§ 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.

> Applicant Response: As described below, the requirements for this section and § 39.3030 for the CFU-2 zone are both satisfied.

(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.

(1) "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.

> Applicant Response: The subject property satisfied all applicable zoning laws when it was created in 1985 and adjusted in 1993 through the approved property line adjustment that was finalized by recording for the property line adjustment deed recorded at Book 2801 Page 1161 in 1993.

(2) "Satisfied all applicable land division laws" shall mean the parcel or lot was created:

(a) By a subdivision plat under the applicable subdivision requirements in effect at the time; or

(b) 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

(c) 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

(d) By partitioning land under the applicable land partitioning requirements in effect on or after October 19, 1978; and

(e) "Satisfied all applicable land division laws" shall also mean that any subsequent boundary reconfiguration completed on or after December 28, 1993 was approved under the property line adjustment provisions of the land division code. (See Date of Creation and Existence for the effect of property line adjustments on qualifying a Lot of Record for the siting of a dwelling in the EFU and CFU districts.)

Applicant Response: The approved lot line adjustment with the Looney parcel adjusted the subject property into its current configuration, through the property line adjustment deed recorded at Book 2801 Page 1161 in 1993.

That property line adjustment approval effectively confirmed the two parcels were already Lots of Record, because property line adjustments can only occur between contiguous Lots of Record. See § 39.9300 and 39.4130(A) (a property line adjustment may be authorized for contiguous Lots of Record).

Consistent with that property line adjustment approval, the Lightcap parcel conveyed a narrow strip to the Looney parcel, again by the deed recorded at Book 2801 Page 1161 in 1993, after which tax lot 600 still easily exceeded the 19-acre minimum. That adjusted line remains the boundary between the Lightcap parcel and the Looney parcel today, as recently confirmed by the county on the recorded one-parcel partition plat of the Looney property, Partition Plat No. 2019-10. The Looney parcel remains one legal lot of record, although it is two tax lots (303 and 304).

By approving the Looney partition in 2019, the county confirmed that the boundary between the Looney and Lightcap parcels established in 1985 and adjusted by the 1993 lot line adjustment deed was lawfully established. If that boundary created in 1985 and adjusted by the 1993 deed had not been lawfully established, then the 2019 partition could not have been approved. None of the other boundaries for the Lightcap parcel have been adjusted since the parcel was created in the 1985 land sale contract, and the parcel has always exceeded the 19-acre minimum size.

LUBA has confirmed that approved lot line adjustments such as occurred here are between two legal lots of record. In *Grimstad v. Deschutes County*, the county required consolidation of two tax lots when approving a land use application. That is what occurred here with the Looney one-parcel partition in 2019. The partition confirmed the validity of the prior lot line adjustment, as in *Grimstad*, where LUBA concluded the property line adjustment had a "practical effect on the parties;" that is, the deed achieved an adjustment of the properties. 74 Or LUBA 360, 370-71 (2016).

Therefore, when the subject property created in 1985 and adjusted in 1993, it satisfied all applicable zoning laws and satisfied all applicable land division laws, so § 39.3005(B) is satisfied.

(3) Separate Lots of Record shall be recognized and may be partitioned congruent with an "acknowledged unincorporated community" boundary which intersects a Lot of Record.

Applicant Response: This provision does not apply because there is no acknowledged unincorporated community at or near the subject property.

§ 39.3030 LOT OF RECORD – COMMERCIAL FOREST USE-2 (CFU-2).

(A) In addition to the standards in MCC 39.3005, for the purposes of the CFU-2 district a Lot of Record is either:

(1) A parcel or lot which was not contiguous to any other parcel or lot under the same ownership on February 20, 1990, or

> Applicant Response: This provision does not apply because the applicant is proceeding under subsection (2)(b) below.

(2) A group of contiguous parcels or lots:

(a) Which were held under the same ownership on February 20, 1990; and

> Applicant Response: The subject property was contiguous to another parcel under the same ownership on Feb. 20, 1990. The owners in 1990, Brian and Christine Lightcap, also owned tax lot 1600, across Newberry Road from the subject property. Tax lot 1600 was and remains 22 acres, so both properties exceeded the then-current 19 acre minimum size. Therefore, as described below, the property satisfies MCC 39.3030(A)(2)(b)(1).

(b) Which, individually or when considered in combination, shall be aggregated to comply with a minimum lot size of 19 acres, without creating any new lot line.

1. Each Lot of Record proposed to be segregated from the contiguous group of parcels or lots shall be a minimum of 19 acres in area using existing legally created lot lines and shall not result in any remainder individual parcel or lot, or remainder of contiguous combination of parcels or lots, with less than 19 acres in area. See Examples 1 and 2 in this subsection.

Applicant Response: Both tax lots 600 and 1600 already exceed 19 acres in size.

2. There shall be an exception to the 19 acre minimum lot size requirement when the entire same ownership grouping of parcels or lots was less than 19 acres in area on February 20, 1990, and then the entire grouping shall be one Lot of Record. See Example 3 in this subsection.

Applicant Response: Not applicable, because both tax lots already exceed 19 acres.

3. Three examples of how parcels and lots shall be aggregated are shown in MCC 39.3070 Figure 1 with the solid thick line outlining individual Lots of Record:

4. The requirement to aggregate contiguous parcels or lots shall not apply to lots or parcels within exception or urban zones (e.g. MUA-20, RR, BRC, R10), but shall apply to contiguous parcels and lots within all farm and forest resource zones (i.e. EFU and CFU), or
Applicant Response: Not applicable, because both tax lots already exceed 19 acres.

(3) A parcel or lot lawfully created by a partition or a subdivision plat after February 20, 1990.

Applicant Response: The subject property was not created by a partition or subdivision plat. However, the property was created in 1985 and adjusted into its current configuration by the property line adjustment deed recorded at Book 2801 Page 1161 in 1993.

However, at the time of creation the east boundary of the property did not align with existing development on the Looney property, and thus a property line adjustment was approved. The property line adjustment was not intended to, and did not, qualify tax lot 600 for a dwelling, because it already qualified for a dwelling under then-existing rules. And that property line adjustment approval effectively confirmed the two parcels were already Lots of Record, because property line adjustments can only occur between contiguous Lots of Record. See § 39.9300 and 39.4130(A) (a property line adjustment may be authorized for contiguous Lots of Record).

Consistent with that property line adjustment approval, the Lightcap parcel conveyed a narrow strip to the Looney parcel, by the deed recorded at Book 2801 Page 1161 in 1993, after which tax lot 1600 still easily exceeded the 19-acre minimum. That adjusted line remains the boundary between the Lightcap parcel and the Looney parcel today, as recently confirmed by the county on the recorded one-parcel partition plat of the Looney property, Partition Plat No. 2019-10. The Looney parcel remains one legal lot of record, although it is two tax lots (303 and 304). Therefore, it is analogous to the two 15-acre lots in Example 2 that combined constitute one legal lot, again as shown on Partition Plat No. 2019-10.

By approving the Looney partition in 2019, the county confirmed that the boundary between the Looney and Lightcap parcels established in 1985 and adjusted in the 1993 lot line adjustment deed was lawfully established. If that boundary created in 1985 and adjusted by the 1993 deed had not been lawfully established, then the 2019 partition could not have been approved. None of the other boundaries for the Lightcap parcel have been adjusted since the parcel was created in the 1985 land sale contract, and the parcel has always exceeded the 19-acre minimum size.

LUBA has confirmed that approved lot line adjustments such as happened here occurred here with two legal lots of record. In *Grimstad v. Deschutes County*, the county required consolidation of two tax lots when approving a land use application. That is what occurred here with the Looney one-parcel partition in 2019. The partition confirmed the validity of the prior lot line adjustment, as in *Grimstad*, where LUBA concluded the property line adjustment had a "practical effect on the parties;" that is, the deed achieved an adjustment of the properties. 74 Or LUBA 360, 370-71 (2016). Again, that 1993 property line adjustment was not intended to, and did not, qualify either the Looney parcel or the Lightcap parcel for the siting of a dwelling. Therefore the date of creation remains August 29, 1985.

(4) Exceptions to the standards of (A)(2) above:

Applicant Response: Not applicable because (A)(2) is satisfied.

(C) A Lot of Record which has less than the minimum lot size for new parcels, less than the front lot line minimums required, or which does not meet the access requirements of MCC 39.4135, may be occupied by any allowed use, review use or conditional use when in compliance with the other requirements of this district.

Applicant Response: Following approval of this Lot of Record application, the applicant will propose a single family dwelling.

(D) The following shall not be deemed a Lot of Record:

(1) An area of land described as a tax lot solely for assessment and taxation purposes;

Applicant Response: The subject property is not described as a tax lot solely for assessment and taxation purposes. The assessor's tax lot records reflect the fee title ownership, as altered by the property line adjustment deed recorded in 1993 at Book 2801 Page 1161. Therefore this provision does not apply.

(2) An area of land created by the foreclosure of a security interest;

Applicant Response: The title records reflect that the subject property was created in its current configuration by deeds conveying fee title. It was not created or altered by the foreclosure of a security interest. Therefore this provision does not apply.

(3) A Mortgage Lot.

Applicant Response: The title records reflect the subject property was created in its current configuration by deeds conveying fee title. It was not created for the purpose of securing a mortgage, trust deed, or other security interest. Therefore this provision does not apply.

(4) An area of land created by court decree.

Applicant Response: The title records reflect the subject property was created in its current configuration by deeds from private parties conveying fee title. It was not created by judicial decree for the partitioning of land, such as in a divorce, or to divide the interests of tenants in common. Therefore this provision does not apply.