

## NOTICE OF DECISION

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**Case File:** T2-2022-16204  
**Permit:** Lot of Record Verification  
**Applicant:** James Howsley **Owner:** Andrew Lightcap  
**Location:** Property north of 13220 NW Newberry Road  
**Map, Tax Lot:** 2N1W33A -00600  
**Alternate Account #:** R971330150 **Property ID #:** R325446  
**Base Zone:** Commercial Forest Use – 2 (CFU-2)  
**Overlays:** Significant Environmental Concern for Wildlife Habitat (SEC-h), Scenic Views (SEC-v), and Streams (SEC-s), Geologic Hazards (GH)  
**Proposal Summary:** The Applicant requests a Lot of Record Verification for the subject property identified above. A Lot of Record Verification determines if a property was lawfully established in compliance with zoning and land division laws at the time of its creation or reconfiguration and the County’s aggregation requirements.

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**Determination:** The subject property identified as 2N1W33A -00600 is not a Lot of Record in its current configuration.

**This decision is final at the close of the appeal period, unless appealed. The deadline for filing an appeal is Thursday, March 02, 2023 at 4:00 pm.**

**Opportunity to Review the Record:** The complete case file, including the Planning Director Decision containing Findings, Conclusions, Conditions of Approval, and all evidence associated with this application is available for review. Paper copies of all documents are available at the rate of \$0.40/per page. For further information, contact Chris Liu via email at [chris.liu@multco.us](mailto:chris.liu@multco.us)

**Opportunity to Appeal:** 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 office at [land.use.planning@multco.us](mailto:land.use.planning@multco.us) or (503) 988-3043. The appeal form is available at [www.multco.us/landuse/application-materials-and-forms](http://www.multco.us/landuse/application-materials-and-forms). This decision is not appealable to the Land Use Board of Appeals until all local appeals are exhausted.

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**Issued by:** Chris Liu

**By:** Chris Liu, Senior Planner

**For:** Adam Barber,  
Interim Planning Director

**Date:** Thursday, February 16, 2023

## Vicinity Map



### **Applicable Approval Criteria:**

**Multnomah County Code (MCC):** MCC 39.1250 Code Compliance and Applications, MCC 39.2000 Definitions, MCC 39.3005 Lot of Record – Generally, MCC 39.3030 Lot of Record – Commercial Forest Use-2 (CFU-2).

Copies of the referenced Multnomah County Code sections are available by contacting our office at (503) 988-3043 or by visiting our website at <https://www.multco.us/landuse/zoning-codes> under the link **Chapter 39: Multnomah County Zoning Code**

### **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*.

### **1.0 Project Description:**

**Staff:** The applicant requests a Lot of Record Verification for the property identified as 2N1W33A - 00600 (“subject property”). The application does not propose any new development at this time.

Through the Lot of Record Verification process, the County reviews the creation or reconfiguration of each parcel, lot, or unit of land involved in the request. The County then verifies that the creation or reconfiguration of the parcel, lot, or unit of land satisfied all applicable zoning laws and all applicable land division laws in effect on the date of its creation or reconfiguration. In the CFU- 2 zone, the County also considers adjacent ownership on February 20, 1990 in determining whether a parcel, lot, or unit of land is a Lot of Record on its own. If the parcel, lot, or unit of land met all applicable zoning laws, applicable land division laws and meets the aggregation requirements, it may be determined to be a Lot of Record.

### **2.0 Property Description & History:**

**Staff:** The subject property is located in unincorporated west Multnomah County in the area known as the West Hills rural area. The property is zoned Commercial Forest Use - 2 (CFU-2) and is located outside of Metro’s Urban Growth Boundary (UGB). Aerial imagery (from 2021) shows an outbuilding on the subject property.

### **3.0 Land Use History:**

The following information provides a summary of the history of the subject property configuration(s) based on findings from the Hearing’s Officer Decision for case no. T2-2018-10124 (Exhibit B.3):

#### *Failed Land Division*

On November 5, 1985, Fred Bernet, the then-owner of ‘Tax Lot 15’, purported to sell 2.5 acres of that property (creating ‘Tax Lot 33’), along with the sale of a 1.31 acre parcel (‘Tax Lots 17 and 62’). On March 30, 1989, Fred Bernet intended to sell Brian and Christine Lightcap the 31.57 remainder of ‘Tax Lot 15’. Bernet made the sales purporting to divide ‘Tax Lot 15’ without County approval of a land division. The zoning at the time was MUF-19 but the County determined that the Lightcap property had issues because it was created from an unlawful land division.

In 1989, to legalize the sales of the properties referenced above, Mr. Bernet submitted an application request for a “Land Division and Lot of Exception approval to create a 3.82 acre parcel and a 31.57 acre parcel out of this 35.39 [sic] acre Lot of Record.” The County approved that application, but due to a failure to submit a final partition map, the approval expired and the Land Division and Lot of Exception were not perfected.

#### *1992 Application and subsequent Decision*

In 1992, the County received an application request for a Lot of Exception (Case LE 14-92) and a Land Division (Case LD 49-92) to legalize the sales of the properties referenced above. The

Lot of Exception process was the County’s methodology for approving a “property line adjustment” because the zoning code did not include a provision for property line adjustments at that time and the adjustment of one of the properties, which was below the minimum lot size of 19 acres, required an exception. On November 5, 1993, the County approved the three property line adjustment legal descriptions. Survey no. 53807 (Exhibit B.5) depicts the resulting configurations of the adjusted properties.

#### 2018 Director’s Interpretation

The County received a Director’s Interpretation request on March 13, 2018 asking the Planning Director find that LE 14-92 and LD 49-92 be found void. Multnomah County issued a Director’s Interpretation finding that LE 14-92 and LD 49-92 were not void. On October 22, 2018, a Multnomah County Hearing’s Officer issued a decision finding that LE 14-92 and LD 49-92 were void due to the failure to consolidate ‘Tax Lots 33, 17, and 62’ prior to December 31, 1993.

Due to the corrective actions of LE 14-92 and LD 49-92 being void, the Hearings Officer found in T2-2018-10124 the subject property issues remain unresolved as the property was created from an unlawful land division (in 1985).

Sections 6.1 – 6.2 below discuss the relevant code criteria for this Lot of Record Verification request.

#### **4.0 Public Comment:**

**Staff:** Staff mailed a notice of application and invitation to comment on the proposed application to the required parties per MCC 39.1105 (Exhibit C.2). No public comments were filed during the 14-day comment period.

#### **5.0 Code Compliance and Applications Criteria:**

##### **5.1 MCC 39.1250 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 or zoning review approval of development or any other approvals authorized by this code for any property that is not in full compliance with all applicable provisions of the Multnomah County Zoning Code and/or any permit approvals previously issued by the County.**

\* \* \*

**Staff:** As noted in Section 1.0 above, this application is a request for a Lot of Record Verification, which does not involve the County approving development, a land division, a property line adjustment, or a building permit. If the property is found not to be a Lot of Record, it may be possible for the property owner to use the County’s Legalization of Lots and Parcels that were Unlawfully Divided provisions under MCC 39.9700 to correct the situation. As the applicant did not elect to submit such an application, this decision does not discuss the associated criteria.

#### **6.0 Lot of Record Criteria:**

##### **6.1 MCC 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.**

**(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.**

**(a) “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.**

**(b) “Satisfied all applicable land division laws” shall mean the parcel or lot was created:**

- 1. By a subdivision plat under the applicable subdivision requirements in effect at the time; or**
- 2. 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**
- 3. 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**
- 4. By partitioning land under the applicable land partitioning requirements in effect on or after October 19, 1978; and**
- 5. “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.)**

\* \* \*

**Staff:** To qualify as a Lot of Record, the subject property, when created or reconfigured, must meet MCC 39.3005(B) of this section and meet the Lot of Record standards set forth in the CFU-2 zoning district. More specifically, section (B) above requires demonstration that the subject property (a) satisfied all applicable zoning laws and (b) satisfied all applicable land division laws. The Lot of Record standards set forth in the CFU-2 district establish additional requirements unique to the district, which are evaluated in Section 5.2 of this decision. The findings below analyze whether the Lot of Record provisions in section (B) have been met.

#### All Applicable Zoning Laws

The applicant provided a Chain of Title Report (Exhibit A.4) to support the Lot of Record Verification request. As described in Section 3.0 above, the subject property was created in

November of 1985. In 1985, the subject property was zoned MUF-19 per historical County zoning maps (Exhibit B.6).

The MUF-19 zone had a minimum lot size of 19.0 acres for all new parcels except in certain situations, a minimum front lot line length of 50 feet, and a requirement for a lot to abut a public street or have other access determined to be safe and convenient for pedestrians and for passengers and emergency vehicles. The subject property abuts NW Newberry Road (a public road), and has a front lot line length greater than 50 feet (Exhibit B.2 and B.5). In 1985, 1989 and 1992, the parent parcel was approximately 35.38 acres (not including the portion of road frontage of NW Newberry Road that would accrue if the road were vacated). To divide a parcel of that size in the MUF-19 zone, a Lot of Exception was necessary to allow the parent parcel to be divided into two units of land with one being less than 19 acres. As discussed above in Section 3.0, the Hearings Officer in T2-2018-10124 (Exhibit B.3), found the various Lot of Exception applications throughout the years void. The failure to use the Lot of Exceptions in a timely fashion left the subject property an unlawfully divided unit of land and not in compliance with all applicable zoning laws.

*The subject property did not comply with all applicable zoning laws in 1985, 1989 and 1992.*

#### All Applicable Land Division Laws

In 1985, the process to divide a property into three or less parcels required the review and approval of a Type I, II, or III land division (Exhibit B.8). In 2001, the County renamed the land division classifications from “Type” to “Category”. Planning staff reviewed the applicable land division regulations and identified that at a minimum, a Type III Land Division application was required. As noted in Section 3.0 above, the land use decisions that attempted to correct the (1985) unlawful land division expired and/or are void as found by the Hearings Officer in T2-2018-10124 (Exhibit B.3).

*The subject property did not comply with all applicable land division laws at the time of its creation or reconfiguration.*

## **6.2 MCC 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**
- (2) A group of contiguous parcels or lots:**
  - (a) Which were held under the same ownership on February 20, 1990; and**
  - (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.**

\* \* \*

**Staff:** In addition to the subject property, the Lightcaps’ also owned ‘Tax Lot 1600’ in 1990, which is located across NW Newberry Road. Tax Lot 1600 and the subject property both

exceeded 19.0 acres, in compliance with MCC 39.3030(A)(2)(b). Therefore, the subject property is not aggregated through the Lot of Record provisions with any other parcel or lot.

**(B) In this district, significant dates and ordinances applicable for verifying zoning compliance may include, but are not limited to, the following:**

- (1) July 10, 1958, F-2 zone applied;**
- (2) December 9, 1975, F-2 minimum lot size increased, Ord. 115 & 116;**
- (3) October 6, 1977, MUF-20 and CFU38 zones applied, Ord. 148 & 149;**
- (4) August 14, 1980, MUF-19 & 38 and CFU-80 zones applied, Ord. 236 & 238;**

\* \* \*

**(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.**

**Staff:** Section (B) is for information purposes. Section (C) is not applicable because the subject property is not a Lot of Record.

**(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;**
- (2) An area of land created by the foreclosure of a security interest;**
- (3) A Mortgage Lot.**
- (4) An area of land created by court decree.**

**Staff:** As discussed in section 6.1 above, the subject property is not an area of land described as a tax lot solely for assessment and taxation purposes. The subject property is not a mortgage lot, an area of land created by the foreclosure of a security interest or created by court decree.

*Based on the findings in 6.1 & 6.2, the subject property (2N1W33A -00600) is not a Lot of Record.*

## **7.0 Applicant's Statements:**

**Summary of Applicant's Narrative:** The applicant's narrative (Exhibit A.3, p.2) notes that the current configuration of the subject property matches the configuration described in the approved property line adjustment deeds from 1993. The applicant states that the adjusted line remains the boundary between the Lightcap parcel and the adjacent parcel today, as recently confirmed by the county on the recorded one-parcel partition plat for the adjacent parcel, Partition Plat No. 2019-10.

**Staff:** As described in Section 3.0 above, the land use decisions authorizing the 1993 property line adjustments are void as found in Hearings Officer's decision T2-2018-10146. The applicant is of the belief that by approving partition plat no. 2019-010 (a one parcel partition, Exhibit B.4), which legalized one of the properties involved in the 1993 property line adjustments, the County confirmed the boundary between that parcel (Tax lot 1600) and the Lightcap property (subject property) was lawfully established. This belief stems from a LUBA decision (*Grimstad v. Deschutes County*), which found that approved *lot line adjustments* (emphasis added) occur between two legal lots of record. The facts do not support

the applicant’s statements as the 1993 property line adjustment (Exhibit B.5) was found void and no property line adjustment application was approved in 2018.

The approval of the 2019 one-parcel partition was not a result of a property line adjustment application and did not involve the Lightcap property (Exhibit B.4). Partition plat no. 2019-010 was a result of a Lot Legalization application, T1-2018-11141 that allowed one parcel to be created from tax lots 300 and 302 and utilized MCC 33.7785 (current code citation MCC 39.9700) as authorized by ORS 92.176 [2018 version].

The County’s current process for lot line adjustments (“property line adjustments”) requires a Type II review process [MCC 39.1105<sup>1</sup>]. County code contains general (property line adjustment) approval criteria [MCC 39.9300], as well as CFU zoning district specific (property line adjustment) approval criteria [MCC 39.4130]. There is no evidence in the record that the County approved a (Type II) *lot line adjustment* (emphasis added) for the subject property. The County’s property line adjustment codes are authorized by ORS 92.192, which is a separate Oregon Revised Statute unrelated to the legalization process used for partition plat no. 2019-010.

In summary, Partition plat no. 2019-010 finalized a (Type I) *Lot Legalization process* (emphasis added) under MCC 33.7785 (currently MCC 39.9700) to create a single parcel from Tax Lots 300 and 302 of Multnomah County Assessor’s Map T2N, R1W, Section 33A. The plat does not contain a reference to an approved land use case for the subject property (Tax Lot 600 of Multnomah County Assessor’s Map T2N, R1W, Section 33A) or any other statement(s) that the plat is finalizing an approved lot line adjustment.

## 8.0 Exhibits

- ‘A’ Applicant’s Exhibits
- ‘B’ Staff Exhibits
- ‘C’ Procedural Exhibits

All listed exhibits are available for review by contacting Chris Liu via email at [chris.liu@multco.us](mailto:chris.liu@multco.us)

Exhibit #	# of Pages	Description of Exhibit	Date Received / Submitted
A.1	3	Amended Application Email 09.27.2022	10.04.2022
A.2	1	General Application Form	10.04.2022
A.3	5	Applicant Narrative	10.04.2022

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<sup>1</sup> The 2018 code citations for this paragraph are MCC 37.0530 Summary of Decision Making Processes, MCC 33.7790 Property Line Adjustment, and MCC 33.2270 Lot Line Adjustment; Property Line Adjustment.

A.4	44	<p>Chain of Title Report</p> <ul style="list-style-type: none"> <li>a. Report cover pages (pp. 1 – 6)</li> <li>b. Deed recorded December 09, 2011 as instrument no. 2011-138576 (pp. 7 – 9)</li> <li>c. Deed recorded February 11, 1930 in Book 56, Page 373-375 (pp. 10 -12)</li> <li>d. Deed recorded July 19, 1963 in Book 2177, Page 680-681 (pp. 13 – 14)</li> <li>e. Deed recorded March 23, 1966 in Book 477, Page 616-617 (pp. 15 – 16)</li> <li>f. Contract recorded August 30, 1985 in Book 1847, Page 1365-1369 (pp. 17 – 21)</li> <li>g. Deed recorded November 5, 1985 in Book 1862, Page 2227-2231 (pp. 22 – 26)</li> <li>h. Deed recorded November 5, 1985 in Book 1862, Page 2232-2235 (pp. 27 – 30)</li> <li>i. Deed Recorded April 5, 1989 in Book 2191, Page 1718-1720 (pp. 31-33)</li> <li>j. Deed recorded December 16, 1993 in Book 2801, Page 1161-1163 (pp. 34 – 36)</li> <li>k. Deed recorded December 09, 2011 as instrument no. 2011-138576 (pp. 37 – 39)</li> <li>l. Assessor’s information and map (pp. 40 – 44)</li> </ul>	10.04.2022
A.5	3	Copy of Deed recorded as instrument no. 2011-138576	10.04.2022
<b>‘B’</b>	<b>#</b>	<b>Staff Exhibits</b>	<b>Date</b>
B.1	2	Division of Assessment, Recording, and Taxation (DART): Property Information for 2N1W33A -00600 (Alt Acct# R971330150)	10.04.2022
B.2	1	Division of Assessment, Recording, and Taxation (DART): Map for 2N1W33A	10.04.2022
B.3	16	Copy of the Hearing’s Officer Decision for case no. T2-2018-10124	11.01.2022
B.4	2	Copy of partition plat no. 2019-010	11.01.2022
B.5	1	Copy of Survey no. 53807	11.01.2022
B.6	1	October 13, 1985 Historic Zoning Map for 2N1W33A	11.01.2022
B.7	11	MUF Zoning Code as adopted March 23, 1982	11.01.2022

B.8	43	Land Division Regulations 1-1981 through 12-1995	11.01.2022
B.9	9	Copy of case no. T1-2018-11141 Lot Legalization	11.01.2022
<b>'C'</b>	<b>#</b>	<b>Administration &amp; Procedures</b>	<b>Date</b>
C.1	1	Complete letter (day 1)	11.01.2022
C.2	2	Opportunity to Comment	12.14.2022
C.3	10	Decision	02.16.2023