EXHIBIT
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Via Email: Marisol.Cervantes@multco.us and lup-hearings@multco.us
First Class-Mail

Hearings Officer
Multnomah County Land Use Planning
c/o Marisol Cervantes, Planner
1600 SE 190th Ave.
Portland OR 97223-5910

Re: 16900 NW Sauvie Island Road
County Case File T2-2021-14361
Our File No.: MAH016.0001

Dear Hearings Officer:

This letter sets forth the Applicant's final argument in the referenced matter. As identified at hearing, the Hearings Officer must resolve two legal issues, i.e., whether (a) Lot 1200 constitutes a lawfully established unit of land and (b) the lot aggregation rule of MCC 39.3070(A)(2) applies to that lot and abutting Lot 1100, such that the Hearings Officer may deem Lot 1200 a lot of record only by consolidating it with Lot 1100.

Nothing in the record suggests that the Hearings Officer lacks jurisdiction to determine whether Lot 1200 was lawfully established.

Regarding lawful establishment of Lot 1200, the record presents no dispute that either (a) it was created by deed in 1968 (Exhibit A.3) or (b) the minimum lot size was then two acres. Review of the historical zoning ordinances reveals subdivision regulations (*e.g.*, minimum lot dimensions),[1] but nothing governing partitions. I further note that (a) the staff decision (Exhibit C.3) and memoranda (Exhibits H.10 and I.2) cite no regulation on division of Lot 1200 (other than minimum parcel size) and (b) Lot 1200 was clearly not landlocked (a longstanding requirement of parcel creation). Accordingly, the sole issue pertaining to lawful establishment of Lot 1200 was its size.

In order to calculate the size of an area, one simply needs to determine its dimensions. In this instance, three of those dimensions are relatively clear. With reference to Exhibit A.3, the 1968 deed described Lot 1200 as follows:

> "Parcel 1. The northerly one-third of the following described real property: A tract of land located in Section 21, Township 2 North, Range 1 West, W.M., in the county of Multnomah, State of Oregon, more particularly described as follows:

[1] http://www4.multco.us/lup_historical_maps/HistoricSubdivisionOrdinances/SubDivOrd%204-19-55.PDF accessed Nov. 9, 2021

> Beginning at a point at which the easterly boundary of Gillihan Road, Multnomah County Road No. 1438, intersects with the northerly line of the James F. Bybee DLC; Thence southerly along the easterly boundary of said county road to Howell Park County Road No. _____; thence south 69° 24' west to the easterly boundary of Multnomah Channel (also known as the Willamette Slough) to a point where said easterly boundary of said Multnomah Channel (also known as the Willamette Slough) intersects an extension of the northerly line of the James F. Bybee DLC; thence easterly to the point of beginning." Exhibit A.3, Bargain and Sale Deed, April 11, 1968.

The relevant question, then, is the location of the westerly boundary. Exhibit I.5.11 describes the parent parcel of Lot 1200, showing that Rose Howell owned to the "West boundary line of the Bybee Donation Land Claim, Notification No. 4491, Claim No. 46;…" The law supports conveyance pursuant to the intent of the grantor. Here, the intent of Rose's executor was to dispose the entirety of Rose's estate. We see no intent on the part of the grantor to short-change the recipient of Lot 1200 and, in so doing, leave a remnant. Even if the record did show such intent, the law disfavors parcelization that leaves a remnant parcel. So, the boundary of Lot 1200 extends to the boundary of the parent parcel.

So, what was the westerly boundary of the parent parcel? The record presented the Hearings Officer with much evidence of this boundary. As stated in Exhibit I.2, staff began with the premise that the ordinary high-water mark constituted the boundary. It held that position until corrected by DSL staff (Exhibit I.3). I submitted evidence (Exhibit I.5.3) of the size of Lot 1200 measured to the "meander line" of the channel. According to Exhibit I.5.1, the meander line constitutes the westerly line of the James F. Bybee DLC. I continue to find it viable for the Hearings Officer to conclude that Rose Howell's estate extended to the meander line (and Lot 1200 does also).

DSL says (Exhibit I.5.3) that the property boundary is the mean low tide line. Exhibit J.1 is correspondence dating to 1999 between that agency and Mabel Dudley, then-owner of Lot 1200. DSL recognized therein Ms. Dudley's right to lease the submerged land at Lot 1200 for "log raft storage" and drew a boundary of the lease area, which extends 100 lineal feet into the water along the entire frontage of Lot 1200.

As shown on Exhibit H.15, Lot 1200 is approximately 660 feet long on its eastern boundary. No one disputed that measurement. In its Oct. 22 memo staff recalculated Lot 1200 as 1.39 acres, measuring from the easterly side of the road to the OHWM along the westerly boundary. Simply adding the 100-foot-wide rectangle into the water (as shown by DSL), adds 66,000 sq.ft to the staff-calculated area of Lot 1200, putting it well over the two-acre minimum lot size.

We can also calculate the size directly from the 1999 DSL lease map. Scaled from the length of the southerly boundary of Lot 1100, it is 271.63 feet wide (from the easterly boundary of the road to the westerly boundary of the lease area). Multiplying that by the 660-foot length of the parcel yields a 4.11-acre parcel size for Lot 1200.

Concluding this issue, nothing in the record supports a determination that the OHWM constitutes the westerly boundary of Lot 1200 and, whether measured to the mapped meander line or the mean low tide, that unit of land well exceeds two acres.

Furthermore, the lot aggregation rule of MCC 39.3070(A)(2) does not apply in this case to mandate the consolidation of Lot 1100 and Lot 1200. In Mackenzie v. Multnomah County, WL6384426 (OrLUBA 2013), the County had approved permits to develop a dwelling. The petitioner argued below that the underlying lots had aggregated pursuant to a lot aggregation provision. The Hearings Officer determined that lot aggregation "is not self-effecting," a determination that LUBA upheld.

McKeel v. Multnomah County, [cite], supports a conclusion that lot aggregation provisions are not self–effecting. There, the Hearings Officer found that a 1977 "lot of exception" decision expressed an intent to aggregate underlying subdivision lots. LUBA upheld that ruling, noting that "the totality of the circumstances" supported it.

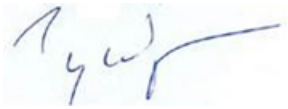
These cases hold that lot aggregation is not self-effecting, i.e., not to be bootstrapped into every land use case that involves a substandard unit of land. Rather, the cases state that it takes effect only where (a) the applicant undertakes a development action or seeks a permit approval or (b) the deed/permit history features a direct expression of intent to aggregate.

As noted during the hearing, the Applicant here seeks no more than a Land Use Compatibility Statement to change out a crop on Lot 1100. Furthermore, nothing in the deed or permit histories suggests any intent to aggregate the subject units of land.

In conclusion, the Applicant respectfully asks the Hearings Officer to (a) deem the unit of land known in this process as Lot 1200 lawfully established and (b) not aggregate that lot of record into Lot 1100 merely because the State requires the Applicant to obtain a LUCS to change the crop on the latter.

Thanks again for your continued attention to this matter.

Very truly yours,



Ty K. Wyman

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