehensive Plan. *This standard is met.*

6. CONCLUSION

Based on the findings and other information provided above, the applicant has carried the burden necessary for the Significant Environmental Concern Permit for stream restoration project in the Commercial Forest Use Zone and the SEC Overlay Zone. This approval is subject to the conditions of approval established in this report.

7. EXHIBITS

- 'A' Applicant's Exhibits
- 'B' Staff Exhibits

All other exhibits are available for review in Case File T2-2019-11543 at the Multnomah County Land Use Planning office.

Exhibit #	# of Pages	Description of Exhibit	Date Received/ Submitted
A.1	3	Application Form	1/31/19
A.2	14	Government Island Restoration Project Landowner Authorization	1/31/19
A.3	9	Project Introduction Narrative	1/31/19
A.4	1	Site Map showing project location	1/31/19
A.5	6	County Assessment Parcel Record – Cartographic Unit card for Tax Lot 100 (1N2E12) with a copy of a deed recorded on 11/21/69 in Book 706 on Pages 359 – 361	1/31/19
A.6	6	County Assessment Parcel Record – Cartographic Unit card for Tax Lot 100 (1N2E13) with a copy of a deed recorded on 11/21/69 in Book 706 on Pages 359 – 361	1/31/19
A.7	6	County Assessment Parcel Record – Cartographic Unit card for Tax Lot 200 (1N3E18) with a copy of a deed recorded on 11/21/69 in Book 706 on Pages 359 – 361	1/31/19
A.8	2	County Assessment Parcel Record – Cartographic Unit card for Tax Lot 100 (1N3E17) with a copy of a deed recorded on 9/8/88 in Book 706 on Pages 359 – 361	1/31/19
A.9	10	SEC Narrative	1/31/19
A.10	23	Narrative and data detailing the wetland restoration project	1/31/19
A.11	26	Site Plan and project design drawings with narrative descriptions	1/31/19
'B'	#	Staff Exhibits	Date
B.1	7	County Assessment Property Information	NA
B.2	2	County Assessment Tax Lot Maps	NA