



NOTICE OF DECISION ON A TYPE II LAND USE PERMIT

Decision: Approved with Conditions

Permit Type: Property Line Adjustment

File No. Z0128-24

Applicant's Proposal: Relocation of the property line between two abutting lots, resulting in 42.7 acres being adjusted from one lot to the other.

Decision Date: July 15, 2024

Deadline for Filing Appeal: July 29, 2024, at 4:00 pm.

Issued By : Aldo Rodriguez, Planner I, ARodriguez@clackamas.us, 503-742-4541

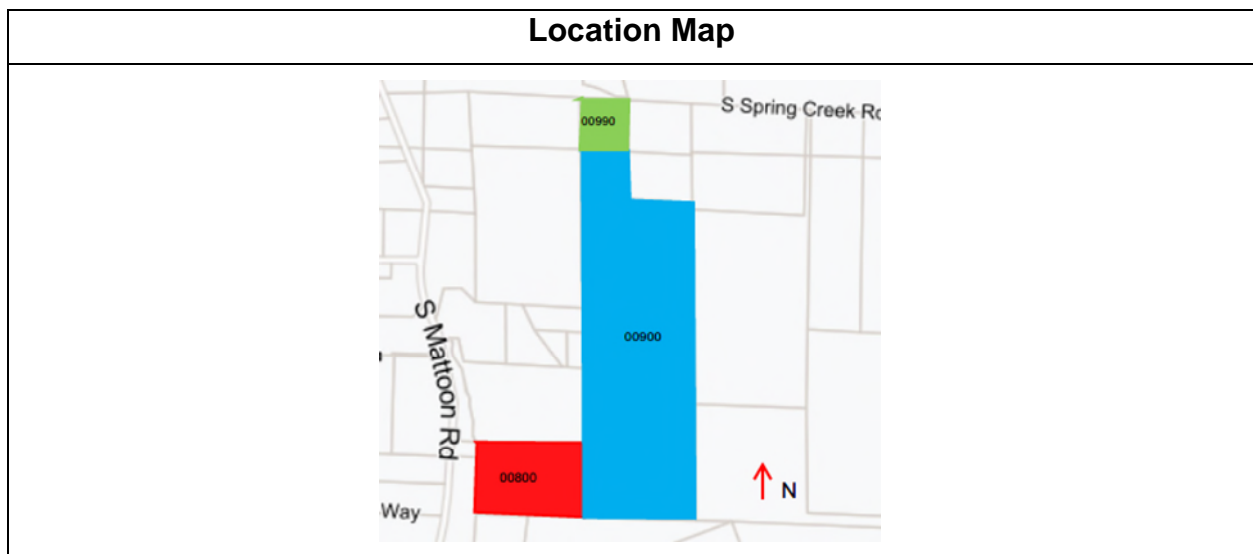
Applicant: Don Wallace

Owner of Property: Nancy Borthwick Trustee

Zoning: TBR

Assessor's Map & Tax Lot(s): T3S R3E Section 11 Tax Lot 00900, 00990, 00800

Site Address: No Situs



Community Planning Organization (CPO) for Area:

REDLAND-VIOLA-FISCHER'S CPO WARD LANCE 503-631-2550
LANCECWARD@AOL.COM

Community Planning Organizations (CPOs) are part of the county's community involvement program. They are advisory to the Board of County Commissioners, Planning Commission and Planning and Zoning Division on land use matters affecting their communities. CPOs are notified of proposed land use actions and decisions on land within their boundaries and may review these applications, provide recommendations or file appeals. If this CPO currently is inactive and you are interested in becoming involved in land use planning in your area, please contact Clackamas County Community Engagement at 503-655-8751.

Opportunity to Review the Record and Decision: The complete decision, including findings and conditions of approval, and the submitted application are available for review online at <https://accela.clackamas.us/citizenaccess/>. Select the **Planning** tab and enter the file number to search. Select **Record Info** and then select **Attachments** from the dropdown list, where you will find the submitted application. A copy of the decision, application, all documents and evidence submitted by or on behalf of the applicant, and applicable criteria are available for inspection at no cost by contacting the Planner listed above. Copies of all documents may be purchased at a cost established by the County fee schedule.

Appeal Rights: **This decision will not become final or effective until the period for filing an appeal with the County has expired without the filing of an appeal.** Any person who is adversely affected or aggrieved or who is entitled to written notice of the decision pursuant to Subsection 1307.09(C) of the Clackamas County Zoning and Development Ordinance may appeal this decision to the Clackamas County Land Use Hearings Officer by filing a written appeal. An appeal must include a completed Appeal Form available at www.clackamas.us/planning/supplemental.html and a \$250.00 filing fee and must be **received** by the Planning and Zoning Division by the appeal deadline identified above.

Appeals may be submitted in person during office hours (8:00 am to 4:00 pm Monday through Thursday, closed Friday and holidays). Appeals may also be submitted by email or US mail.

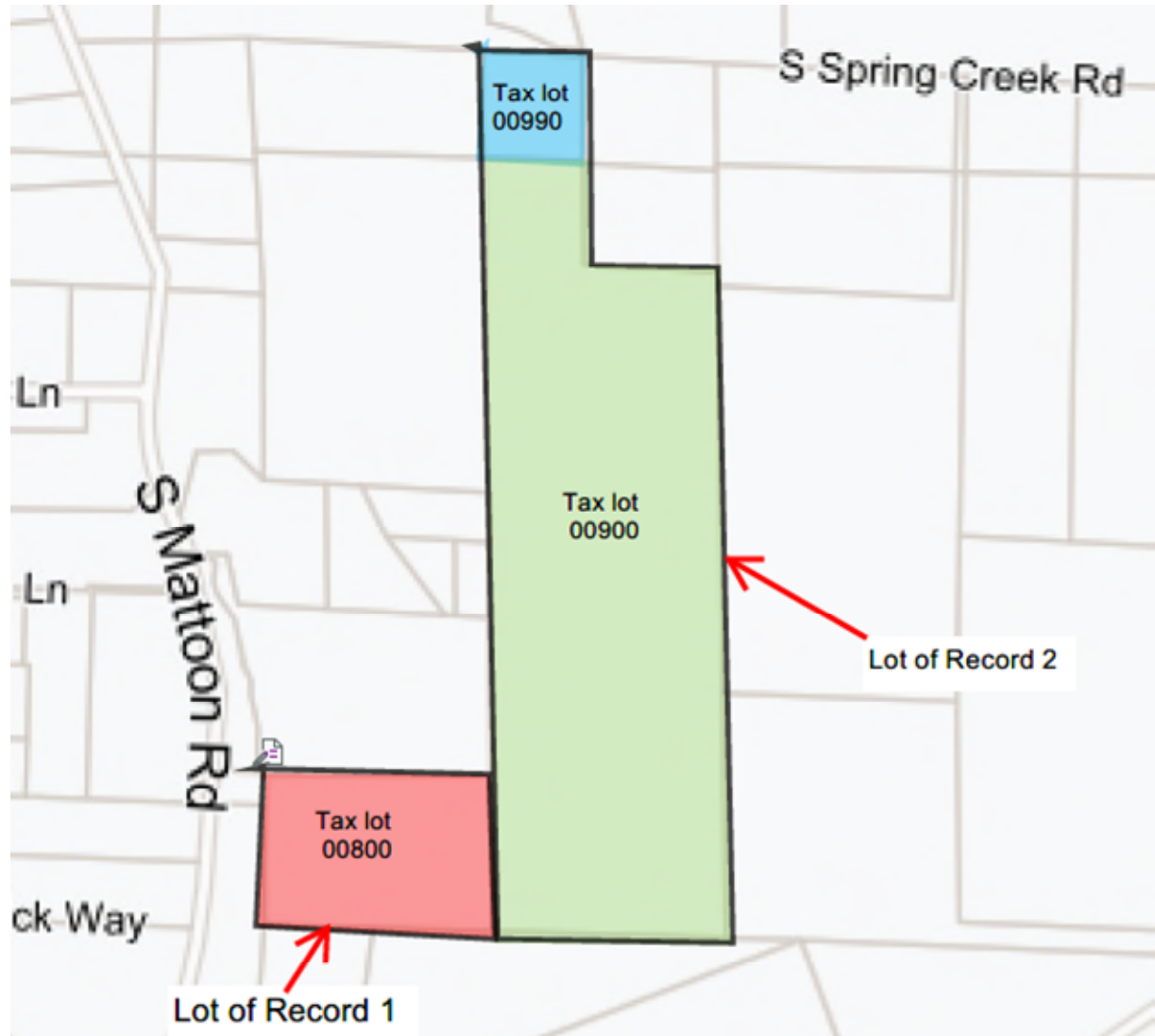
A person who is mailed written notice of this decision cannot appeal this decision directly to the Land Use Board of Appeals under ORS 197.830.

NOTICE TO MORTGAGEE, LIENHOLDER, VENDOR OR SELLER: ORS CHAPTER 215 REQUIRES THAT IF YOU RECEIVE THIS NOTICE, IT MUST PROMPTLY BE FORWARDED TO THE PURCHASER.

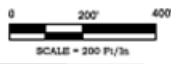
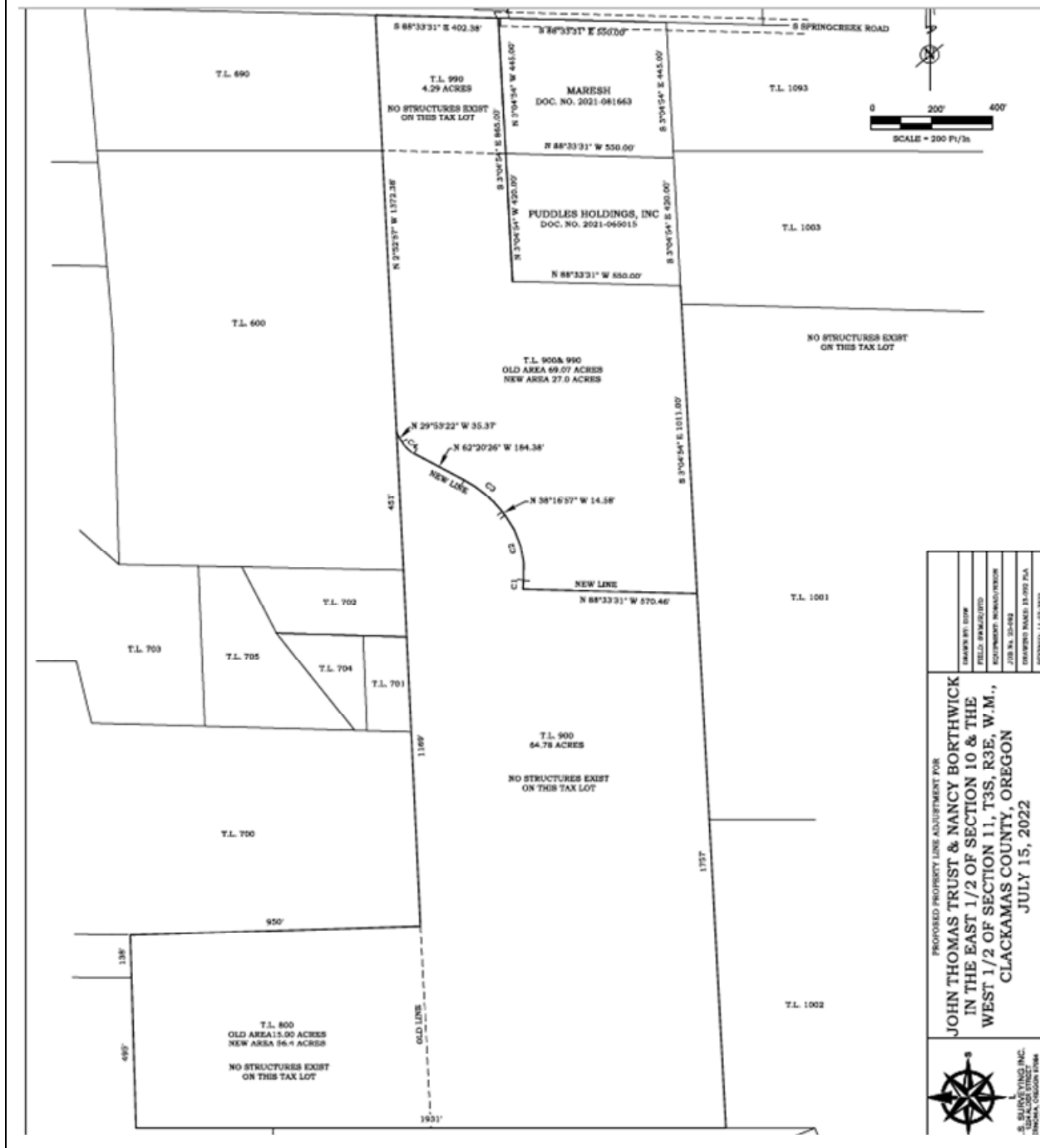
Clackamas County is committed to providing meaningful access and will make reasonable accommodations, modifications, or provide translation, interpretation or other services upon request. Please contact us at 503-742-4545 or email DRenhard@clackamas.us.

503-742-4545: ¿Traducción e interpretación? | Требуется ли вам устный или письменный перевод? | 翻译或口译? | Cần Biên dịch hoặc Phiên dịch? | 번역 또는 통?

Location Map



Site Plan



<p>PROPOSED PROPERTY LINE ADJUSTMENT FOR JOHN THOMAS TRUST & NANCY BORTHWICK IN THE EAST 1/2 OF SECTION 10 & THE WEST 1/2 OF SECTION 11, T3S, R3E, W.M., CLACKAMAS COUNTY, OREGON JULY 15, 2022</p>	<p>DRAWN BY: DDP FIELD: PERMITS/UDS EQUIPMENT: MAN/AL/VEH/CR JOB NO. 22-482 DRAWING NUMBER: 22-092.DA STANDARD L&S: 3000</p>
	<p>S. SAURET AND INC. 1000 N. GARDNER STREET PORTLAND, OREGON 97228</p>

PERMIT EXPIRATION

Approval of a property line adjustment is valid for two years from the date of the final decision. Unless an appeal is filed, the date of the final decision is the “decision date” listed above. During this two year period, the requirements of Chapter 11.01.040 of the Clackamas County Code and Subsection 1107.06 or 1107.07 (whichever is applicable) of the Zoning and Development Ordinance shall be satisfied, or the approval will become void. The requirements are summarized in the conditions of approval below.

This is the only notice you will receive of this deadline.

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 parentheses.

1. Approval of this land use permit is based on the submitted written narrative and plan(s) filed with the County on 3/25/2024 and additional documents submitted on. No work shall occur under this permit other than that which is specified within these documents, unless otherwise required or specified in the conditions below. It shall be the responsibility of the property owner(s) to comply with these document(s) and the limitation of any approval resulting from the decision described herein.
2. Prior to Planning Director approval of the final property line adjustment record of survey map or final plat required pursuant to ZDO Subsection 1107.06 or 1107.07, respectively, setbacks from the proposed relocated property line for all existing structures on the subject property shall be verified by a site plan prepared and stamped by an Oregon registered professional land surveyor. If no structures exist, the surveyor shall submit a stamped letter so stating. (ZDO 1107.03(C))
3. To finalize the property line adjustment, a record of survey map shall be filed unless the County Surveyor waives this requirement or unless the adjustment constitutes a replat under ORS Chapter 92. (ZDO 1107.06)
 - a. The form and content of the record of survey map shall comply with the County's final decision approving the tentative plan and applicable provisions of Chapter 11.01 of the Clackamas County Code and Oregon Revised Statutes Chapters 92 and 209.
 - b. As required by Section 11.01.040 of the Clackamas County Code, revised legal descriptions of the properties affected by the adjustment (for new deeds) shall be prepared by a registered professional land surveyor, refer to the record of survey map that is filed with the County, and be recorded with the County Clerk. A

property line adjustment deed shall contain the names of the parties, the description of the adjusted line, references to original recorded documents, and signatures of all parties with proper acknowledgement.

4. If the property line adjustment constitutes a replat under ORS chapter 92, finalizing the adjustment requires the filing of a final plat, except that a final plat is not required for a replat in which all parcels are larger than 80 acres. (ZDO 1107.07)
 - a. The form and content of the final plat shall comply with the County's final decision approving the adjustment and applicable provisions of Chapters 11.01 and 11.02 of the Clackamas County Code and ORS chapters 92, 94, 100, and 209.

APPLICABLE APPROVAL CRITERIA

This application is subject to Clackamas County Zoning and Development Ordinance (ZDO) Section(s) 202, 406, 1107 and 1307.

PUBLIC AND AGENCY COMMENTS

Notice was sent to applicable agencies and owners of property within 750 feet. Comments received relating to the applicable approval criteria listed above are addressed in the Findings Section. Comments from the following were received:

Staff received no comments.

FINDINGS

The findings below identify the standards and criteria that are relevant to this decision, state the facts relied upon in rendering the decision, and explain the justification for the decision.

1. **Background/Overview of Applicant's Proposal:** The applicant proposes to adjust 42.7 acres from the property identified as Assessor's map and tax lot T3S R3E Section E11 Tax Lot(s) 00900, 00990 to the property identified as Assessor's map and tax lot T3S R3E Section E11, Tax Lot 00800.

2. **ZDO Section 202, Definitions**

Section 202 defines a property line adjustment as: *A relocation or elimination of all or a portion of the common property line between two abutting lots of record that does not create an additional lot of record. As used in this definition, a property line is the division line between two abutting lots of record.*

Section 202 defines a lot of record as:

1. *A lot or parcel created by a subdivision or partition plat, as defined in ORS chapter 92, filed with the Clackamas County Surveyor and recorded with the Clackamas County Clerk;*
2. *A unit of land created by a recorded deed or recorded land sales contract and in compliance with all applicable planning, zoning, and subdivision or partition ordinances and regulations, if any, in effect on the date the deed or land sales contract was signed by the parties to the deed or contract; or*
3. *A unit of land created solely to establish a separate tax account or for mortgage purposes; that did not conform to all planning, zoning, or subdivision or partition ordinances or regulations in effect on the date it was created; and that was sold prior to September 5, 2023, under the foreclosure provisions of ORS chapter 88.*

Finding: Tax lot 33E11 00800 is a lot of record (hereinafter referred to as Lot of Record 1) and the findings are located below. Tax lot 33E11 00900 and Tax lot 33E11 00990 are one lot of record (hereinafter referred to as Lot of Record 2) and the findings are located below.

ANALYSIS

Assessor's Map	Tax Lot	Approx. Acres	Lot of Record?
Township 3S Range 3E Section 11	00800	15 acres	Yes
Township 3S Range 3E Section 11	00900 & 00990	69.07 acres	Yes

Tax Lot 800 of Assessor's Map T3S R3E Section 11 is a lot of record for the following reasons.

The subject property includes no platted lots or parcels, and there is nothing in the record that demonstrates a history of foreclosure; therefore, whether the subject property is one or more lots of record is dependent on this aspect of the definition of a lot of record:

A unit of land created by a recorded deed or recorded land sales contract and in compliance with all applicable planning, zoning, and subdivision or partition ordinances and regulations, if any, in effect on the date the deed or land sales contract was signed by the parties to the deed or contract;

The earliest relevant document in the record is a deed, describing tax lot 800 as a separate unit of land, which was signed on March 3, 1945, and recorded as Book 340, page 189. This was prior to the effective date of initial zoning for the subject property on June 9, 1970, and prior to the county's first partition ordinance on October 26, 1974. A subdivision ordinance was in effect beginning on December 22, 1955, but it applied only to the division of a tract of land into four or more lots in a calendar year.

Tax Lot 900 of Assessor's Map T3S R3E1 Section 11 is a lot of record for the following reasons.

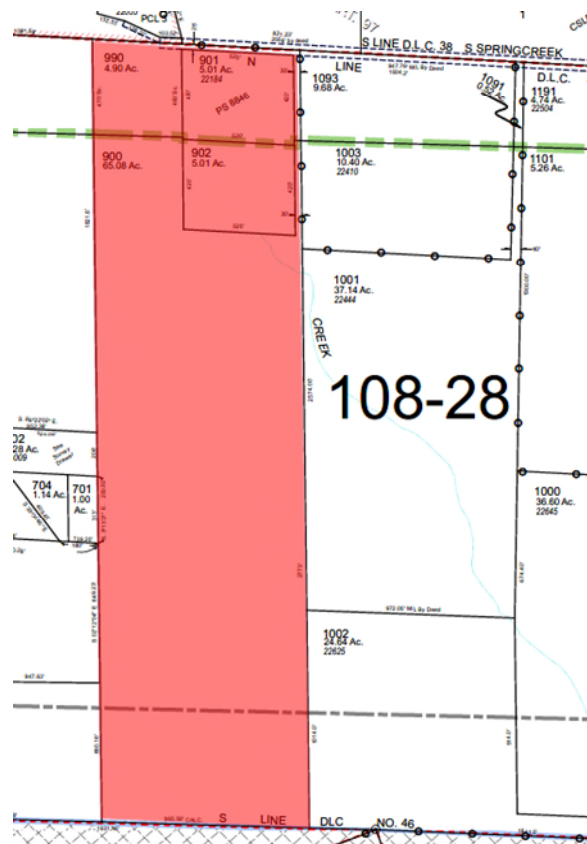
The subject property includes no platted lots or parcels, and there is nothing in the record that demonstrates a history of foreclosure; therefore, whether the subject property is one or more lots of record is dependent on this aspect of the definition of a lot of record:

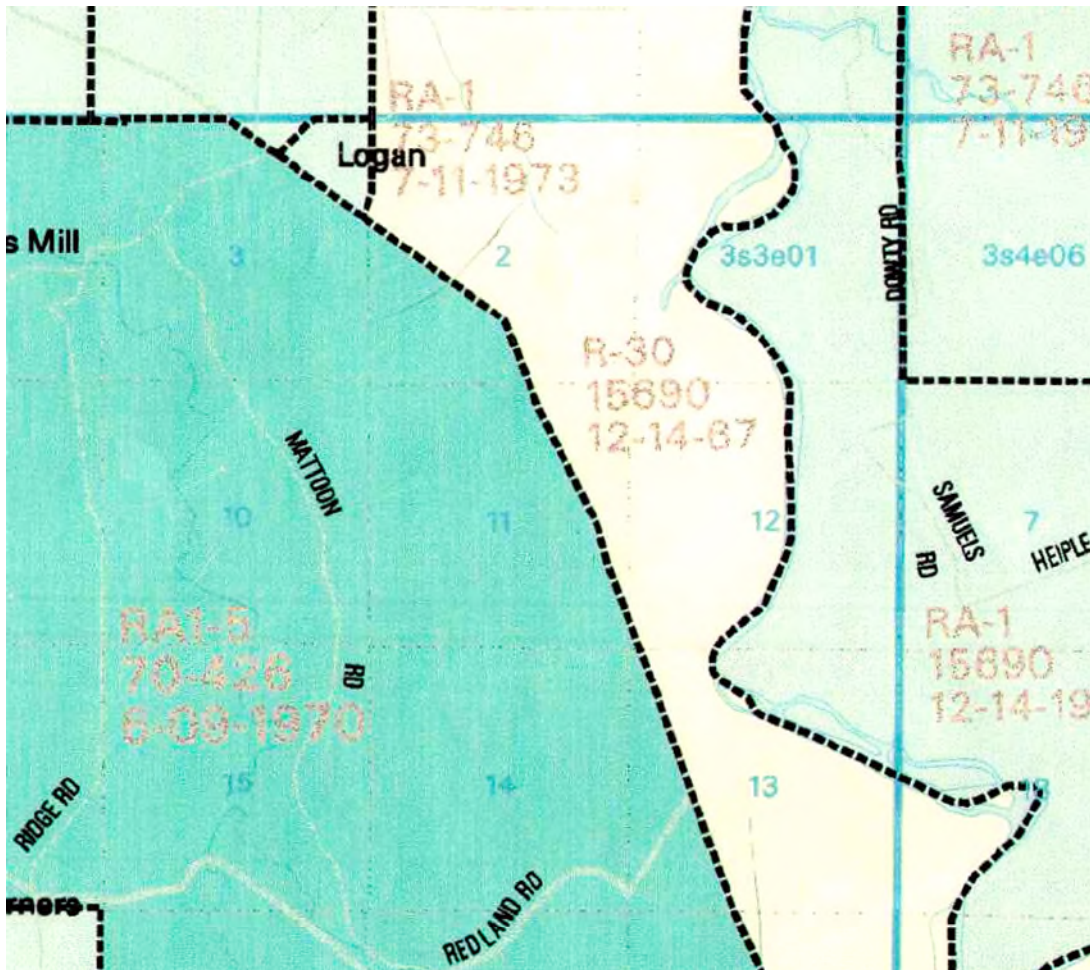
A unit of land created by a recorded deed or recorded land sales contract and in compliance with all applicable planning, zoning, and subdivision or partition ordinances and regulations, if any, in effect on the date the deed or land sales contract was signed by the parties to the deed or contract;

The earliest relevant document in the record is a deed, describing tax lots 990, 900, 901 and 902, which was signed on November 11, 1945, and recorded as Book 566, page 51.

The next two relevant documents in the record is two deeds removing and describing tax lot 901 and tax lot 902, which were both signed on May 3, 1970 and recorded as document no. 70-008700 and document no. 70-12453.

Based on the deed history, it is clear that tax lot 900 and tax lot 990 was the remainder parcel with the last parcel being removed on May 3, 1970. This was prior to the effective date of initial zoning for the subject property on June 9, 1970, and prior to the county's first partition ordinance on October 26, 1974. A subdivision ordinance was in effect beginning on December 22, 1955, but it applied only to the division of a tract of land into four or more lots in a calendar year. The subject property is one 69.07 piece, but there are two tax lots due the northern portion of the property (tax lot 990) being in a different tax district.





References Consulted:

- | | |
|---|---|
| <input type="checkbox"/> Assessor "Ownership Books" | <input type="checkbox"/> Building Permits |
| <input type="checkbox"/> Assessor "Appraisal Jackets" | <input type="checkbox"/> Rolodex |
| <input type="checkbox"/> Assessor Microfiche Ledger | <input type="checkbox"/> Microfiche |
| <input type="checkbox"/> Accela and SharePoint | <input checked="" type="checkbox"/> Other: DEEDS_____ |

This criterion is met.

3. ZDO Section 406, Section Title

Section 406 applies to the TBR zoning district where the subject property is located. Subsection 406.07 establishes applicable dimensional standards, which are limited to minimum lot size and minimum setback standards.

Findings of compliance with lot size and setback standards are included below.

4. ZDO Section 1107, Property Line Adjustments

1107.03 General Provisions

Property line adjustments shall be subject to the following standards and criteria:

- A. *A property line adjustment is subject to the minimum and maximum lot size standards of the applicable zoning district, except as follows:*
- 1. If a lot of record is smaller than the minimum lot size standard, its size may be reduced, provided that it is not in an AG/F, EFU, or TBR District.*
 - 2. If a lot of record is larger than the maximum lot size standard, its size may be reduced even if the reduction is not sufficient to comply with the maximum lot size standard.*
 - 3. If a lot of record in an AG/F, EFU, or TBR District is smaller than the minimum lot size standard, its size may be reduced subject to Subsection 1107.04.*

Finding:

As demonstrated by the submitted site plan, Lot of Record 1 and 2 are each smaller than 80 acres, and Lot of Record 2 will be reduced in size by the property line adjustment. Compliance with Subsection 1107.04 is addressed below.

There is no maximum lot size in the TBR District.

This criterion is met.

- B. *Subsequent subdivision or partition (or development of dwelling units subject to Section 1012, Lot Size and Density) of a lot of record that was the subject of a property line adjustment shall be limited as follows:*
- 1. A property line adjustment shall not be used to later permit development that exceeds the maximum density established by Section 1012. In calculating density, all lots or parcels (or dwelling units subject to 1012) within both lots of record that were the subject of the property line adjustment shall be included.*

Finding: Section 1012 does not establish a maximum density standard in the TBR District;

This criterion is not applicable.

- 2. In the RA-1, RRFF-5 and FF-10 Districts, where averaging of lot sizes may be permitted pursuant to table 316-2, Dimensional Standards in the Rural Residential and Future Urban Residential Zoning Districts, a property line*

adjustment shall not be used to later permit a subdivision or partition that reduces the minimum average lot size below the minimum average lot size standard. In calculating the minimum average lot size, all lots or parcels within both lots of record that were the subject of the property line adjustment shall be included.

Finding: The subject property is not zoned RA-1, RRF-5 or FF-10.

This criterion is not applicable.

- C. *A property line adjustment is subject to the minimum setback standards of the applicable zoning district, except that if a lawfully established nonconforming setback exists, the property line adjustment may be approved if it does not reduce that depth. Prior to Planning Director approval of the final property line adjustment record of survey map or final plat required pursuant to Subsection 1107.06 or 1107.07, respectively, setbacks from the proposed relocated property line for all existing structures on the subject property shall be verified by a site plan prepared and stamped by an Oregon registered professional land surveyor. If no structures exist, the surveyor may submit a stamped letter so stating.*

Finding: The proposed property line adjustment will reduce the rear side property line for Lot of Record 2, which is currently vacant. The minimum side yard setback in the TBR District is 30 feet. Neither of the lots of record contain structures therefore they will continue to comply with the minimum side yard setback standard following the adjustment. A condition of approval is included requiring that setbacks from the relocated property line for existing structures are verified by a site plan prepared and stamped by an Oregon registered professional land surveyor, or if no structures exist, by a stamped letter from the surveyor stating that no structures exist.

As conditioned, this criterion is met.

- D. *A property line adjustment shall be prohibited between lots of record separated by a Comprehensive Plan land use designation boundary, as identified on Comprehensive Plan Map IV-3, Lake Oswego Land Use Plan Map, IV-4, West Linn Land Use Plan Map, IV-5, Oregon City Land Use Plan Map, IV-6, North Urban Area Land Use Plan Map, or IV-7, Non-Urban Area Land Use Plan, and Mt. Hood Corridor Land Use Plan, if the boundary separates an Urban, Unincorporated Community, or Rural Plan designation from an Agriculture or Forest Plan designation, except an adjustment may be granted when it results in an increase in size of the lot of record with the Agriculture or Forest plan designation. However, approval of such an adjustment shall not be used to reconfigure a lot of record, the result of which is to qualify the lot of record for a land division pursuant to Subsection 1012.02(D).*

Finding: Both lots of record have a Plan designation of Forest.

This criterion is met.

- E. *A property line adjustment is prohibited between lots of record separated by the Portland Metropolitan Urban Growth Boundary (UGB) or the unincorporated community boundary of Government Camp, Rhododendron, Wemme/Welches, Wildwood/Timberline or Zigzag Village.*

Finding: The proposed PLA does not involve lots of record that are separated by the Portland Metropolitan UGB or the unincorporated community boundary of Government Camp, Rhododendron, Wemme/Welches, Wildwood/Timberline or Zigzag Village.

This criterion is met.

- F. *A property line adjustment shall not result in the adjustment of a dwelling from one lot of record to the other unless the lot of record receiving the dwelling otherwise complies with all applicable standards of this Ordinance for the siting of a dwelling.*

Finding: As demonstrated by the submitted site plan and a review of aerial photography and Department of Assessment and Taxation records, the proposed PLA will not result in the adjustment of a dwelling from one lot of record to the other.

This criterion is met.

1107.04 AG/F, EFU, and TBR District Approval Criteria

In addition to the standards and criteria in Subsection 1107.03, a property line adjustment in the AG/F, EFU, or TBR District shall be subject to the following standards and criteria:

- A. *As used in Subsection 1107.04, “ground water restricted area”, “high-value farmland”, “high-value forestland”, and “waiver” have the meanings given those terms in Oregon Revised Statutes (ORS) 195.300*

Finding: This criterion is advisory in nature.

- B. *A property line adjustment for a lot of record in the AG/F, EFU, or TBR District that is larger than 80 acres may be approved if the adjustment does not reduce the lot of record to less than 80 acres.*

Finding: Neither Lot of Record 1 nor Lot of Record 2 is larger than 80 acres.

This criterion is not applicable.

- C. *A property line adjustment may not be used to:*

- 1. Decrease the size of a lot of record that, before the relocation or elimination of the common property line, is smaller than 80 acres and contains an existing dwelling or is approved for the construction of a dwelling, if another lot of record affected by the property line adjustment would be increased to a size as large as or larger than the minimum lot or parcel size required to qualify the other affected lot of record for a dwelling;*

Finding: Lot of record 2 is already below 80 acres and will be reduced further, but is not approved for a dwelling, the property is vacant. Lot of Record 1 will increase up to 56.4 acres, which not as large as or larger than the minimum lot or parcel size required to qualify for a lot of record dwelling.

This criterion is met.

2. *Decrease the size of a lot of record that contains an existing dwelling or is approved for construction of a dwelling to a size smaller than 80 acres, if another lot of record affected by the property line adjustment would be increased to a size as large as or larger than the minimum lot or parcel size required to qualify the other lot of record for a dwelling;*

Finding: This criterion is nearly identical to the preceding one but seems to contemplate a situation where a lot could be larger than 80 acres prior to the property line adjustment and smaller than 80 acres following it. This criterion comes directly from Oregon Revised Statutes 92.192(4)(b); however, ZDO 1107.04(B) prohibits such an adjustment.

This criterion is not applicable.

3. *Allow an area of land used to qualify a lot of record for a dwelling based on an acreage standard to be used to qualify another lot of record for a dwelling if the land use approval would be based on an acreage standard;*

Finding: Lot of Record 2 would be reduced in size by the proposed property line adjustment. It is not developed with a dwelling. However, Lot of Record 1, which will be increased in size, will not be increased to a size large enough to qualify for a dwelling. Lot of Record 1 will be 56.4 acres once the PLA is completed, this size acreage increase does not qualify the property for any type of dwelling.

This criterion is met.

4. *Adjust a property line that resulted from a subdivision or partition authorized by a waiver so that any lot of record affected by the property line adjustment is larger than:
 - a. *Two acres if the lot of record is, before the adjustment, two acres in size or smaller and is high-value farmland, high-value forestland, or within a ground water restricted area; or*
 - b. *Five acres if the lot of record is, before the adjustment, five acres in size or smaller and is not high-value farmland, high-value forestland, or within a ground water restricted area;**

Finding: Neither Lot of Record 1 nor Lot of Record 2 was part of a subdivision or partition authorized by a waiver (i.e., approval of a Ballot Measure 49 (2007) claim).

This criterion is met.

5. *Separate a temporary dwelling for care, home occupation, relative farm help dwelling, or processing facility from the lot of record on which the primary residential use or other primary use exists; or*

Finding: As represented by the submitted application and confirmed by a review of county land use permitting records, neither Lot of Record 1 nor Lot of Record 2 is developed with a temporary dwelling for care, home occupation, relative farm help dwelling, or processing facility.

This criterion is met.

6. *Separate an accessory dwelling in conjunction with farm use approved pursuant to Subsection 401.05(C)(12), except as provided in OAR 660-033-0130(24)(B).*

Finding: As represented by the submitted application and confirmed by a review of county land use permitting records, neither Lot of Record 1 nor Lot of Record 2 is developed with an accessory dwelling in conjunction with farm use.

This criterion is met.

1107.06 Record of Survey Map Review

If a property line adjustment application is approved, finalizing the adjustment requires the filing of a record of survey map unless the County Surveyor waives this requirement or unless the adjustment constitutes a replat under ORS Chapter 92. The applicant shall comply with the following:

- A. *The form and content of the record of survey map shall comply with the County's final decision approving the tentative plan and applicable provisions of Chapter 11.01 of the Clackamas County Code and Oregon Revised Statutes Chapters 92 and 209.*
- B. *Final Planning Director Approval of the Record of Survey Map: The final record of survey map shall be submitted to the County for review. If it is consistent with the approved tentative plan and the conditions of approval included in the County's final decision on the application have been satisfied, the Planning Director shall sign the record of survey map.*

Finding: Conditions of approval have been included requiring compliance with either Subsection 1107.06 or 1107.07.

As conditioned, this criterion is met.

1107.07 Final Plat Review for Replats

If an application is approved for a property line adjustment that constitutes a replat under ORS chapter 92, finalizing the adjustment requires the filing of a final plat, except that a final plat is not required for a replat in which all parcels are larger than 80 acres. The applicant shall comply with the following:

- A. *The form and content of the final plat shall comply with the County's final decision approving the adjustment and applicable provisions of Chapters 11.01*

and 11.02 of the Clackamas County Code and ORS chapters 92, 94, 100, and 209.

B. The final plat shall be submitted to the County for review. If a homeowners association is required, the declaration for a planned community, articles of incorporation, and bylaws shall be submitted to the County with the final plat. If the final plat and, if a homeowners association is required, the declaration for a planned community, articles of incorporation, and bylaws are consistent with the approved adjustment and the conditions of approval included in the County's final decision on the application have either been satisfied or guaranteed pursuant to Section 1311, Completion of Improvements, Sureties, and Maintenance, the Planning Director shall sign the plat.

Finding: Conditions of approval have been included requiring compliance with either Subsection 1107.06 or 1107.07.

As conditioned, this criterion is met.