

**MEMORANDUM**

TO: Hearings Officer, Dan Kearns

FROM: Land Use Planning

DATE: October 22, 2021

RE: T2-2021-14361 Information (First Open Record Period)

Land Use Planning would like to provide the following information for the above Lot of Record Verification Appeal in response to issues and questions raised at hearing.

**Area Measured on Tax Lot 2N1W21-01200**

The following graphic shows the area of land that was measured by the County's GIS program to determine that tax lot 2N1W21-01200 is 1.39 acres. The portion of the unit of land under NW Sauvie Island Road (to the eastern boundary of the road) was included in staff's calculations. To date, the applicant has not provided evidence of the surveyed square footage or other evidence to demonstrate that the unit of land met the 2-acre minimum lot size at the time it was created or reconfigured. Under MCC 39.1125, the applicant has the burden to show that the property meets the Lot of Record standards.



## **Ownership to the Meander Line**

Land Use Planning has contacted the Department of State Lands (DSL) for clarification of their position as to the state's ownership of land within the Multnomah Channel. Multnomah Channel is part of the Willamette River. DSL staff stated that the State of Oregon has had ownership of the river's channel up to mean low water adjacent to tax lot 2N1W21-01200 since Statehood on February 14, 1859. (Exhibit I.2) DSL staff stated that mean low water is 6.34 feet elevation NAVD88 at this location. At this time, DSL is not able to provide a map or other graphic showing the exact boundary of the state's ownership interest in the Multnomah Channel. As a result, without a survey or other similar evidence, Land Use Planning is unable to determine whether any additional area of land in the Multnomah Channel that might be part of the ownership interest for tax lot 2N1W21-01200 would result in the unit of land meeting the 2-acre minimum lot size requirement.

## **Legal Description**

Land Use Planning has discussed the DSL information and the legal description with the County Surveyor. The County Surveyor has informed us they do not have enough information to provide an answer as to where exactly the "easterly boundary of Multnomah Channel (also known as Willamette Slough)" is for this unit of land. A survey would be needed to determine the easterly boundary.<sup>1</sup>

The appellant's assertions that the parcel size is at least 2 acres is not supported by any significant evidence in the record.

## **Consolidation vs. Aggregation**

Land Use Planning would like to clarify that the two terms -- Consolidation and Aggregation -- are not used to describe the same activity.

**Consolidation:** The act of Consolidation is used to remove property lines between adjacent units of land when held in the same ownership. MCC 39.9200(C)(2)(b) allows a property owner to combine an unlawfully created unit of land into a legal parcel, lot or unit of land. It is also used to remove a property line between one or more legal units of land to create a larger parcel.

**Aggregation:** The County in its Lot of Record provisions in the Exclusive Farm Use (EFU) and Commercial Forest Use (CFU) zones does not grant "Potential Development Rights" to every single legal parcel, lot or unit of land. For smaller legal units of land that technically can be separately sold as allowed by State law, the County's Lot of Record provisions require that legal units of land under 19 acres in size be aggregated with contiguous units of land to meet a minimum lot size of 19 acres for purposes of determining their allowable development rights. Aggregation is based on the ownership of contiguous properties on February 20, 1990. However, unlike Consolidation, which removes property lines, the Code makes clear that the units of land are Aggregated "without creating any new lot line." In other words, rather than combining multiple units of land into a single unit of land as is the case with Consolidation, Aggregation combines the development rights for multiple units of land into a single set of development rights.

---

<sup>1</sup> A survey could also more accurately determine the southern property boundary of tax lot 2N1W21-01200. The County Surveyor noted that the legal description is ambiguous, making it difficult to determine the actual location of the southern boundary for the parcel. The fact that the legal description describes a large piece of land and then just divides off the "northerly one-third" creates ambiguity as to where the grantor intended the southern property boundary to be located. However, for purposes of the Lot of Record determination, staff relied on the only evidence in the record identifying the southern boundary – the tax map. The tax map appears to show the parent parcel divided by land area into three 0.81 acre parcels (which does not include the area underlying the adjacent right-of-way).