

NOTICE OF DECISION

Case File: T2-2021-14225 & T2-2021-14226

Permit: Lot of Record Verification

Applicant: Jason Smith, Columbia River Estuary Study Taskforce (CREST) **Owner:** Joshua Enyart

Tract 1: Adjacent to NW St. Helen's Rd., Portland
Map # 2N1W18 -200; 2N1W18 -600; 2N1W18 -400; 2N1W18 -300; 2N1W18 -500
Alt. Acct. # R971180330; R971181020; R971180950; R971180900; R971181000
Property ID # R325039; R506054; R325096; R325091; R503257

Tract 2: Adjacent to NW St. Helen's Rd.; Portland
Map # 2N1W18D -200; 2N1W18D -100; 2N1W18D -300
Alt. Acct. # R971180340; R971181010; R971181030
Property ID # R325040; R506053; R506055

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

Overlays: Willamette River Greenway (WRG); Flood Hazard (FD)

Proposal Summary: Lot of Record Verification to determine if the combined tax lots identified as “Tract 1” form a single Lot of Record and the combined tax lots identified as “Tract 2” form a single Lot of Record. A Lot of Record is a unit of land that satisfied all applicable zoning and land division laws at the time of its creation/reconfiguration. WRG and FH permits are not required as this review does not consider a development request.

Determinations:

- 1. The combined five tax lots listed in Tract 1 above are a single Lot of Record.**
- 2. The combined three tax lots listed in Tract 2 above are a single Lot of Record.**

This decision is final at the close of the appeal period, unless appealed. The deadline for filing an appeal is Monday, May 3, 2021 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 digital review. Copies of all documents are available at the rate of \$0.35/per page. For further information, contact Chris Liu, Staff Planner at chris.liu@multco.us

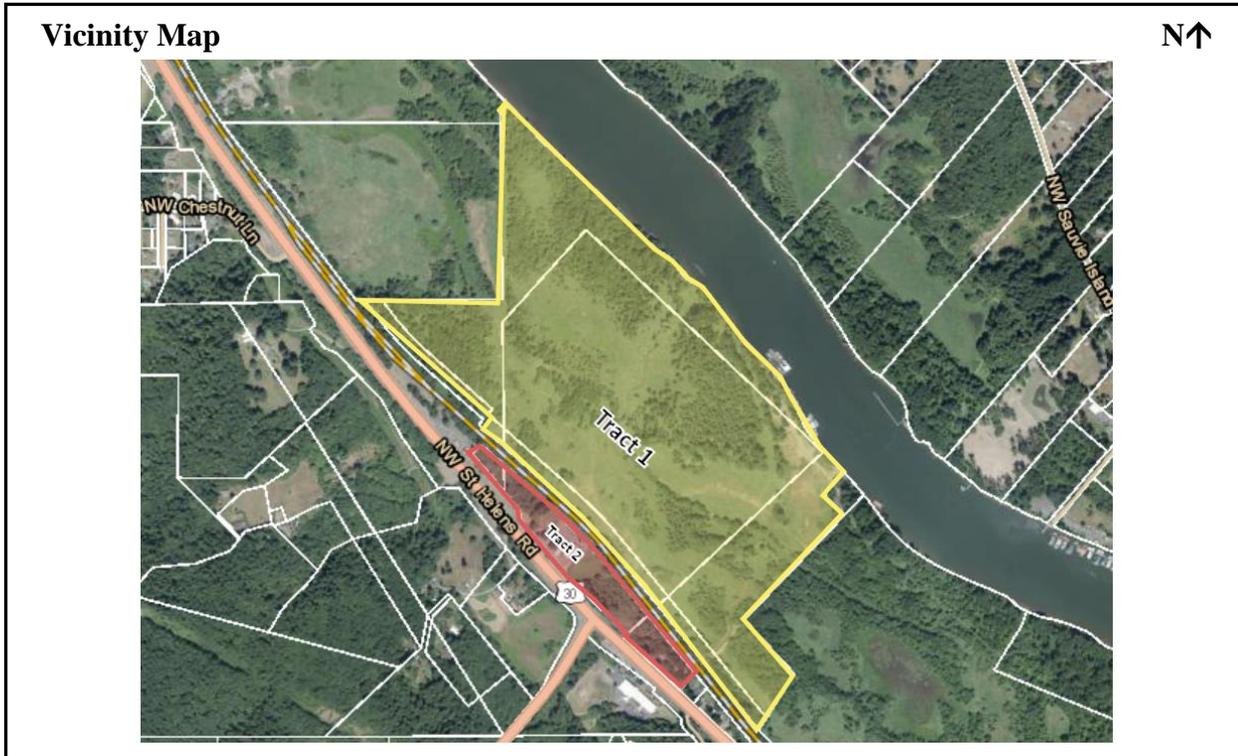
Opportunity to Appeal: An appeal requires a \$250.00 fee and must state the specific legal grounds on which it is based. To obtain appeal forms or information on the procedure, contact the Land Use Planning office via phone at 503-988-3043. This decision is not appealable to the Land Use Board of Appeals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

Issued by: _____

By: Chris Liu, Planner

For: Carol Johnson, AICP
Planning Director

Date: Monday, April 19, 2021



Applicable Approval Criteria:

Multnomah County Code (MCC): MCC 39.1515 Code Compliance and Applications, MCC 39.2000 Definitions, MCC 39.3005 Lot of Record – Generally, MCC 39.3080 Lot of Record – MUA-20

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:

Staff: The two Lot of Record Verifications are to determine if the combined tax lots identified as “Tract 1” form a single Lot of Record and the combined tax lots identified as “Tract 2” form a single Lot of Record. A Lot of Record is a unit of land that satisfied all applicable zoning and land division laws at the time of its creation/reconfiguration. WRG and FH permits are not required as this review does not consider any development request.

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 reconfiguring 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. If the parcel, lot or unit of land met all the applicable zoning and land division laws in effect at the time, it may be determined to be a Lot of Record.

2.0 Property Description:

Staff: The subject tracts are located in unincorporated Multnomah County in the MUA-20 zone. NW St. Helens Rd. provides access to the two tracts and a fee-simple railway line right-of-way bisects the two subject tracts. Tract 1 consists of five (5) tax lots and a majority of the tract is dedicated to a conservation easement. Tract 2 consists of three (3) tax lots and contains a number of buildings / structures. The subject tracts are outside of the Metro urban growth boundary.

3.0 Public Comment:

Staff: Staff mailed a notice of application and invitation to comment on the proposed application to the required parties per MCC 39.1105 (Exhibit C.4). Staff did not receive any public comments during the 14-day comment period.

4.0 General Provisions:

4.1 § 39.1515 CODE COMPLIANCE AND APPLICATIONS.

Except as provided in subsection (A), the County shall not make a land use decision approving development, including land divisions and property line adjustments, or issue a building permit for any property that is not in full compliance with all applicable provisions of the Multnomah County Zoning Code and/or any permit approvals previously issued by the County.

(A) A permit or other approval, including building permit applications, may be authorized if:

(1) It results in the property coming into full compliance with all applicable provisions of the Multnomah County Zoning Code. This includes sequencing of permits or other approvals as part of a voluntary compliance agreement; or

- (2) It is necessary to protect public safety; or
- (3) It is for work related to and within a valid easement over, on or under an affected property.

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

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

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

* * *

Staff: To qualify as a Lot of Record, the subject property, when created or reconfigured, must meet (B) of the above code section and meet the Lot of Record standards set forth in the MUA-20 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 of Record standards set forth in the MUA-20 district establish additional requirements unique to the district, which are evaluated in Sections 5.2-5.4 of this decision. The finding below analyzes whether the Lot of Record provisions in Section (B) have been met.

1972 Creation/Reconfiguration

The Applicant provided two deeds recorded in 1972 describing two distinct parcels, the “1972 Parcels” (Exhibit A.3 & A.7). The two parcels combined, form what is now Tract 1 and Tract 2. The table below depicts the areas described in the respective deeds for the 1972 Parcels.

Document	Zone	Map
Warranty Deed recorded in November 1972 in Book 895, Page 648	‘F-2’	 <p style="text-align: center;">Image ‘1’</p>
Warranty Deed recorded in November 1972 in Book 895, Page 647	‘F-2’	 <p style="text-align: center;">Image ‘2’</p>

In 1972, the zoning for the area was ‘F-2’ per the 1966 historic zoning map included as Exhibit B.2. The F-2 zone required a minimum lot size of 2.0 acres (Exhibit B.3). There were no dimensional or access requirements for the F-2 zone. The 1972 Parcels complied with all applicable zoning laws at the time of creation / reconfiguration in 1972.

In 1972, 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 warranty deeds recorded in 1972 (Exhibit A.3 & A.7), the applicable land division laws were satisfied.

Based on the above, the 1972 Parcels satisfied all applicable zoning and land division laws in 1972.

1992 Reconfiguration

In 1992, the 1972 Parcels were combined via warranty deed and a portion of the combined parcel was excepted out to accommodate the railway line (Exhibit A.14). This reconfiguration formed what is now Tract 1 and Tract 2. Tract 1 became the northern portion and Tract 2 became the southern portion, with the two tracts bisected by the railway line (see graphic below). The table below depicts the area described in the 1992 deed.

Document	Zone	Map
<p>Warranty Deed recorded in June 1992 in Book 2549, Page 121-126</p>	<p>‘MUA-20’</p>	

In 1992, the zoning for the area was ‘MUA-20’ per the historic zoning map included as Exhibit B.4. The MUA-20 zone had a minimum lot size (with exceptions) of 20.0 acres, required a minimum front lot line length of 50 ft., and appropriate access (Exhibit B.5). Tract 1 is approximately 146.00 acres, has a front lot line length greater than 50 ft., and has appropriate access from NW St. Helens Rd (Exhibit B.1).

Tract 2 is approximately 10.97 acres in size, has a front lot line length greater than 50 ft., and has appropriate access from NW St. Helens Rd. As per the 1992 MUA-20 zoning regulations [MCC 11.15.2142], *no sale or conveyance of any portion of a lot, other than for a public purpose...shall result in a lot with less than the area or width requirements of this district* (Exhibit B.5).

In 1992, MCC 11.45 regulated land divisions [January 1981 Version]. The 1992 deed (Exhibit A.14) corrected the legal description to reflect the fee simple ownership of the railway line. The creation of the railway line occurred prior to the adoption of the County's land division regulations. Therefore, combining the two existing legal parcels and excepting out a portion of the combined parcel to accommodate a railway line (public purpose), was not subject to the land division regulations of MCC 11.45 (Exhibit B.6) as it was not legally part of the properties in 1955. Tract 1 and Tract 2 are not contiguous to each other as they are separated by the fee-simple railway line unit of land. Noncontiguous units of land cannot be combined into a single parcel; hence, Tract 1 and Tract 2 remain discreet parcels.

Based on the above, Tract 1 and Tract 2 satisfied all applicable zoning and land division regulations in 1992.

5.2 MCC 39.3080 Lot of Record – (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;**

* * *

(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.

Staff: Section (A) is for information purposes. Tract 2 has less than the minimum lot size for new parcels or lots and is subject to (B) above. *Criteria met.*

5.3 (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.

Staff: As noted above, Tract 1 and Tract 2 are bisected by a fee-simple railway line. The railway line was excepted out of the original combined parcel that formed what is now Tract 1 and Tract 2. *Criterion met.*

5.4 (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: The subject tracts are not an area of land described as a tax lot solely for assessment and taxation purposes. The subject tracts are not an area of land created by the foreclosure of a security interest or created by court decree. *Criteria met.*

Based on the information described above, Tract 1 and Tract 2 each form a single Lot of Record.

6.0 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 T2-2021-14225 & T2-2021-14226.

Exhibit #	# of Pages	Description of Exhibit	Date Received / Submitted
<i>Exhibits from Case File #T2-2021-14225</i>			
A.1	2	General Application Form and Cover Page	02.25.2021
A.2	7	Parcel Record Card(s) for 2N1W18 -00200	02.25.2021
A.3	1	Quitclaim Deed recorded November 1972 in Book 895, Page 648	02.25.2021
A.4	4	Preliminary Title Report for 2N1W18 -00200 prepared by Stewart Title.	02.25.2021
A.5	4	Parcel Record Card for 2N1W18 -00600	02.25.2021
A.6	4	Parcel Record Card for 2N1W18 -00400	02.25.2021
A.7	1	Quitclaim Deed recorded November 1972 in Book 895, Page 647	02.25.2021
A.8	10	Warranty Easement Deed recorded November 06, 2003 as instrument no. 2003-265067	02.25.2021
A.9	3	Parcel Record Card for 2N1W18 -00500	02.25.2021
<i>Exhibits from Case File #T2-2021-14226</i>			
A.10	2	General Application Form and Cover Page	02.25.2021
A.11	6	Parcel Record Card for 2N1W18D -00200	02.25.2021

A.12	5	Parcel Record Card for 2N1W18D -00100	02.25.2021
A.13	5	Parcel Record Card for 2N1W18D -00300	02.25.2021
A.14	6	Deed recorded in 1992 in Book 2549, Page 121-126	02.25.2021
'B'	#	Staff Exhibits	Date
B.1	1	Division of Assessment, Recording, and Taxation (DART): Map for 2N1W18	02.25.2021
B.2	1	1966 Historic Zoning Map for 2N1W18	02.25.2021
B.3	5	Table of Contents and F-2 Zoning Regulations from Zoning Ordinance 100 as adopted May 21, 1968	02.25.2021
B.4	1	1983 Historic Zoning Map for 2N1W18	02.25.2021
B.5	4	MUA-20 Zoning Regulations from MCC 11.15 as adopted February 20, 1990	02.25.2021
B.6	44	MCC 11.45 Land Division Regulations as adopted January 1981	02.25.2021
'C'	#	Administration & Procedures	Date
C.1	2	Incomplete letters	01.27.2021
C.2	2	Revised Incomplete letters	02.18.2021
C.3	2	Complete letters (day 1)	02.25.2021
C.4	2	Opportunity to Comment	03.16.2021
C.5	9	Administrative Decision	04.19.2021