

Applicable Approval Criteria:

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

Multnomah County Code (MCC): MCC 39.1515 Code Compliance and Applications, MCC 39.2000 Definitions

Lot of Record: MCC 39.3005 Lot of Record – Generally, MCC 39.3070 Lot of Record - EFU

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

Chapter 39 - Zoning Code

Notice to Mortgagee, Lien Holder, Vendor, or Seller:
ORS Chapter 215 requires that if you receive this notice it must be promptly forwarded to the purchaser.

Findings of Fact

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

1.0	Project Description:
<p>Staff: The applicant requests a Lot of Record Verification for the property identified as 7519 SE Hogan Rd, Gresham (the “subject property). The application does not propose any new development.</p> <p>Through the Lot of Record Verification process, the County reviews the creation or reconfiguration of each parcel, lot, or unit of land involved in the request. The County then verifies that the creation or reconfiguration of the parcel, lot, or unit of land satisfied all applicable zoning laws and all applicable land division laws in effect on the date of its creation or reconfiguration. In the EFU zone, the County also considers adjacent ownership on February 20, 1990 in determining whether a parcel, lot or unit of land is a Lot of Record on its own. If the parcel, lot or unit of land met all applicable zoning laws, applicable land division laws and meets the aggregation requirements, it may be determined to be a Lot of Record.</p>	
2.0	Property Description and History:
<p>Staff: The subject property is located in unincorporated east Multnomah County in the area known as the West of Sandy River (WSR). The property is zoned Exclusive Farm Use (EFU) and is located within the Metro’s Urban Growth Boundary (UGB). It is very near the City of Gresham. The subject property is occupied by a single family dwelling with an attached garage that was constructed in the year, 1960. The property also contains a small shed located behind the dwelling.</p>	
3.0	Public Comments:
<p>Staff: Staff mailed a notice of application and invitation to comment on the proposed application to the required parties per MCC 39.1105 as Exhibited in C.2. Staff did not receive any written public comments during the 14-day comment period.</p>	
4.0	Code Compliance and Applications Criteria:
<p>MCC 39.1515 CODE COMPLIANCE AND APPLICATIONS.</p> <p>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.</p> <p>(A) A permit or other approval, including building permit applications, may be authorized if:</p> <ul style="list-style-type: none">(1) It results in the property coming into full compliance with all applicable provisions of the Multnomah County Zoning Code. This includes sequencing of permits or other approvals as part of a voluntary compliance agreement; or(2) It is necessary to protect public safety; or(3) It is for work related to and within a valid easement over, on or under an affected property.	

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

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

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

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

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

5.0	Lot of Record Criteria:
5.01	<p>MCC 39.3005 - LOT OF RECORD – GENERALLY.</p> <p>(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.</p> <p>(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.</p> <p>(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.</p>

(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: To qualify as a Lot of Record, the subject property, when created or reconfigured, must meet (B) of this section and meet the Lot of Record standards set forth in the EFU zoning district. More specifically, section (B) above requires demonstration that the subject property (a) satisfied all applicable zoning laws and (b) satisfied all applicable land division laws. The Lot or Record standards set forth in the EFU district establish additional requirements unique to the district, which are evaluated in sections 5.02 through 5.06 of this decision. The findings below analyzes whether the Lot of Record provisions in section (B) have been met.

The applicant provided five deeds (Exhibit A.11 through A.15) to support the Lot of Record request. They are as follows:

Table 1

Exhibit	Area Described	Year	Grantor	Grantee
A.13	1S3E22D -00200 (westerly 460 feet) combined with 1S3E22D – 00100 (3 acre parcel)	5.20.1959	Eva M Biornstad	James N Biornstad & Marquita A. Biornstad
A.15	1S3E22D -00100	12.14.1959	James N Biornstad & Marquita A Biornstad	William & Helen Schneider
A.11	1S3E22D -00100	3.28.1990	James N Biornstad & Marquita A Biornstad	Marquita A Biornstad
A.12	1S3E22D -00100	3.28.1990	Marquita Biornstad	Marquita A. Biornstad Trust
A.14	1S3E22D -00100	1.24.1991	James N Biornstad & Marquita A Biornstad	Marquita A Biornstad

B.9	1S3E22D -00200	4.18.2000	James Biornstad Trust	Jack and Deanna Bigeij Trusts
B.25	1S3E22D -00200	12.05.2006	Jack and Deanna Bigeij Trusts	East Side Gresham Properties LLC

The area contained in tax lot 1S3E22D-00100 was first described in the lot's current configuration in December 1959. On July 18, 1958, the County adopted zoning for the area. The subject property and the property to the north were zoned Suburban Residential from July, 1958 to October 5, 1977. The Suburban Residential (SR) zone had a variable minimum lot size with three potential minimum lot sizes depending on the available services in the area. The subject property is 0.44 of an acre (19,166.4 sq. ft.). The property is 110 feet wide by 174.98 feet long (Exhibits A. 14 and B.5). The largest SR lot size is 40,000 sq. ft. The intermediary lot size for the SR is 20,000 sq. ft. The smallest is 10,000 sq. ft. To establish a lot that is less than 20,000 sq. ft., the property would need to have the following available services: a public water supply, approved public sewer or when conditions permit, a State Code cesspool, approved public access, approved plan for the subdivision of the total tract and other established community facilities are available to serve the area and similar lot sizes exist in the vicinity.

The applicant has indicated that the dwelling on the subject property is served by a shared well that resides on tax lot 1S3E22D – 0200 and has an on-site sewage disposal system (Exhibit A.16). The December 1959 Warranty Deed (Exhibit A.15) references an easement for the installation and maintenance of a water pipe from the subject property to tax lot 1S3E22D – 0200 immediately to the north. Survey 14517 shows the location of the water to the pump house (Exhibit B.3) A well that serves two properties is not currently considered a public water supply by the State of Oregon. An on-site sewage disposal system could have been viewed in 1959 as a type of cesspool. The property fronts onto SE Hogan Road. Planning staff has not located the building permit that authorized the dwelling's construction in 1959 or 1960. As the dwelling was constructed during the same time period, planning staff assumes that the subject property met the applicable zoning regulations of the SR zoning at the time of its division from tax lot R993220080 (aka 1S3E22-00200).

The deed record submitted by the applicant has a couple of peculiarities in it. The first is Exhibit A.15 and the second is Exhibit A.14. The Warranty Deed (Exhibit A.15) transfers the property from the Biornstads to the Schneiders in December 1959. There is no deed in the record transferring the property back to the Biornstads, but there are later deeds (Exhibits A.11 & A.12) that show the Biornstads own the property. Planning staff contacted the applicant seeking the missing deed. The applicant responded (Exhibit A.17) that the Biornstads have owned the property since 1922 or 1923 and it may be the Schneiders were the construction company that built the house in 1959. Based on the evidence in the record, the Biornstads have owned the property continuously since around the 1960s after the house was constructed.

The second peculiarity is the Bargain and Sale Deed recorded on January 24, 1991 (Exhibit A.14). Exhibit A.14 transfers the property from James Norman and Marquita Adell Biornstad to Marquita Adell Biornstad. The deed in Exhibit A.11 recorded on March 28, 1990 appears to have already accomplished this task. The Bargain and Sale Deed (Exhibit A.14) states that it is being "Recorded to replace identical deed recorded in Book 2287 at page 2085 as instrument No. 025335 which omitted date acknowledged in notary."

	<p>In 1959, the process to divide a property required a deed or sales contract dated and signed by the parties to the transaction. The document needed to be in recordable form or recorded with the County Recorder prior to October 19, 1978. As evidenced by the 1959 Warranty Deed (Exhibit A.15), the applicable land division laws were satisfied.</p> <p><i>Based upon the above, the subject property satisfied all applicable zoning and land division laws when it was created/reconfigured in 1959.</i></p>
<p>5.02</p>	<p>(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.</p> <p>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.</p> <p>2. An “acknowledged unincorporated community boundary” is one that has been established pursuant to OAR Chapter 660, Division 22.</p> <p>Staff: The subject property is currently zoned Exclusive Farm Use. It is not intersected by different zone boundaries. <i>The provisions in (c) above are not applicable to this application or property.</i></p>
<p>5.03</p>	<p>MCC 39.3070 LOT OF RECORD – EXCLUSIVE FARM USE (EFU).</p> <p>(A) In addition to the standards in MCC 39.3005, for the purposes of the EFU district a Lot of Record is either:</p> <p>(1) A parcel or lot which was not contiguous to any other parcel or lot under the same ownership on February 20, 1990, or</p> <p>(2) A group of contiguous parcels or lots:</p> <p>(a) Which were held under the same ownership on February 20, 1990; and</p> <p>(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.</p> <p>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.</p> <p>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.</p> <p>3. Three examples of how parcels and lots shall be aggregated are shown in Figure 1 below with the solid thick line outlining individual Lots of Record:</p>

* * *

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

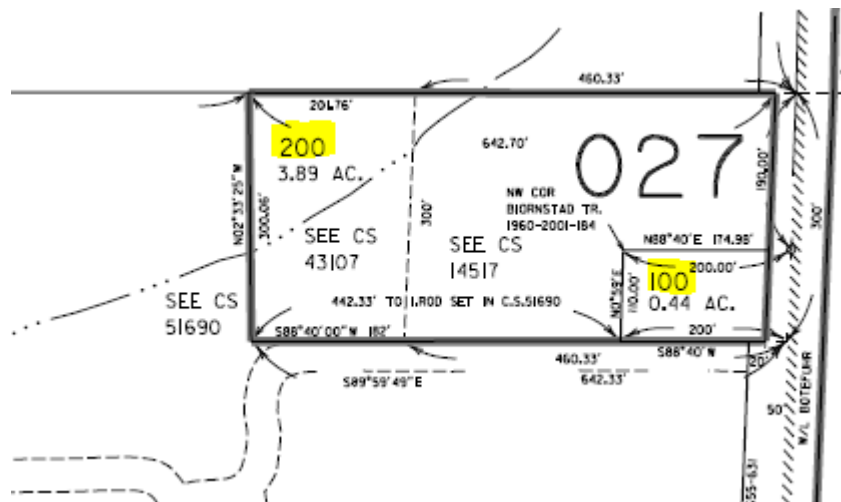
(3) A parcel or lot lawfully created by a partition or a subdivision plat after February 20, 1990.

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

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

Staff: The subject property is 0.44 of an acre (19,247.8 sq. ft.). As it is under 19 acres in size, planning staff reviewed the deed records provided (Exhibits A.11 through A.15, B.8 and B.9) and Assessment and Taxation records (Exhibit B.7) to determine if any adjacent properties were held under the same ownership on February 20, 1990. MCC 39.4210 Definitions specifies that **“Same Ownership refers to greater than possessory interests held by the same person or persons, spouse, minor age child, same partnership, corporation, trust or other entity, separately, in tenancy in common or by other form of title...”** As stated in the March 28, 1990 deed James and Marquita Biornstad were husband and wife (Exhibits A.11 & A.14). Based upon the evidence and the definition of Same Ownership, James N & Marquita Biornstad owned both tax lots 1S3E22D-00100 (subject property) and 1S3E22D-00200 (property to the north) on February 20, 1990. They were both zoned and continue to be zoned Exclusive Farm Use (EFU) (Exhibits B.14, B.17 & B.18). The area of land known as 1S3E22D – 00200 was 2.555 acres in size on February 20, 1990. It is currently 3.875 acres after completion of a Lot Line Adjustment (Exhibit B.10) in April 1990. When considered together tax lots 1S3E22D – 00100 and 1S3E22D – 00200 are a total of 4.315 acres.

Portion of Tax Map 1S3E22D



The Lot Line Adjustment (LE 1-90) was completed by recording a new metes and bounds description (Exhibits B.8 and B.9). No partition or subdivision plat was used or recorded to complete the Lot Line Adjustment. No Lot of Exception was approved. No conditional use permit or creation of a new lot for a conditional use permit was approved to transfer 1.32 acres of land from an adjoining property (Exhibit B.15) to the unit of land known as tax lot 1S3E22D – 00200.

MCC 39.3070(A)(2) states “**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.

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.”

The exception under MCC 39.3070(A)(2)(b) allows contiguous units of land under the same ownership to be a Lot of Record even if it does not add up to 19 acres in area. However, if the units of land are transferred into separate ownership after February 20, 1990, none is eligible to be deemed a Lot of Record.

Presently, tax lot 1S3E22D -00100 is owned by the Marquita Biornstad Trust (Exhibits A.12, A.14 and B.1). On April 18, 2000 James Biornstad transferred tax lot 1S3E22D – 00200 to Jack and Deanna Bigej Trusts (Exhibit B.9), who in turn transferred the property to East Side Gresham Properties LLC on December 5, 2006 (Exhibit B.25).

As both tax lots 1S3E22D – 00100 and 1S3E22D – 00200 are no longer in the same ownership, the aggregation requirements listed in MCC 3070(A)(2) are not met and tax lot 1S3E22D – 00100 does not qualify as a Lot of Record.

The area of land known as 1S3E22D – 00100 is not a Lot of Record.

5.04

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

(1) July 10, 1958, F-2 zone applied;

(2) December 9, 1975, RL-C zone applied, F-2 minimum lot size increased, Ord. 115 & 116;

(3) October 6, 1977, MUA-20 and EFU-38 zones applied, Ord. 148 & 149;

(4) August 14, 1980, zone change from MUA-20 to EFU-38 for some properties, zone change from EFU-38 to EFU-76 for some properties. Ord. 236 & 238;

(5) February 20, 1990, lot of record definition amended, Ord. 643;

(6) April 5, 1997, EFU zone repealed and replaced with language in compliance with 1993 Oregon Revised Statutes and 1994 Statewide Planning Goal 3 Oregon Administrative Rules for farmland, Ord. 876;

(7) May 16, 2002, Lot of Record section amended, Ord. 982, reenacted by Ord. 997;

Staff: Section (B) is for informational purposes only.

5.05	<p>(C) A Lot of Record which has less than the minimum lot size for new parcels, less than the front lot line minimums required, or which does not meet the access requirements of MCC 39.4260 may be occupied by any allowed use, review use or conditional use when in compliance with the other requirements of this district.</p> <p>Staff: The area of land known as tax lot 1S3E22D – 00100 is not a Lot of Record. The County cannot authorize the use tax lot 1S3E22D – 00100 for any Allowed Uses, Review Uses or Conditional Uses except as specified under State law.</p>		
5.06	<p>(D) The following shall not be deemed a Lot of Record:</p> <p>(1) An area of land described as a tax lot solely for assessment and taxation purposes;</p> <p>(2) An area of land created by the foreclosure of a security interest;</p> <p>(3) A Mortgage Lot.</p> <p>(4) An area of land created by court decree.</p> <p>Staff: The area of land known as Tax lot 1S3E22D – 00100 is a lawfully established unit of land as discussed in Section 5.01 above. Unfortunately, tax lot 1S3E22D – 00100 is not a Lot of Record as it was required to remain aggregated with contiguous properties in the EFU zone which were under the same ownership on February 20, 1990.</p>		
6.0	Conclusion:		
Based on the findings and other information provided above, the subject property known as 1S3E22D – 00100 is not a Lot of Record in the Exclusive Farm Use zone.			
7.0	Exhibits:		
<p>‘A’ Applicant’s Exhibits ‘B’ Staff Exhibits ‘C’ Procedural Exhibits</p> <p>All exhibits are available for review in Case File T2-2020-13640 by contact case planner, Lisa Estrin via email at lisa.m.estrin@multco.us.</p>			
Exhibit #	# of Pages	Description of Exhibit	Date Received / Submitted
A.1	1	General Application Form	8.13.2020
A.2	1	Cover Letter to Kathryn Runyon to Danial Biornstad regarding Requested Trustee Documentation dated June 11, 2020	8.13.2020
A.3	1	State of Oregon Certificate of Death for Marquita Biornstad	8.13.2020
A.4	1	Facsimile Transmission Cover Letter from Anderson Yamada Attorneys at Law regarding Appointment and Acceptance of Successor Trustee of the Marquita A. Biornstad Trust.	8.13.2020
A.5	5	Appointment and Acceptance of Successor Trustee of the James N. Biornstad Trust dated January 12, 1990 appointing Danial Biornstad as Trustee dated February 23, 2018	8.13.2020

A.6	5	Appointment and Acceptance of Successor Trustee of the Marquita A. Biornstad Trust dated January 12, 1990 appointing Danial Biornstad as Trustee dated February 23, 2018	8.13.2020
A.7	3	Anderson Yamada Attorneys at Law Statement of Account dated February 28, 2018	8.13.2020
A.8	1	State of Oregon Certificate of Death for James N Biornstad	8.13.2020
A.9	11	Oregon Durable Power of Attorney Financial	8.13.2020
A.10	3	Durable Power of Attorney for Healthcare Decisions	8.13.2020
A.11	2	Bargain and Sale Deed recorded in Book 2287, Pages 2085 & 2086 on March 28, 1990	8.13.2020
A.12	2	Bargain and Sale Deed recorded in Book 2287, Pages 2087 & 2088 on March 28, 1990	8.13.2020
A.13	1	Deed recorded on June 8, 1959	8.13.2020
A.14	3	Bargain and Sale Deed recorded in Book 2380, Page 962 – 964 on January 24, 1991	8.13.2020
A.15	2	Warranty Deed recorded in Book 1988, Page 25 & 26 on December 14, 1959	8.13.2020
A.16	2	Email from Applicant regarding Services to Dwelling	12.04.2020
A.17	3	Applicant Email regarding 1959 Schneider Deed	12.14.2020
'B'	#	Staff Exhibits	Date
B.1	2	Assessment & Taxation Property Information for 1S3E22D-00100 (Alt Acct#R993220150)	8.13.2020
B.2	1	Tax Map 1S3E22D	12.03.2020
B.3	1	Survey 14517	12.03.2020
B.4	1	Survey 43107	12.03.2020
B.5	1	Survey 57066	12.03.2020
B.6	2	Assessment & Taxation Property Information for 1S3E22D - 00200	12.04.2020
B.7	1	Property Owners for 1989 and 1990	12.08.2020
B.8	2	Bargain and Sale Deed recorded in Book 2289, Page 236 & 237 on April 2, 1990	12.08.2020
B.9	2	Warranty Deed recorded in Instrument 2000-054029 on April 18, 2000 (JN Biornstad Trust to Jack & Deanna Bigeij Trusts)	12.08.2020
B.10	13	Lot Line Adjustment 1-90	12.08.2020
B.11	1	1962 Zoning Map for 1S3E22D	12.08.2020

B.12	1	1962 Zoning Map for 1S3E22A	12.08.2020
B.13	1	October 5, 1977 Zoning Map 1S3E22D	12.08.2020
B.14	1	October 6, 1977 Zoning Map 1S3E22D	12.08.2020
B.15	2	Survey 51690	12.08.2020
B.16	6	SR Zone	12.08.2020
B.17	1	1980 Zoning Map for 1S3E22D	12.08.2020
B.18	1	1999 Zoning Map for 1S3E22	12.08.2020
B.19	1	1962 Zoning Map for 1S3E23B	12.08.2020
B.20	1	1962 Zoning Map for 1S3E23C	12.08.2020
B.21	1	Effective Date Document dated February 7, 1966	12.08.2020
B.22	3	Parcel Record Card for R993220150 (Subject Property)	12.08.2020
B.23	3	Parcel Record Card for R993220080 (1S3E22D-00200)	12.08.2020
B.24	1	Deed Legal Descriptions, Seller & Buyers	12.08.2020
B.25	3	Warranty Deed recorded at Instrument #2006-224025 on December 5, 2006	12.09.2020
'C'	#	Administration & Procedures	Date
C.1	1	Complete letter (Day 1 – September 12, 2020)	9.25.2020
C.2	3	Opportunity to Comment and mailing list	10.02.2020
C.3	1	Evidence of Mailing Date	10.02.2020
C.4	12	Administrative Decision and mailing list	