

NOTICE OF DECISION

Case File: T2-2019-12047
Permit: Lot of Record Verification
Applicant: David Blumenkrom **Owners:** David & Katherine Blumenkrom
Location: 14421 NW Springville Road
Tax Lots 200, 300, 400 & 500, Section 16B, Township 1 North, Range 1 West,
Willamette Meridian.
Alt. Acct # R961160020, R961160890, R961160260, & R961160950
Property ID# R324294, R324365, R324311, & R504736
Zoning: Tax Lots 200 & 300: Exclusive Forest Use (EFU)
Tax Lots 400 & 500: Commercial Forest Use -2 (CFU-2)
Overlays: Significant Environmental Concern – Wildlife Habitat and Stream
Proposal Summary: Request for a Lot of Record Verification for the above listed properties.

Decision: Approved, all four parcels have been verified as each being a separate Lot of Record.

This decision is final and effective at the close of the appeal period, unless appealed. The deadline for filing an appeal is October 25, 2019, at 4:00 pm.

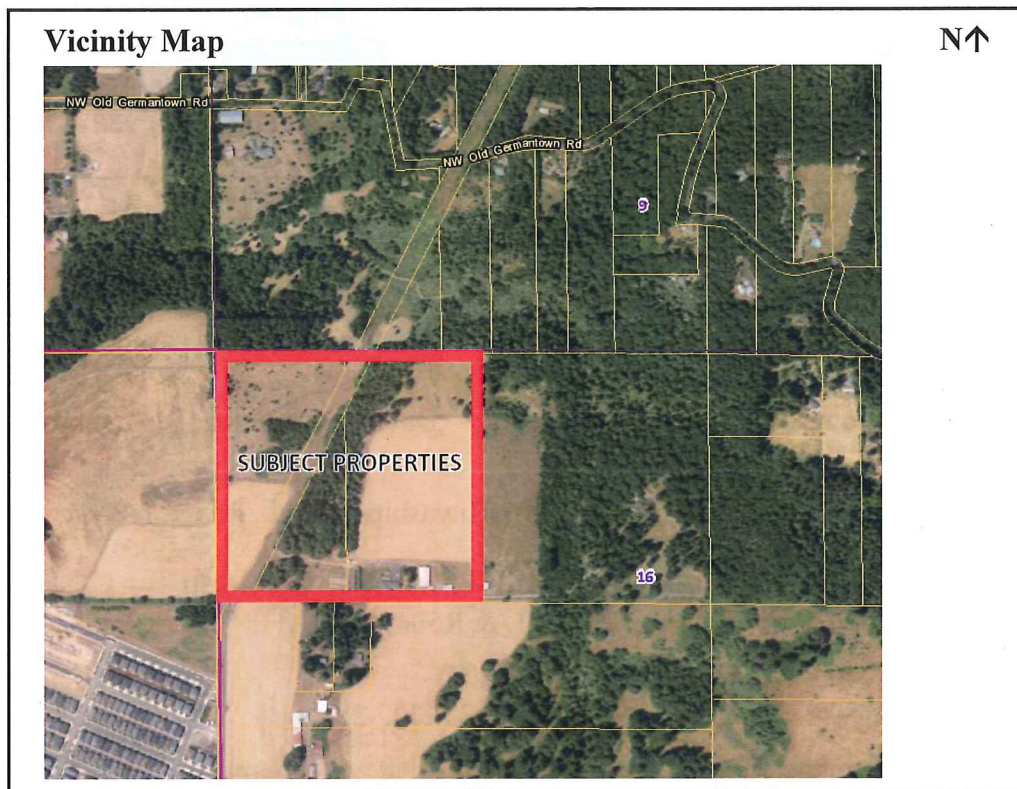
Opportunity to Review the Record: The complete case file, including the Planning Director Decision containing Findings, Conclusions, Conditions of Approval, and all evidence associated with this application is available for review at the Land Use Planning office. Copies of all documents are available 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 or (503) 988-3043.

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
Interim Planning Director

Date: October 10, 2019



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 39.3030: Lot of Record – Commercial Forest Use – 2 (CFU-2), and MCC 39.3070 Lot of Record – Exclusive Farm Use (EFU).

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

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 documents. This decision verifies the Lot of Record status on the listed properties only and does not authorize any development.

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: Request for a Lot of Record Verification for the properties at 14421 NW Springville Road also described as follows:

- Tax Lots 200, 300, 400 & 500, Section 16B, Township 1 North, Range 1 West, Willamette Meridian;
- Alternative Account # R961160020, R961160890, R961160260, & R961160950;
- Property ID# R324294, R324365, R324311, & R504736

2. PROPERTY DESCRIPTION & HISTORY

Staff: the case includes four properties in the Blumenkrom ownership. The four properties are located in Section 16B of Township 1 North, Range 1 West, Willamette Meridian and are the following sizes:

Tax Lot: 200 is 20.61 acres

Tax Lot: 300 is 0.11 acre

Tax Lot: 400 is 6.10 acres

Tax Lot: 500 is 12.26.

There is a Bonneville Power Administration power line property and a separate easement that runs through the Blumenkrom ownership in northeast to southwest orientation. The properties are used for farming and for forestry with Tax Lot 200 having a residential use.

Tax Lots 200 and 300 are zoned Exclusive Farm Use (EFU) and Tax Lots 400 and 500 are zoned Commercial Forest Use – 2 (CFU-2). All the properties are located in a Significant Environmental Concern for Wildlife Habitat and Streams Overlay Zone. This decision has no impact on these overlays because it does not include any development thus that review is not required at this time. There are no known code compliance issues on the properties.

3. LOT OF RECORD VERIFICATION

3.1. Lot of Record – Generally

3.1.1. MCC 39.3005(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.

Staff: Following Lot of Record are findings for Subsection (B) and for CFU-2 and EFU Zone Districts (Exhibit A.20).

3.1.2. 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: In the 1920s, August and Wihelmina Noffke owned roughly 80 acres (Exhibit A.22 page 2 and Exhibit A.22 Ex:1), which included the area of the subject properties (currently known as tax lots 200, 300, 400 and 500, 1N1W16B). The subject properties together are the western 40+/- acres of the original 80 acre Noffke property. The eastern 40 acres of the original 80 acres is not involved in this case.

In 1939, Anna Dewey Noffke and others owned the 80 acre parcel (Exhibit A.22, page 2) when on March 11, 1939 a Declaration of Takings was filed with the District Court of the United States for the District of Oregon to create “fee title” ownership by the Bonneville Project (became Bonneville Power Administration or BPA) of a 100-ft wide strip of land running from Hayden Island into Washington County to the south of the subject properties. This lawfully created unit of land passed through the Anna Noffke property dividing it into two parcels.

By 1944, Conrad and Elizabeth Hahn owned what had been the Noffke property including the 40 acres of land (Tax Lot 200, 300, 400 and 500). In 1944, the Hahns’ transferred two parcels to their children (Exhibit A.16 and A.17). On July 10, 1944, Tax Lots 200 and 300 were transferred by deed recorded in Book 850 on Pages 300 and 301 from Conrad Hahn and Elizabeth Hahn to John Hahn and Evelyn Hahn (Exhibit A.16). This deed is the oldest deed submitted that described the property (Tax Lots 200 and 300) as it currently exists. This is the oldest deed (Exhibit A.16) submitted for the subject properties known as Tax Lots 200 and 300 (Section 16B, Township 1 North, Range 1 West, Willamette Meridian). The property continued in the ownership of John Hahn and Evelyn Hahn until after John passed away on April 24, 1998 (Exhibit A.7). Evelyn Hahn Trustee (Hahn Family Revocable Living Trust) sold the property via contract to the current owners, David F. Blumenkron and Katherine M Blumenkron (Exhibit A.6). The Fulfillment of Contract document was recorded by Copy of Statutory Special Warranty Deed at County Records on April 19, 2004 as Instrument # 2004-065527 (Exhibit A.9).

On July 10, 1944, Tax Lots 400 and 500 were transferred by deed recorded in Book 850 on Pages 298 and 299 from Conrad Hahn and Elizabeth Hahn to Clarence Hahn and Lillian Hahn (Exhibit A.17). This deed is the oldest deed submitted that described the property (Tax Lots 400 and 500) as currently exists. On June 16, 1981, Clarence Hahn and Lillian Hahn, transferred via a deed recorded in Book 1531, on Page 171 the area contained in Tax Lots 400 and 500 to Patricia Lynn Severson, Richard C. Hahn, and Allen L. Hahn (Exhibit A.15). On June 15, 2001 a Bargain and Sale Deed was recorded which transferred the properties from Patricia Lynn Severson, Richard C. Hahn, and Allen L. Hahn to David F. Blumenkron and Katherine M Blumenkron the current owners (Exhibit A.8).

All four of the subject properties were lawfully created prior to the 1950's when zoning requirements were adopted thus there were no minimum parcel size or other zoning standards. The properties (Tax Lot 200, 300, 400 and 500) all existed prior to laws for land divisions (with three of the parcels exceeding five acres subdivision was not required). The properties when created satisfied all applicable zoning laws and satisfied all applicable land division laws.

3.2. Lot of Record – Commercial Forest Use-2 (CFU-2)

MCC 39.3030(A): In addition to the standards in MCC 39.3005, for the purposes of the CFU-2 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 or urban zones (e.g. MUA-20, RR, BRC, R-10), but shall apply to contiguous parcels and lots within all farm and forest resource zones (i.e. EFU and CFU), or

Staff: Tax Lots 400 and 500 (Section 16B, Township 1 North, Range 1 West, Willamette Meridian) were in the ownership of Patricia Lynn Severson, Richard C. Hahn, and Allen L. Hahn from 1981 to 2001. On June 16, 1981, in Book 1531, on Page 171, (for correction) Clarence Hahn and Lillian Hahn, Grantors to Patricia Lynn Severson, Richard C. Hahn, and Allen L. Hahn (Exhibit 22 – Ex:7). On June 15, 2001 a Bargain and Sale Deed was recorded at County Records which transferred the properties (Exhibit A.8) from Patricia Lynn Severson, Richard C. Hahn, and Allen L. Hahn to David F. Blumenkron and Katherine M Blumenkron

the current owners (Exhibit A.8). Tax Lots 400 and 500 are separated by the BPA property thus are contiguous, thus they meet MCC 39.3070(A)(1) with no aggregation required. On February 20, 1990 there were no adjacent properties owned by Patricia Lynn Severson, Richard C. Hahn, or Allen L. Hahn for Tax Lot 400 (6.1 acres) or Tax Lot 500 (12.26 acres) that required aggregation meeting the criteria of MCC 39.3070(A).

3.3. Lot of Record – Exclusive Farm Use (EFU)

MCC 39.3070(A) In addition to the standards in MCC 39.3005, for the purposes of the EFU district a Lot of Record is either:

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

(2) A group of contiguous parcels or lots:

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

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

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

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

* * *

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

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

Staff: Tax Lots 200 and 300 (Section 16B, Township 1 North, Range 1 West, Willamette Meridian) was in the ownership of John Hahn and Evelyn Hahn from July 10, 1944 (Exhibit A.16) until after John passed away on April 24, 1998 (Exhibit A.7). These two properties are separated by the BPA property, thus not contiguous, meeting MCC 39.3070(A) properties “not contiguous to any other parcel or lot under the same ownership on February 20, 1990.” Evelyn Hahn Trustee (Hahn Family Revocable Living Trust) sold the property via contract to David F. Blumenkron and Katherine M Blumenkron, the current owners, (Exhibit A.6) fulfilled by Copy of a Statutory Special Warranty Deed in Fulfillment of Contract recorded at County Records on April 19, 2004 as Instrument # 2004-065527 (Exhibit A.9). On February 20, 1990 there were no adjacent properties owned by either John Hahn or Evelyn Hahn for Tax Lot 200 (20.61 acres) or Tax Lot 300 (0.11 acre) that required aggregation meeting the criteria of MCC 39.3070(A).

3.4. Resource Zoned Land (EFU and CFU) Aggregation Standard

MCC 39.3030(A)(1): A parcel or lot which was not contiguous to any other parcel or lot under the same ownership on February 20, 1990,

MCC 39.3070(A)(1): A parcel or lot which was not contiguous to any other parcel or lot under the same ownership on February 20, 1990

Staff: The parcels for this case, properties described as Tax Lots 200, 300, 400 and 500 that are adjacent to another one in this case are Tax Lot 200 and 400 as well as Tax Lot 300 and 500.

On February 20, 1990, Tax Lot 200 was owned John Hahn and Evelyn Hahn (Exhibit A.7 and A.16). On February 20, 1990, Tax Lot 400 was owned by Patricia Lynn Severson, Richard C. Hahn, and Allen L. Hahn (Exhibit A.8 and A.15). These two adjacent properties were in different ownership on February 20, 1990 and thus no aggregation required. For adjacent Tax Lots 200 and 400 there is no aggregation required.

On February 20, 1990, Tax Lot 300 was owned John Hahn and Evelyn Hahn (Exhibit A.7 and A.16). On February 20, 1990, Tax Lot 500 was owned by Patricia Lynn Severson, Richard C. Hahn, and Allen L. Hahn (Exhibit A.8 and A.15). These two adjacent properties were in different ownership on February 20, 1990 and thus no aggregation required. For adjacent Tax Lots 300 and 500 there is no aggregation required.

For the subject properties Tax Lots 300, 400 and 500 are under 19 acres. There were no other properties adjacent to these properties that were in the same ownership on February 20, 1990. There is no aggregation required for any of the four subject properties.

3.5 Previous Cases

Staff: In a previous land use decision, T2-2015-3993, the information demonstrating the BPA parcel is a separate "fee title" property and not an easement was not submitted for the case review. It appears that an assumption was made that the BPA power-line was on an easement, however, it is a separate property created through a takings case (Exhibit A.19 and Exhibit 22 Ex:2). The BPA property separates Tax Lot 200 from 300 and separates 400 from 500.

In addition, Tax Lot 200 from 300 were owned by John Hahn and Evelyn Hahn (Exhibit A.7 and A.16) and Tax Lots 400 and 500 were owned by Patricia Lynn Severson, Richard C. Hahn, and Allen L. Hahn (Exhibit A.8 and A.15) on February 20, 1990. The Hearings Officer in the appeal decision did not reconsider the evidence as it was not an issue presented by the applicant. The County did not consider the Lot of Record in land use case T2-2017-7000 and only cited the Lot of Record finding in decision in Case T2-2015-3993. As the County is making a new Lot of Record Verification, we have considered all evidence presented in a de novo and is making a different decision based on the evidence before us.

3.6 Lot of Record Verification

Staff: All four of the subject properties were lawfully created prior to 1958 thus there was no minimum parcel size or other zoning standards and the properties predated land division laws. The properties when created satisfied all applicable zoning laws and satisfied all applicable land division laws. Additionally there is was are no aggregation required. Each of the four properties are Lots of Record.

4. CONCLUSION

Based on the findings and other information provided above, the applicant has carried the burden necessary for the Lot of Record Verification for the four subject parcels in the CFU-2 an EFU zones. This approval is subject to the conditions of approval established in this report.

5. EXHIBITS

‘A’ Applicant’s Exhibits

‘B’ Staff Exhibits

All exhibits are available for review in Case File T2-2019-12047 at the Land Use Planning office.

Exhibit #	# of Pages	Description of Exhibit	Date Received/ Submitted
A.1	1	Application Form	6/04/19
A.2	1	Site Plan showing the subject properties	6/04/19
A.3	1	Copy of a deed recorded at County Records in 1947 (exact date illegible) in Book 1165 on Pages 408-409 Conrad Hahn and Elizabeth Hahn to John Hahn and Evelyn Hahn	6/04/19
A.4	2	Copy of Memorandum of Trust recorded at County Records on March 10, 1994 as Instrument # 94 038355	6/04/19
A.5	2	Copy of a Bargain and Sale Deed recorded at County Records on March 10, 1994 as Instrument # 94 038356 John Hahn and Evelyn Hahn Grantor, conveys to John Hahn and Evelyn Hahn Trustee of Hahn Family Revocable Living Trust, Grantee	6/04/19
A.6	10	Copy of a Land Sale Contract recorded at County Records on March 17, 2000 as Instrument # 2000-836922, Buyers: David F. Blumenkron and Katherine M Blumenkron, - Sellers: Evelyn Hahn Trustee of Hahn Family Revocable Living Trust	6/04/19
A.7	1	Certificate of Death dated April 24, 1998 for John Hahn	6/04/19
A.8	2	Copy of Bargain and Sale Deed recorded at County Records on June 15, 2001 as Instrument # 2001-090121, Patricia Lynn Severson, Richard C. Hahn, and Allen L. Hahn, Grantors, convey to David F. Blumenkron and Katherine M Blumenkron Grantees	6/04/19
A.9	3	Copy of a Statutory Special Warranty Deed in Fulfillment of Contract recorded at County Records on April 19, 2004 as Instrument # 2004-065527, Evelyn Hahn Trustee of Hahn Family Revocable Living Trust, Grantor conveyed to David F. Blumenkron and Katherine M Blumenkron Grantees	6/04/19

A.10	2	Copy of Statutory Quitclaim Deed recorded at County Records on April 19, 2004 as Instrument # 2004-065528, Katherine M Blumenkron Grantor to David F. Blumenkron, Grantee	6/04/19
A.11	9	Copy of Statutory Bargain and Sale Deed recorded at County Records on September 29, 2014 as Instrument # 2014-096445, David F. Blumenkron, Grantor to David F. Blumenkron and Katherine M Blumenkron Grantees	7/09/19
A.12	2	Copy of County Assessment, Cartographic Unit, Parcel Record for Tax Lot 200 (1N1W16B) with legal description on back.	7/09/19
A.13	2	Copy of County Assessment, Cartographic Unit, Parcel Record for Tax Lot 300 (1N1W16B) with legal description on back.	7/09/19
A.14	2	Copy of County Assessment, Cartographic Unit, Parcel Record for Tax Lot 400 (1N1W16B) with Quit Claim Deed recorded at County Records in June 16, 1981 on Book 1531, Page 171, (for correction) Clarence Hahn and Lillian Hahn, Grantors to Patricia Lynn Severson, Richard C. Hahn, and Allen L. Hahn, Grantees on the back.	7/09/19
A.15	2	Copy of County Assessment, Cartographic Unit, Parcel Record for Tax Lot 500 (1N1W16B) Quit Claim Deed recorded at County Records in June 11, 1981 on Book 1531, Page 171, (for correction) Clarence Hahn and Lillian Hahn, Grantors to Patricia Lynn Severson, Richard C. Hahn, and Allen L. Hahn, Grantees on the back.	7/09/19
A.16	1	Copy of County deed recorded on July 10, 1944 in Book 850 on Pages 300 and 301, Conrad Hahn and Elizabeth Hahn to John Hahn and Evelyn Hahn.	7/09/19
A.17	1	Copy of County deed recorded on July 10, 1944 in Book 850 on Pages 298 and 299, Conrad Hahn and Elizabeth Hahn to John Hahn and Evelyn Hahn.	7/09/19
A.18	1	Bonneville Power Administration Powerline Map	8/06/19
A.19	9	Copy of District Court of the United States, Declaration of Takings dated March 11, 1939 for the Bonneville Project	8/06/19
A.20	4	Transmission Line Easement deed Clarence Hahn and Lillian Hahn, Grantor to United State of America recorded at County Records on January 21, 1952 in Book 1517 on Pages 563-565	8/06/19
A.21	2	Easement Deed, United State of America, Department of Interior, Bonneville Power Administration grantor long list of grantees (Hahns are not included, Anna Noffke owned the property when the takings case o) for a road easement recorded at County Records on May 29, 1940 in Book 551 on Pages 202-203.	8/06/19

A.22	28	<p>Letter dated August 9, 2019 from Dean N. Alterman, Alterman Law Group PC with site map detailing historic ownership and nine additional Exhibits as follows:</p> <p>Ex. 1: Metzker's Atlas of Multnomah County, 1927</p> <p>Ex. 2: Declaration of Taking, 1938</p> <p>Ex. 3: Metzker's Atlas of Multnomah County, 1940s</p> <p>Ex. 4: Conrad and Elizabeth Hahn deed to Clarence and Lillian Hahn</p> <p>Ex. 5: Conrad and Elizabeth Hahn deed to John and Evelyn Hahn</p> <p>Ex. 6 Multnomah County tax map, 1950s</p> <p>Ex. 7: Clarence and Lillian Hahn deed to their children</p> <p>Ex. 8: Evelyn Hahn to Blumenkron contract amendment, 2000 (covers Tax Lots 200 and 300)</p> <p>Ex. 9: Hahn children to Blumenkron deed, 2001 (covers Tax Lots 400 and 500)</p>	8/12/19
'B'	#	Staff Exhibits	Date
B.1	8	Multnomah County Assessment and Taxation, property information sheets for subject properties	NA
B.2	1	Multnomah County Assessment and Taxation, tax lot map for subject properties	NA