

NOTICE OF DECISION

This notice concerns a Planning Director Decision on the land use case(s) cited and described below.

Case File: T2-2015-4092

Permit: Property Line Adjustment

Location:

Tract 1: 33304 SE Lusted Rd, Gresham
Tax Lot 900, Section 21A
Township 1 South, Range 4 East, W.M.
Tax Account #R994210630
Site Size: 35.56 acres

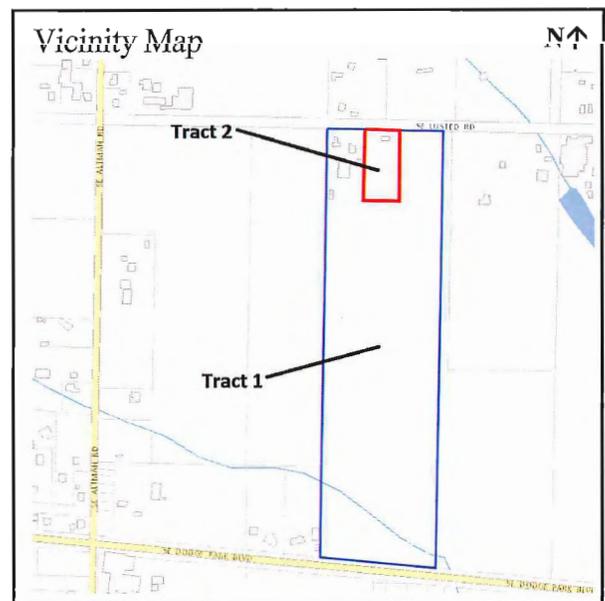
Tract 2: 33334 SE Lusted Rd, Gresham
Tax Lot 1000, Section 21A
Township 1 South, Range 4 East, W.M.
Tax Account #R994210050
Site Size: 1.86 acres

Applicant: Sester Farms Inc.

Owners: T&K Sester Family LLC

Base Zone: Tract 1 & 2 : Multiple Use Agriculture – 20 (MUA-20)

Overlays: Tract 1: Significant Environmental Concern for Water Resources
Tract 2: n/a

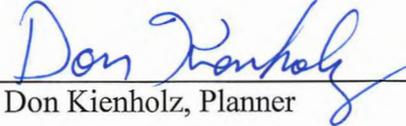


Summary: Adjust the common property line to reduce the size of Tract 1 from 35.56 to 33.19 acres and increase Tract 2 from 1.86 to 5.00 acres.

Decision: Approved with Conditions

Unless appealed, this decision is effective Monday, November 30, 2015, at 4:00 PM.

Issued by:

By: 
Don Kienholz, Planner

For: Michael Cerbone, Planning Director

Date: Friday, November 13, 2015

Opportunity to Review the Record: A copy of the Planning Director Decision, and all evidence submitted associated with this application, is available for inspection, at no cost, at the Land Use Planning office during normal business hours. Copies of all documents may be purchased at the rate of 30-cents per page. The Planning Director Decision contains the findings and conclusions upon which the decision is based, along with any conditions of approval. For further information on this case, contact Don Kienholz, Staff Planner at 503-988-0191 or at don.d.kienholz@multco.us.

Opportunity to Appeal: This decision may be appealed within 14 days of the date it was rendered, pursuant to the provisions of MCC 37.0640. 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 offices at 1600 SE 190th Avenue (Phone: 503-988-3043). This decision cannot be appealed to the Land Use Board of Appeals until all local appeals are exhausted.

This decision is final at the close of the appeal period, unless appealed. The deadline for filing an appeal is Monday, November 30, 2015 at 4:00 pm.

Applicable Approval Criteria: Multnomah County Code (MCC): MCC 37.0560 Code Compliance, MCC 36.0005 Lot of Record, MCC 36.2825(C) Property Line Adjustment, MCC 36.2855 Dimensional Requirements, MCC 36.2860(B) Property Line Adjustments, MCC 36.2870 Lot of Record, MCC 36.2885 Access, MCC 36.7790 Property Line Adjustments

Copies of the referenced Multnomah County Code (MCC) sections can be obtained by contacting our office at 503-988-3043 or by visiting our website at multco.us/landuse/zoning-codes under the link *Chapter 36: West of Sandy River Rural Plan Area*.

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.

1. 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. [MCC 37.0580].
2. This land use permit expires two years from the date the decision is final pursuant to MCC 37.0690(A). The property owner may request to extend the timeframe within which this permit is valid, as provided under MCC 37.0695, as applicable. The request for a permit extension must be submitted prior to the expiration of the approval period.
3. Prior to land use approval of the new legal descriptions and deeds, T&K Sester Family, LLC shall enter into a Voluntary Compliance Agreement with the Code Compliance section or gain compliance for the outstanding land use issues contained in UR-2015-4459. Gaining compliance means that the Code Compliance section finds all complaints have been resolved and UR-2015-4459 has been closed. Contact Code Compliance at 503-988-5508 [MCC 37.0560].
4. Prior to Land Use Planning's sign off of the survey and new legal descriptions for recording, the property owner or its representative shall demonstrate that the dwelling on Tract 1 meets the 10-foot side yard requirement of MCC 36.2855(B) for the new western side property line. All portions of the existing dwelling over 30-inches tall shall be setback a minimum of 10 feet from the

side property line. If the property line must be shifted west so that the dwelling on Tract 1 meets the side yard, Tract 2 shall be adjusted so that it will maintain the 5 acres when the property line adjustment is complete. [MCC 36.2855(B) & MCC 37.0580].

5. No additional lot or parcel shall be created through this property line adjustment process. [MCC 36.7790(A)].
6. Prior to recording the deeds, the property owner, or representative thereof, shall submit copies of the final survey, and legal descriptions and prepared deeds to Multnomah County Land Use Planning for review and verification that the adjusted tracts conform to the approved plan and that the conditions of approval have been met. Once the submitted documents conform to this approval and the conditions of approval, planning staff will sign the survey and legal descriptions. Multnomah County Land Use Planning must sign these documents before they may be submitted to the County Records Management Office located at the Assessment and Taxation and County Surveying for recording. [MCC 36.7790(D)].
7. For each of the two tracts of land, a new deed shall be filed with the County Recorder describing the property boundary with a new metes and bounds description describing the newly adjusted tracts of land. These new metes and bound descriptions shall be clear and concise. When the process is complete the portions of land transferred between Tract 1 and Tract 2 shall be merged into the parcel through the metes and bounds description describing the entire tract. The transferred land shall not exist as a separate unit of land with its own deed or deed description. [MCC 36.7790(A)].

Note: When ready to have the new deeds with their legal descriptions reviewed, the applicant shall contact the Staff Planner, Don Kienholz at (503) 988-0191 or at don.d.kienholz@multco.us, for an appointment for review and approval of the deeds and to verify the condition of approval have been met. Please note, Multnomah County Land Use Planning must review and sign off on the new deeds and legal descriptions before the applicant can record these documents with the County Recorder. At the time of deed and legal description review, a fee will be collected.

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*.

1.00 Property & Project Description:

Staff: Tract 1 is currently known as 1S4E21A – 00900 and is 35.56 acres in size. Tax lot 1S4E21A – 00900 currently contains a dwelling constructed in 1912 which is approximately 3,237 square feet along with three agricultural buildings (900 sq. ft., 5,824 sq. ft., and 2,475 sq. ft.) and a 216 sq. ft. garage. Tract 2 is currently known as 1S4E21A – 01000 and is 1.86 acres. Tax lot 1S4E21A – 01000 currently contains a dwelling constructed in 1898 and it is approximately 864 sq. ft. with an attached 264 sq. ft. garage.

The applicant is requesting a property line adjustment that will move Tract 2 to the west and increase its size from 1.86 acres to 5.00 acres. After the property line adjustment, Tract 2 will no longer contain the dwelling constructed in 1898, but will include the 3,237 sq. ft. house and all outbuildings currently located on Tract 1. Tract 1 will be reduced from 35.56 to 32.42 acres and will contain the small dwelling constructed in the year 1898 only.

2.00 Multiple Use Agriculture – 20 Approval Criteria:

2.01 § 36.2825 REVIEW USES.

Uses listed in this section may be permitted after required review as Type II decisions pursuant to MCC 37.0510 through 37.0800, or as specified for the use.

(C) Property Line Adjustment pursuant to the provisions of MCC 36.2860.

Staff: The applicant has applied for a property line adjustment application and has demonstrated compliance with MCC 36.2860.

2.02 § 36.2855 DIMENSIONAL STANDARDS AND DEVELOPMENT REQUIREMENTS.

(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: After the adjustment, Tract 1 will have a minimum front lot line length of approximately 396 feet. Tract 2 will have a minimum front lot line length of approximately 300 after the adjustment.

After the property line adjustment, the buildings will be located on their respective tracts as follows:

Proposed Yards				
Tract	Structure	Front	Side	Rear
Tract 1	Dwelling	34.40 ft	West – 11 ft East – 309 ft	1,085 ft
Tract 2	Dwelling	50.10 ft	West – 28 ft East – 218 ft	619 ft
	Garage	128 ft	West – 21.5 ft East – 266 ft	540 ft
	Shop	205 ft	West – 65 ft East – 155 ft	418 ft
	Shop	73 ft	West – 113 ft East – 125 ft	554 ft
	Shop	163 ft	West – 163 ft East – 100 ft	480 ft

The shown western yard for the dwelling on Tract 1 appears to be measured to the main wall of the house, but the plan (Exhibit A.3) shows an encroachment of a roof structure into the setback. A condition of approval has been included requiring that the placement of the new property line be at least 10 feet from the eave/roof line of any structure over 30 inches in height as required by MCC 36.2855(C). All other setbacks are shown to be met on Tract 1. The buildings on Tract 2 will comply with the minimum yard dimensions as shown above. *As conditioned, these criteria will be met.*

2.03 (F) On-site sewage disposal, storm water/drainage control, water systems unless these services are provided by public or community source, required parking, and yard areas shall be provided on the lot.

(1) Sewage and stormwater disposal systems for existing development may be off-site in easement areas reserved for that purpose.

(2) Stormwater/drainage control systems are required for new impervious surfaces. The system shall be adequate to ensure that the rate of runoff from the lot for the 10 year 24-hour storm event is no greater than that before the development.

Staff: The Environmental Health Specialist for the County has reviewed the proposed property line adjustment for both Tracts 1 and 2 and finds that the existing systems will not be impacted and that there will be adequate area on both parcels for replacement drainfields (Exhibit A.9 & A.10).

Registered professional engineer Ronald Bush reviewed the existing impervious surfaces proposed for each adjusted parcel and found that the rate of surface storm water run-off rate or volume attributed to the existing development for a 10-year/24-hour storm event will be no greater than that occurring before the adjustment for both Tracts 1 and 2. *Criterion met*

2.04 § 36.2870 LOT OF RECORD.

(A) In addition to the Lot of Record definition standards in MCC 36.0005, for the purposes of this 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.**

(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 36.2885, 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 36.2860, 36.2875, and 36.4300 through 36.4360, 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: Tax lot 1S4E21A – 00900 (Tract 1) was created at its current size and configuration (35.56 acres) in April 1971 when 0.30 (13,068 sq. ft.) of an acre on the south side Dodge Park Blvd was deeded off by William H Sester in Book 784, Page 23 (1S4E21DB – 00900). The zoning at the time was Suburban Residential (SR). The minimum lot size of the SR zone at the time ranged from 10,000 sq. ft. to 40,000 sq. ft. Tax lot 1S4E21A – 00900 (Tract 1) is 35.56 acre and met the minimum lot size at the time of this division. *Tax lot 1S4E21A – 00900 is a Lot of Record.*

Tax lot 1S4E21DB – 00900 is not a part of this land use application. The property owners have not requested a Lot of Record determination so none is being made at this time for this small piece of land.

Tax lot 1S4E21A – 01000 (Tract 2) was divided out of 1S4E21A – 00900 (Tract 1) in February 1969 (Exhibit A.22). The zoning at the time was Suburban Residential which had variable minimum lot sizes ranging from 10,000 to 40,000 sq. ft. Tax lot 1S4E21A – 01000 is 1.86 acre in size and it met the minimum lot size when it was created. *Tax lot 1S4E21A – 01000 is a Lot of Record.*

2.05 § 36.2885 ACCESS.

All lots and parcels in this district shall abut a public street or shall have other access determined by the approval authority to be safe and convenient for pedestrians and for passenger and emergency vehicles. This access requirement does not apply to a pre-

existing lot and parcel that constitutes a Lots of Record described in MCC 36.2870(B).

Staff: Both tax lots abut a public street. Tax lot 1S4E21A – 00900 (Tract 1) fronts onto Dodge Park Blvd and Lusted Road. Tax lot 1S4E21A – 01000 (Tract 2) fronts onto Lusted Road. *Criterion met.*

3.00 Property Line Adjustment Criteria

3.01 § 36.7790 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: The discussion under Section 2.04 above and the tentative plan map (Exhibit A.2) show that two parcels currently exist and after the property line adjustment only two parcels continue to exist. A condition of approval will be included prohibiting the creation of any new parcel. *As conditioned, no new parcel can legally be created.*

3.02 (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 tax lot 1S4E21A – 00900 and tax lot 1S4E21A – 01000 are owned by T&K Sester Family LLC. Mr. Ted Sester signed the Property line Adjustment form (Exhibit A.1) for both properties. Mr. Ted Sester is the Manager for T&K Sester Family, LLC (Exhibit B.8.)

3.03 (C) The adjusted properties shall meet the approval criteria for a property line adjustment as given in the underlying zoning district; and

Staff: Both properties are zoned Multiple Use Agriculture – 20 (MUA-20). The adjusted parcels will meet the MUA-20 minimum yard requirements of MCC 36.2855, MUA-20 access standard of MCC 36.2885 and the MUA-20 property line adjustment criteria of MCC 36.2860(B). See Sections 2.02, 2.05, 3.05 and 3.06 for supporting findings. *Criterion met.*

3.04 (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 used the proper forms and followed the procedures for the property line adjustment (Exhibits A.1 through A.24). *Criterion met.*

3.05 § 36.2860 ... AND PROPERTY LINE ADJUSTMENTS.

(B) Property Line Adjustment

Pursuant to the applicable provisions in MCC 36.7790, 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.

(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 36.2885 are met after the relocation of the common property line; and

Staff: Tract 1 and Tract 2 were found to both be Lots of Record in Section 2.04. From the exhibits A.2 & A.3, Tract 2 will meet the minimum yard and minimum front lot line as discussed in Section 2.02. Tract 1 will meet the minimum front lot line length and through a condition of approval the minimum yard requirements. Both tracts will continue to front onto Lusted Road which is a public street. *Criteria met.*

3.06 (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: Tract 1 is currently 35.56 acres and will be reduced to 32.42 acres (Exhibit A.2). Tract 2 is currently 1.86 acres and will be increased to 5 acres (Exhibit A.2). *Criteria met.*

4.00 Code Compliance

4.01 § 37.0560 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 Land Use 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 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: Presently, Multnomah County has an open complaint (UR-2015-4459 regarding non-permitted grading and excavation in a Significant Environmental Concern for water resource overlay (SEC-wr) for the installation of an ag tile system to dewater the property and the non-

permitted construction of an access drive onto Dodge Park Blvd.

MCC 36.4520 EXCEPTIONS

An SEC permit shall not be required for the following:

(A) Farming practices as defined in ORS 30.930 and agricultural use as defined in OAR 603-095-0010, except that buildings and other development associated with farm practices and agricultural uses are subject to the requirements of this district;...

§ 36.4510 DEFINITIONS.

(A) Development: Any manmade change defined as buildings or other structures, mining, dredging, paving, filling, or grading in amounts greater than ten (10) cubic yards on any lot or excavation. Any other activity that results in the removal of more than 10 percent of the existing vegetation in the Water Resource Area or Habitat Area on a lot or parcel.

This grading activity remains an outstanding code compliance issue that will not be corrected by this application. At present, the County has not entered into a Voluntary Compliance Agreement with T&K Sester Family, LLC nor corrected the situation. In order to approve this application at this time, Land Use Planning has attached a condition of approval requiring T&K Sester to enter into a Voluntary Compliance Agreement to correct the compliance issues on Tract 1 or gain compliance and closure of UR-2015-4459 before the new legal descriptions for the property line adjustment can be recorded. This will allow the positive approval of this application while ensuring Tract 1 comes into compliance with land use and development codes of Multnomah County.

5.00 Conclusion

Based on the findings and other information provided above, the applicant has carried the burden necessary for the Property Line Adjustment to alter existing parcels in the Multiple Use Agriculture – 20 zone. This approval is subject to the conditions of approval established in this report.

6.00 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. All other exhibits are available for review in Case File T2-2015-4092 at the Land Use Planning office.

Exhibit #	# of Pages	Description of Exhibit	Date Received/ Submitted
A.1	1	Property Line Adjustment Application	5/29/2015
A.2	1	Property Line Adjustment Survey*	5/29/2015
A.3	1	Property Line Adjustment Detail	5/29/2015
A.4	2	Deed creating Tax Lot 1S4E21A-00900 recorded in Book 308, Page 528 on October 1, 1935	5/29/2015
A.5	1	Letter from Gordon Sester Discussing Proposed Lot Line Adjustment Proposal	3/2/2015
A.6	1	Authorizing Representative Form from the City of Portland,	5/29/2015

		Bureau of Development Services	
A.7	1	Storm Water Certificate for Land Divisions and Property Line Adjustments for Tract 2	5/29/2015
A.8	1	Storm Water Certificate for Land Divisions and Property Line Adjustments for Tract 1	5/29/2015
A.9	3	Septic Review Certification for Tract 2 dated 5/22/2015	5/29/2015
A.10	3	Septic Review Certification for Tract 1 dated 5/22/2015	5/29/2015
A.11	1	Special Warranty Deed recorded in Book 2162, Page 1354 on December 12, 1988	5/29/2015
A.12	4	First American Title Company of Oregon Cover Sheet (1 page) a. Statutory Warranty Deed recorded at 2015-050111 on May 1, 2015 (2 pages) b. Exhibit A for Parcel I and Parcel II (1 page)	5/29/2015
A.13	1	Exhibit 1 for Tract 1 of Property Line Adjustment	5/29/2015
A.14	1	Exhibit 1 for Tract 2 of Property Line Adjustment	5/29/2015
A.15	1	Exhibit 1 for Multnomah County Transfer of Land Area to Tract 1	5/29/2015
A.16	1	Exhibit 1 for Multnomah County Transfer of Land to Tract 2	5/29/2015
A.17	1	Exhibit Showing Areas of Land to be Transferred between Tract 1 and 2	5/29/2015
A.18	1	Legal Description for Transfer Tract 1 of Property Line Adjustment	5/29/2015
A.19	1	Legal Description for Transfer Tract 2 of Property Line Adjustment	5/29/2015
A.20	1	Legal Description for Tract 1 of Property Line Adjustment	5/29/2015
A.21	1	Legal Description for Tract 2 of Property Line Adjustment	5/29/2015
A.22	1	Special Warranty Deed recorded in Book 661, Page 1217 on February 4, 1969	6/31/2015
A.23	1	A&T Parcel Record Card for 1S4E21A-00900	6/31/2015
A.24	1	A&T Parcel Record Card for 1S4E21A-01000	6/31/2015
'B'	#	Staff Exhibits	Date
B.1	2	A&T Property Information for 1S4E21A-00900	5/29/2015
B.2	2	A&T Property Information for 1S4E21A-01000	5/29/2015
B.3	1	A&T Improvement Information for 1S4E21A-00900	6/26/2015
B.4	1	A&T Improvement Information for 1S4E21A-01000	6/26/2015

B.5	1	November 15, 1962 Zoning Map for 1S4E21A (Section Zoning Map 712)	6/26/2015
B.6	1	October 5, 1977 Zoning Map for 1S4E21A (Section Zoning Map 712)	6/26/2015
B.7	1	October 6, 1977 Zoning Map for 1S4E21	6/26/2015
B.8	2	Business Entity Data from Oregon Corporation Division for T&K Sester Family, LLC	6/26/2015
'C'	#	Administration & Procedures	Date
C.1	2	Incomplete Letter	6/26/2015
C.2	1	Complete Letter (Day 1)	7/15/2015
C.3	6	Opportunity to Comment	7/21/2015
C.4	11	Administrative Decision	11/12/2015