

NOTICE OF DECISION

Case File: T2-2019-12673

Permit: Property Line Adjustment

Applicant: Grant Eisele **Owners:** Maridean Eisele

Location: **Tract #1:** 33440 SE Carpenter Lane, Gresham **Map #** 1S4E21D - 00700
Alternate Account #R994210330 **Property ID #**R342488

Tract #2: 33410 SE Carpenter Lane, Gresham **Map #** 1S4E21D – 00800
Alternate Account #R994210320 **Property ID #**R342487

Base Zone: Multiple Use Agriculture – 20 (MUA-20)

Overlays: N/A

Proposal Summary: Applicant is proposing a Property Line Adjustment to transfer four (4) acres from Tract #1 to Tract #2. After completion of the property line adjustment, Tract #1 will be 1 acre. Tract #2 will be 9 acres.

Decision: **Approved with Conditions**

This decision is final at the close of the appeal period, unless appealed. The deadline for filing an appeal is Thursday, October 22, 2020 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 can be reviewed by contacting the case planner listed below. Copies of all documents are available at the rate of \$0.35/per page. For further information, contact case planner Lisa Estrin at 503-988-0167 or via email at lisa.m.estrin@multco.us

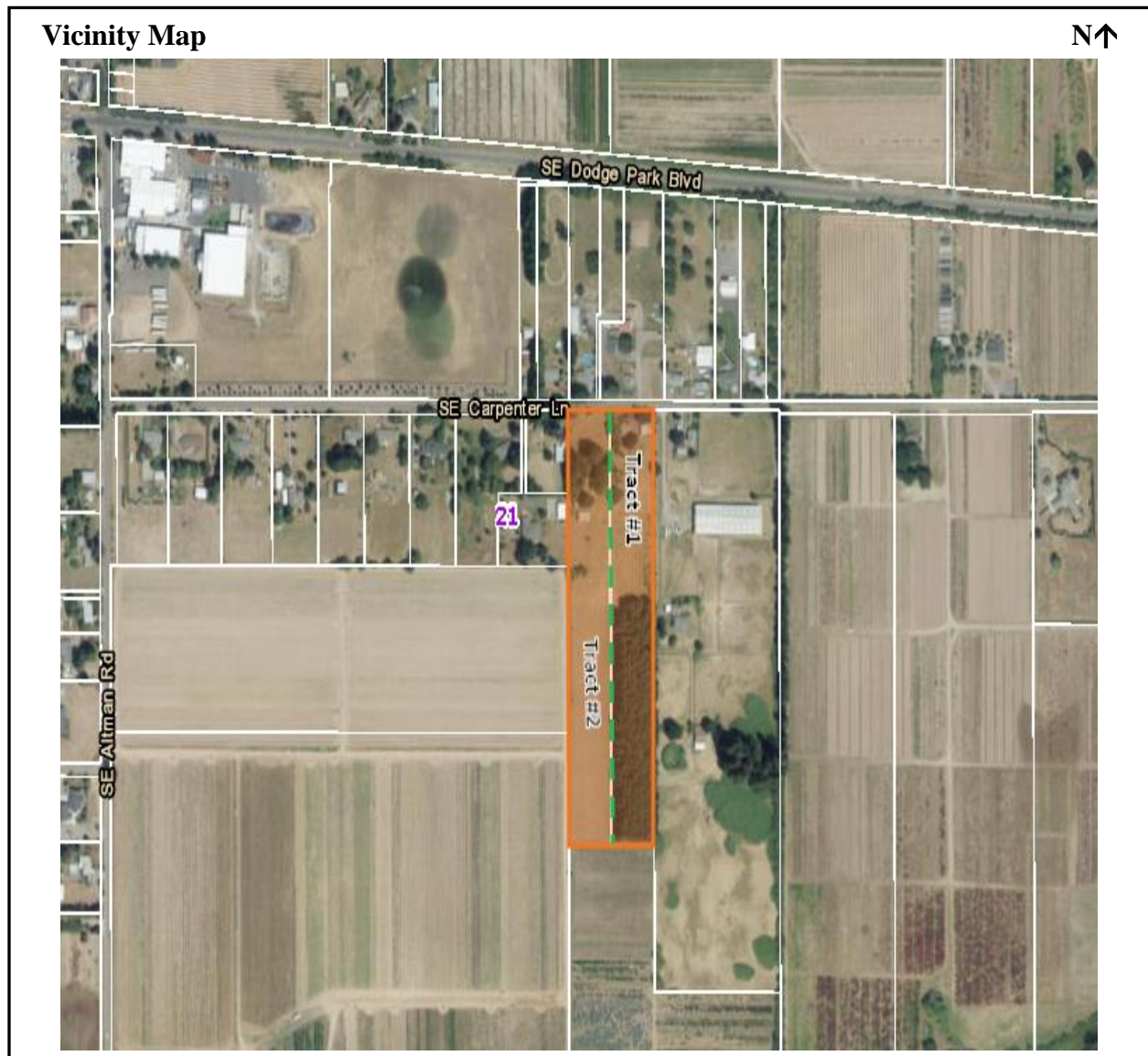
Opportunity to Appeal: An appeal requires a \$250.00 fee and must state the specific legal grounds on which it is based. To obtain appeal forms or information on the procedure, contact the Land Use Planning office at 1600 SE 190th Avenue (Phone: 503-988-3043). This decision is not appealable to the Land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

Issued by: _____

By: Lisa Estrin, Senior Planner

For: Carol Johnson, AICP
Planning Director

Date: Thursday, October 8, 2020



Applicable Approval Criteria:

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

Multnomah County Code (MCC): General Provisions: MCC 39.1515 Code Compliance and Applications, MCC 39.3005 Lot of Record – Generally, MCC 39.3080 Lot of Record – MUA-20;

Multiple Use Agriculture-20: MCC 39.4315 Review Uses, (C) Property Line Adjustment, MCC 39.4325(C) & (D) Dimensional Requirements and Development Standards, MCC 39.4330(B) Property Line Adjustments; and

Property Line Adjustments: MCC 39.9300 Property Line Adjustment.

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

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. 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.

1. Permit Expiration – This land use permit shall expire as follows:

- a. For a use or development that does not include a structure shall expire two (2) 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. [MCC 39.1185(A)]
 - i. For the purposes of 1.a, expiration of an approval means that a new application is required for uses that are not established during the approval period. For property line adjustments, “established” means the final deed or plat has been recorded with the county recorder.

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 request for a permit extension must be submitted prior to the expiration of the approval period.

2. No new parcel shall be created through the property line adjustment process [MCC 39.9300]
3. Prior to land use sign off of the property line adjustment, the property owner or their representative shall obtain land use approval for all non-permitted buildings on Tract #1 (coop, two sheds and any other building on the site without land use approval). They shall provide a site plan that shows the proposed location for the non-permitted buildings and that they meet the Yard requirements of MCC 39.4325(C). Any building not meeting the yard requirements shall be relocated so it complies or removed from the property.
4. **Prior to recording the deeds and new legal descriptions**, the property owner or their representative shall:
 - a. Pay a fee and submit copies of the deeds to be recorded, metes and bounds legal descriptions to Multnomah County Land Use Planning for verification that the adjusted properties conform to the Tentative Plan Map (Exhibit A.8).
 - b. The new legal descriptions shall be in compliance with the applicant’s proposal. Tract #1 shall contain 1 acre. Tract #2 shall contain 9 acres.
 - c. Each submitted metes and bounds legal description to be reviewed shall have an area on the page below the legal description that is a minimum of two inches by five inches to accommodate the County’s Land Use Planning approval stamp.
 - d. Multnomah County Land Use Planning must approve these documents prior to their recording. If the submitted documents conform to the approved Tentative Plan Map and zoning requirements staff will approve the draft deeds and new legal descriptions [MCC 39.9300]
5. **At the time of recording**, the property owner or their representative shall record the deeds with the stamped metes and bounds legal description attached as an exhibit in this order:

- a. The deed with the legal description that describes the area of land being transferred from Tract #1 to Tract #2.
- b. The deed and legal description describing Tract #1 as 1 acre.
- c. The deed and legal description describing Tract #2 as 9 acres.

The recordation of the deeds in this order will ensure that no new unauthorized unit of land is created [MCC 39.9300(A)]. These new deeds and legal descriptions shall be recorded within two years of this decision becoming final as outlined by Condition No. 1 above.

6. The transferred four acres of land shall not exist as a separate unit of land or tax lot after the property line adjustment is completed. No additional lot or parcel shall be created through this property line adjustment process. If this occurs, it shall be a violation of this approval and no further land use permits shall be approved on Tract #1 or Tract #2 until the non-permitted land division is corrected. [MCC 39.9300(A) & MCC 39.9020(A) & (B)]
7. Within 30 days of recording the required deeds & new legal descriptions (Condition No. 5) and prior to authorization of any building permits on the new Tract #2, the property owner or their representative shall submit a copy of the recorded deeds for the new Tract #1 and new Tract #2 to Land Use Planning [MCC 39.9300(D)]

Note: Submit the draft deeds and draft metes and bounds legal descriptions to case planner, Lisa Estrin at lisa.m.estrin@multco.us.

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

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

Findings of Fact

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

1.0 Project Description:

Staff: The applicant requests a property line adjustment to transfer four (4) acres from Tract #1 (33440 SE Carpenter Lane) to Tract #2 (33410 SE Carpenter Lane). After completion of the property line adjustment, Tract #1 will be 1 acre. Tract #2 will be 9 acres.

2.0 Property Description and History:

Staff: The subject properties are located in unincorporated east Multnomah County in the Multiple Use Agriculture-20 (MUA-20) zone. Both properties are located outside of the urban growth boundary in the rural area known as West of Sandy River.

Assessment and Taxation records show that Tract #1 is currently occupied with a single family dwelling established in 1936, a 48 sq. ft. shed, a 120 sq. ft. shed, 160 sq. ft. garage and a 960 sq. ft. farm building. The Tentative Plan Map shows these buildings locations (Exhibit A.8).

Planning staff found the following permits for Tract #1:

Permit / Date	Proposed Work
Land Use Permit / 6-28-1999	Addition of Mechanical Room to SFD for HVAC Unit
Bldg Permit 34484 / 9-1-1964	12-ft by 32-ft addition to SFD (Expired)
Farm Equipment Bldg / 11-24-1976	Agricultural Building

Tract #2 is currently vacant. The old house and outbuildings have been removed from the property in preparation of future development.

3.0 Public Comment:

Staff mailed a notice of application and invitation to comment on the proposed application to the required parties per MCC 39.1105 as Exhibited in C.4.

Staff: No comments were received during the 14 day comment period.

4.0 Code Compliance:

MCC 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.

*** * ***

Staff: Tract #1 has some small outbuildings that did not obtain land use approval before their placement/construction. These buildings will be able to be permitted or reviewed by Land Use Planning without further land use applications. A condition of approval has been included requiring their authorization before Land Use Planning will allow completion of the property line adjustment. *Through a condition, Tract #1 will be brought into compliance.*

Tract #2 is currently vacant (Exhibit A.9). Planning staff is not aware of any existing issues on the site.

5.0 Lot of Record Criteria:

5.1 MCC 39.3005- LOT OF RECORD – GENERALLY.

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

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

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

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

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

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

1. Partitioning of the Lot of Record along the boundary shall require review and approval under the provisions of the land division part of this Chapter, but not be subject to the minimum area and access requirements of this district.

2. An “acknowledged unincorporated community boundary” is one that has been established pursuant to OAR Chapter 660, Division 22.

Staff: Tract #2 was found to be a Lot of Record in February 2017 in T1-2017-6855 (Exhibit B.9). It was established in its current configuration in 1948 prior to the implementation of zoning or partition regulations. *Tract #2 is a Lot of Record in its current configuration.*

Tract #1 was established with the recording of a deed with a new legal description in Book 1295, Book 114 on September 30, 1948 (Exhibit B.8). The County did not have zoning or partition regulations at that time. *Tract #1 is a Lot of Record in its current configuration.*

5.2 **MCC 39.3080 LOT OF RECORD – MULTIPLE USE AGRICULTURE-20 (MUA-20).**

(A) In addition to the standards in MCC 39.3005, for the purposes of the MUA-20 district the significant dates and ordinances for verifying zoning compliance may include, but are not limited to, the following:

- (1) July 10, 1958, SR zone applied;
- (2) July 10, 1958, F-2 zone applied;
- (3) December 9, 1975, F-2 minimum lot size increased, Ord. 115 & 116;
- (4) October 6, 1977, MUA-20 zone applied, Ord. 148 & 149;
- (5) October 13, 1983, zone change from EFU to MUA-20 for some properties, Ord. 395;
- (6) May 16, 2002, Lot of Record section amended, Ord. 982, reenacted by Ord. 997.

(B) A Lot of Record which has less than the minimum lot size for new parcels or lots, less than the front lot line minimums required, or which does not meet the access requirement of MCC 39.4345, may be occupied by any allowed use, review use or conditional use when in compliance with the other requirements of this district.

(C) Except as otherwise provided by MCC 39.4330, 39.4335, and 39.5300 through 39.5350, no sale or conveyance of any portion of a lot other than for a public purpose shall leave a structure on the remainder of the lot with less than minimum lot or yard requirements or result in a lot with less than the area or width requirements of this district.

(D) The following shall not be deemed to be 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) An area of land created by court decree.

Staff: (A) is for informational purposes only. Tract #1 and Tract #2 are each a Lot of Record and subject to (B) above. The applicant is proposing a property line adjustment pursuant to MCC 39.4330 to transfer land from Tract #1 to Tract #2. Tract #1 and Tract #2 are not individual areas of land described as a tax lot solely for assessment and taxation purposes, neither area areas of land created by the foreclosure of a security interest or court decree. Tract #1 and Tract #2 were both created as separate legal units of land prior to the implementation of zoning or land division regulations in Multnomah County. *These criteria are met.*

6.0 Multiple Use Agriculture – 20 Criteria:

6.1 MCC 39.4315 REVIEW USES.

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

(C) Property Line Adjustment pursuant to the provisions of MCC 39.4330.

Staff: The applicant has requested approval of a Property Line Adjustment to transfer land from Tract #1 to Tract #2. The proposed application has demonstrated compliance with the criteria listed MCC 39.4330 as discussed below in Section 7. *Criterion met.*

6.2 MCC 39.4325 DIMENSIONAL REQUIREMENTS AND DEVELOPMENT STANDARDS.

All development proposed in this base zone shall comply with the applicable provisions of this section.

* * *

(C) Minimum Yard Dimensions – Feet

Front	Side	Street Side	Rear
30	10	30	30

* * *

Minimum Front Lot Line Length – 50 feet.

(D) The minimum yard requirement shall be increased where the yard 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 yard requirements in consultation with the Road Official.

Staff: Tract #2 is currently vacant and has a front lot line length of 165 feet (Exhibit A.8). The dwelling on Tract #1 is approximately 36 feet from the front lot line and approximately 15 feet from the western side property line (Exhibit A.8). The distance between the house and the eastern side lot line is approximately 92 feet. After the property line adjustment, the rear property line will be 163 feet from the rear of the dwelling. The existing ag building is 34 feet from the front lot line to the north, 24 feet to the eastern side property line, 119 feet from the western side property line and approximately 163 feet to the proposed rear property line. There are other small sheds on the property such as a chicken coop and shed. The

applicant has indicated that these small buildings will either be removed from the property or moved to meet the minimum yards(Exhibit A.8). A condition of approval has been included requiring the property owner to obtain land use approval for any non-permitted building/structure on the site and demonstrate compliance with the minimum yard requirements at that time. *Through a condition, these criteria will be met.*

7.0 Property Line Adjustment Criteria

7.1 MCC 39.4330 LOTS OF EXCEPTION AND PROPERTY LINE ADJUSTMENTS.

(B) Property Line Adjustment

Pursuant to the applicable provisions in MCC 39.9300, the approval authority may grant a property line adjustment between two contiguous Lots of Record upon finding that the approval criteria in (1) and (2) are met. The intent of the criteria is to ensure that the property line adjustment will not increase the potential number of lots or parcels in any subsequent land division proposal over that which could occur on the entirety of the combined lot areas before the adjustment.

Staff: Tract #1 and Tract #2 were found to be separate Lots of Record in Section 5.0 above. Based on Section 7.2 and 7.3 the approval criteria in (1) and (2) have been satisfied. The planning director has approved the property line adjustment based on meeting the applicable criteria. *Criterion met.*

7.2 (1) The following dimensional and access requirements are met:

- (a) The relocated common property line is in compliance with all minimum yard and minimum front lot line length requirements;**
- (b) If the properties abut a street, the required access requirements of MCC 39.4345 are met after the relocation of the common property line; and**

Staff: The minimum front lot line length in the MUA-20 zone is 50 feet. After the property line adjustment, Tract #1 will have a 165-ft front lot line adjacent to Carpenter Lane (a public street). Tract #2 will also have a 165-ft front lot line adjacent to Carpenter Lane. Tract #2 is vacant. Tract #1 is occupied by a single family dwelling and various outbuildings. The Tentative Plan Map (Exhibit A.8) shows that the dwelling and ag building meets the minimum yard dimensions as discussed in Section 6.2 above. A condition of approval has been included requiring the property owner to demonstrate that the unpermitted buildings meet the minimum yard requirements prior to Land Use Planning approving the new legal descriptions or remove the building from the site. *Criteria met.*

7.3 (2) One of the following situations occurs:

- (a) The lot or parcel proposed to be reduced in area is larger than 20 acres prior to the adjustment and remains 20 acres or larger in area after the adjustment, or**
- (b) The lot or parcel proposed to be enlarged in area is less than 40 acres in area prior to the adjustment and remains less than 40 acres in area after the adjustment.**

Staff: Both Tract #1 and Tract #2 each are 5 acres currently in size including the half street right-of-way known as Carpenter Lane (Exhibit B.1 & B.2). After the property line

adjustment Tract #1 will be reduced in size to 1 acre and Tract #2 will be increased to 9 acres per the Tentative Plan Map (Exhibit A.8). *Criteria met.*

7.4 MCC 39.9300 PROPERTY LINE ADJUSTMENT.

A property line adjustment is the relocation of a common property line between two abutting properties. The Planning Director may approve a property line adjustment based upon findings that the following standards are met:

(A) No additional lot or parcel shall be created from any parcel by the property line adjustment; and

Staff: Tract #1 and Tract #2 share a common side property line (Exhibit A.8). The shared property line will be adjusted to reduce Tract #1 in size. Both Tract #1 and Tract #2 were found to be separate Lots of Record and hence are separate parcels in the MUA-20 zone. After the completion of the property line adjustment there will continue to be two legal parcels. A condition of approval has been included requiring the property owner to complete the property line adjustment without creating a new parcel. *As conditioned, these criteria will be met.*

7.5 (B) Owners of both properties involved in the property line adjustment shall consent in writing to the proposed adjustment and record a conveyance or conveyances conforming to the approved property line adjustment; and

Staff: Both Tract #1 and Tract #2 are owned by Maridean Eisele. She has consented in writing to this application (Exhibit A.1). She will need to sign a deed with new legal descriptions after the approval of this application and record those deeds in order to complete the property line adjustment. *Through a condition of approval, this criterion will be met.*

7.6 (C) The adjusted properties shall meet the approval criteria for a property line adjustment as given in the base zone; and

Staff: The proposed property line adjustment has met the approval criteria for the MUA-20 zone as discussed in Sections 7.1 through 7.3. *Criterion met.*

7.7 (D) The procedure and forms shall be submitted for obtaining approval of a property line adjustment as provided for by the Planning Director.

Staff: The applicant has submitted the forms required by the Planning Director and will follow the procedures necessary to complete the property line adjustment as conditioned. *Through a condition, criterion met.*

8.0 Conclusion:

Based on the findings and other information provided above, the applicant has carried the burden necessary for a Property Line Adjustment between 33440 and 33410 SE Carpenter Lane in the MUA-20 zone. This approval is subject to the conditions of approval established in this report.

9.0 Exhibits:

‘A’ Applicant’s Exhibits

‘B’ Staff Exhibits

‘C’ Procedural Exhibits

Exhibits with a “*” after the exhibit # have been included as part of the mailed decision. Those exhibits have been reduced to a size of 8.5” x 11” for mailing purposes. All other exhibits are

available for review in Case File T2-2019-12673 by contacting the case planner, Lisa Estrin via email at lisa.m.estrin@multco.us or at 503-988-0167.

Exhibit #	# of Pages	Description of Exhibit	Date Received / Submitted
A.1	1	Property Line Adjustment application	11.13.2019
A.2	3	Statutory Warranty Deed 2017-066799	11.13.2019
A.3	2	Warranty Deed – Statutory Form 2000-087659	11.13.2019
A.4	1	Property Line Adjustment Exhibit	11.13.2019
A.5	1	Tentative Plan Map	5.8.2020
A.6	1	33410 SE Carpenter Ln As-Built for Septic	6.15.2020
A.7	4	Septic Paper Work for 33410 SE Carpenter Ln	6.15.2020
A.8*	1	Tentative Plan Map - Revised	7.1.2020
A.9	1	Email Regarding Demolition of Structures on Tract #2	10.01.2020
‘B’	#	Staff Exhibits	Date
B.1	2	Assessment and Taxation Property Information for 33440 SE Carpenter Ln (1S4E21D – 00700 (R994210330))	11.13.2019
B.2	2	Assessment and Taxation Property Information for 33410 SE Carpenter Ln (1S4E21D – 00800 (R994210320))	11.13.2019
B.3	1	1999 Zoning Map	12.12.2019
B.4	3	Building Cards for R993210320 (left property)	12.12.2019
B.5	4	Building Cards for R993210330 (Tract #1)	12.12.2019
B.6	2	Farm Building Permit for Tax Lot R993210330	12.12.2019
B.7	1	Survey 48464 dated June 1985	12.12.2019
B.8	3	Lot of Record Information for Tract #1	10.2.2020
B.9	4	T1-2017-6855 Lot of Record Materials	10.02.2020
B.10	1	Tax Lot Map 1S4E21D	10.02.2020
B.11	6	LUP Addition Approval dated 6.28.1999 for Tract #1	10.02.2020
B.12	4	Demo Permit for Tract #2 dated 6.20.2019	10.02.2020
‘C’	#	Administration & Procedures	Date
C.1	4	Incomplete letter	12.13.2019
C.2	3	Opportunity to Comment and Mailing List	7.28.2020
C.3	12	Administrative Decision	10.08.2020