April 21, 2023

RE: T2-2022-16204 Appeal of Planning Director's Decision Property North of 13220 NW Newberry Road

Dear Hearing Officer Turner,

Thank you again for your independent and thoughtful deliberation on this critical matter. I understand that this may not be the biggest matter on your docket, but in many ways, I cannot imagine something being any more important than to protect my real property rights from decades of attack in what our case is a zealously manipulating and over-reaching county planning office. There is a lot to say here, so please be patient as you review, it may take some explaining but all points pertain to the Lot of Record status of my property.

During the conference meeting, you asked me to focus on the issue at hand of the lot of record determination. You are entirely correct to this statement. Let me point out how you very appropriately start your hearings with critical statements of non-bias, being free of ownership interest in the property, and etc.. This is just as critical a topic to this hearings process as the Lot of Record topic. As a civic government institution, a citizen should expect the same levels of fiduciary responsibility from the Multnomah County Planning Office. I never imagined the county planning department to act in the manner as outlined in this letter to obstruct my Lot of Record. I hope that through the emotions and damage caused by the decades of toil and pain the county has brought against the Lightcap family, you can see the facts and reasons for our suffering. If the thought arises, you should know that I do not carry some political agenda. I ask that you look deeper to see past the smoke and mirror tactics of the county. They are using these tactics in my case as an attempt to cover up their misdeeds, incompetence, and bad acting over these many years. They know that acknowledging the existence my Lot of Record, as it does, is also an acknowledgment of their misdeeds.

As you read through my letter and my lawyer's, ask yourself this very important question. Has Lightcap ever signed an agreement to divide the property? You will clearly see that at *NO POINT* has a Lightcap *EVER* signed an agreement to divide the property. So how can it be divided you ask, when Lightcap owned 93% of the property and never signed or agreed to anything dividing their own land? Where in the county code does the planning department have a written legalization process to independently divide privately owned property?

Key Questions and Facts:

1) Is the original 34.07 acre parcel, once owned by Miller as proven by deed, a lot of record?

All parties agree that the original 34.07 acre parcel, as described in Land Use Decision Lot of Exception 14-92 and Land Division 49-92 (aka LE 14-92 & LD 49-92) as the Lightcap/Looney parcel and described again in case file T2-2018-10124 , is shown by deed to predate zoning law and therefore is a Lot of Record. These deed(s) are well documented and referenced in both in LE 14-92 & LD 49-92 and case file T2-2018-10124. See attached deed from Miller Estate selling to Bernet. See Attached Maps for reference.

2) Did the county issue a replacement building permit in 1997 to Looney in full violation of Hearing Officer decision LE 14-92 & LD 49-92?

In LE 14-92 & LD 49-92, the county's key intent in reconfiguring Parcel 1 into two Lots of Record with Lot of Exception is to 1)take away the Lightcap ability to build a dwelling, and 2)allow Looney to apply for a "proposed replacement dwelling". LE 14-92 & LD 49-92 repeatedly states that Looney seeks to file for a replacement dwelling. County staff is well aware of this fact and well aware of the key conditional requirements. Critically, the consolidation of Looney parcels as a condition of approval and that failure to do so renders LE 14-92 & LD 49-92 void. See attached Maps for reference.

Answer: Yes = The County is GUILTY of open disregard and violation of Hearing Officer decision LE 14-92 & LD 49-92.

3) With Lightcap as the majority 93% interest holder in the Property (Parcel 1), did the County have written and recorded authorization from Lightcap to issue a building permit to the Looney?

LE 14-92 & LD 49-92 made it clear that Lightcap/Looney own an "Undivided and unequal interest in the original 34.07 acre parcel". Put in other words, t*he property was never divided and therefore must retain its historical lot of record*. Further, it means that Lightcap owns a majority ~93% interest in the property and Looney owns a minor ~7% interest in the undivided property. Lightcap was never, approached, never authorized, and never signed off on a replacement dwelling for the property.

Answer: NO = The County is GUILTY of open disregard and violation of Hearing Officer decision LE 14-92 & LD 49-92

4) Did the County knowingly deny my dwelling application from circa 2011-2013 citing LE 14-92 & LD 49-92, even though they know that LE 14-92 & LD 49-92 is void by its own definition? The county agreed that the property otherwise meets the requirements for a dwelling based on their own findings from two years of working on my dwelling application and as outlined in LE 14-92 & LD 49-92. However, at the 11th hour, the county then tells me that my property is a Lot of Record but with a Lot of Exception that restricts a dwelling from being built, even though they know that LE 14-92 & LD 49-92 is void and was never in force. While I agree that the property is a Lot of Record as it was with Miller, the Lot of Exception has never been in force because it is void. When I pointed out to them that, which they already knew but would not admit, that LE 14-92 & LD 49-92 is void, the County obfuscates their duties and tells me to "get a lawyer".

Answer: Yes = The County is GUILTY of open disregard and violation of Hearing Officer decision LE 14-92 & LD 49-92

5) Besides the County's responsibility as a professional planning department to know that LE 14-92 & LD 49-92 void, is there clear evidence that the County knew that LE 14-92 LD 49-92 was void as the decision clearly states?

In circa 2016, after denying me a dwelling permit citing LE 14-92 LD 49-92 as valid to enforce lot of record with lot of exception restriction on my property (and if I don't like that I should get a lawyer), the county then goes to Looney and informs Looney that the Looney lots are not consolidated and are

in violation. The county requires Looney to record a deed of consolidation. As is documented by deed, Looney proceeds to record a deed of consolidation per the county's demands. This action is all of record and documented in county planning records. Also, it is documented by Mr. Looney in a letter he wrote and his statements in case file T2-2018-10124. The county and Looney never approach Lightcap and are noticeably silent about this matter, leaving Lightcap to discover this on his own during the case file T2-2018-10124 process. The county knows full well that the lack of parcel consolidation by definition of LE 14-92 & LD 49-92 renders it void. The county clearly knows it is void full well when denying my dwelling application based on a false Lot of Record with Lot of Exception premise. This is the reason why the county on its own volition approaches Looney requiring Looney to consolidate the parcels as an attempt to appear in compliance the conditions of LE 14-92 & LD 49-92.

Answer: Yes = The County is GUILTY of open disregard and violation of Hearing Officer decision LE 14-92 & LD 49-92. Also, GUILTY of knowingly and falsely stating that the property is a Lot of Record with Lot of Exception that prohibits me from building a dwelling.

6) Case file T2-2018-10124 – validates that LE 14-92 & LD 49-92 is void and was never in force.

7) County knowingly violates case file T2-2018-10124 and LE 14-92 & LD 49-92 by having Looney apply for Lot Legalization. They never talked to me or got my consent or signature for this process, despite knowing that Lightcap is the ~93% interest owner of Parcel 1.

In Lot Legalization Case file: T1-2018-11141, a key condition for approval requires that the county issued a dwelling permit. Page 5 of Case file: T1-2018-11141 both states and relies on the county code as part of the county's approval:

(C)(2) There is a clear property description on the permit for the unlawfully established unit of land for which the building or placement permit was issued. The description may be confirmed by tax lot references, tax lot maps, site plans, or deeds recorded at the time; and

The county's house of cards. The county in approving the Looney Lot Legalization knowingly relies on violations on top of violations to validate its approval in legalizing Looney ~7% interest in Parcel 1. In another move of brazen audacity, the "building permit" that the county uses to validate the Lot Legalization is the very replacement dwelling permit they knowingly illegally gave to Looney in full violation of LE 14-92 & LD 49-92. Further, the void Lightcap quitclaim deed the county used to approve Looney's Lot Legalization specifically said it is for "Lot line Adjustment" purposes. Why does the void Lightcap quitclaim deed say this? Because it is Lightcap who was actually adhering to the ruling of LE 14-92 & LD 49-92, where the county openly did not and does whatever they please with their permits to meet their ends. LE 14-92 & LD 49-92 was void and never if force. Thus, the Lightcap quit claim deed action is void as it was part of void LE 14-92 & LD 49-92.

The county code also states that there needs to be a "*clear property description on the permit"*. The term "clear" does not just mean the description is readable and legible. No, rather, "clear" means that the property description is free and clear of cloud, clear about ownership. And if it was not clear enough from LE 14-92 & LD 49-92 that is void and Parcel 1 is "undivided with unequal interest" with one parcel that has two owners, case file T2-2018-10124 made it clear again only earlier that same year. How can the County's dwelling permit be considered "Clear".

In yet another example of the great hypocrisy coming from county, how can the county with a straight

face officially approve Case file: T1-2018-11141 claiming Looney has a “clear property description” and in the next breath officially claim Lightcap does not have a “clear property description”? If Looney parcel is clear, then the Lightcap parcel is clear. Thanks to Case file: T1-2018-11141, we share the same property boundary in Parcel 1 where once there was no boundary. This should not be confused with Parcel 3 which has always shared a common boundary with Parcel 1. Remember, Parcel 1 was an undivided property with two owners as made clear by LE 14-92 & LD 49-92 and again case file T2-2018-10124.

By definition, a lot line adjustment is between abutting two lots of record. The county's use of the lot line adjustment quitclaim deed 'quid pro quo' would mean that Parcel 1 is a Lot of Record and Looney's new legalized parcel is a Lot of Record. Or alternatively, since Case file: T1-2018-11141 requires that Looney consolidates all parcels, so this use of the void Lot Line Adjustment quitclaim deed means that Parcel 3, which was a Lot of Record, can be constructed to be the other lot of record for purposes of the lot line adjustment.

§ 33.7790 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
(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

County in case file T2-2018-10124 by using the void lot line adjustment steals the Lightcap real estate without Lightcap approval or signature and gives it to Looney. The Lightcap lot line adjustment quitclaim deed is void, the County knows this as know LE 14-92 LD 49-92 is void, they were just reminded of that in case file T2-2018-10124 earlier that year. The Property Line Adjustment rules are clearly state that “*owners of both properties...shall consent in writing to the proposed adjustment”*. Neither Looney nor the County approached me to seek written consent and approval for a new Lot Line Adjustment.

The Lot Legalization used in Case file: T1-2018-11141 only applies to illegally divided lots. The Lightcap/Looney Parcel 1 was never divided. How can you have an illegally divided lot on a undivided parcel? LE 14-92 & LD 49-92 and case file: T2-2018-10124 both reiterated that no parcel was divided by the 1985 sale as the county wrongly claims in Case file: T1-2018-11141. In Case file: T1-2018-11141 on page 5 section 2.00, where the county cites as evidence of the illegal lot division, the very title of section 2.00 “*Failed Land Division”* defeats the county's claim before it even starts. *“*Failed” means the land division never happened. Why? Because it failed. So, in other words Parcel 1 remained a Lot of Record as it had long before zoning law as “undivided” and with unequal interest just as explained by LE 14-92 LD 49-92 and case file T2-2018-10124. In an ironic twist, it is county who illegally divides my property through their approval of Case file: T1-2018-11141.

It is not my job to police the county planning office. One should not expect the County to steal my land or steal my lot of record which in effect is my dwelling. They should not be playing a game of “Got you” against me. If the county can approve anything they want without the actual landowner’s consent, what is to stop people from filing countless claims to take other their neighbors' or other peoples' property unless you are available to defend yourself within 2 weeks?

Parcel 3, Section 28 - Hello? Is It Me You're looking For?...What Should Have Happened All Along. And Maybe It Did.

The Lightcap's solution to this issue is simple. This solution has long been known and ignored by the county since it does not meet their ends to both steal away the Lot of Record from Lightcap and steal away the dwelling right from Lightcap. We feel this solution, outlined in brief below, should have happened a long time ago and cannot understand why it never has. Or did it and the county doesn't want to admit it? The solution is independently shared by the LE 14-92 & LD 49-92 hearings officer.

To understand what should have been the actual solution, one needs to merely begin by counting to two. Two is the total number of Lot of Records that are in this discussion. Parcel 1 is a lot of record that dates back to long before zoning law and had remained an undivided and unequal interest property with Lightcap owning a ~93% interest and Looney owning a ~7% interest. Similarly, Parcel 3 is a lot of record that dates back to 1898, long before zoning law as clearly shown by the attached Miller Estate to Bernet deed sale, and is owned by Looney with 100% interest. The easiest solution to this whole issue would have been for Lightcap and Looney to apply for and the county to approve a simple lot line adjustment between the two lots of record Parcel 1 and Parcel 3. Both parcels share an abutting property line. A lot line adjustment would not increase the number of dwellings permitted since Looney would retain the lot of record dwelling right from Parcel 3 and Lightcap would retain the lot of record dwelling right from Parcel 1.

In the LE 14-92 & LD 49-92 land use decision on Page 7 the hearings officer writes:

It is ironic that the applicants were concerned to file their application before the effective date of the Commercial Forest Use rezoning of the property. If the applicants had been willing to apply under MCC 11.15.2061 "Lot Line Adjustment" of the Commercial Forest Use District, almost all of the complexity could have been avoided.

The hearings officer was completely correct that a Lot Line Adjustment would have been much simpler. However, the hearings officer is in error in the statement when he writes "...the applicants...". There was only one applicant to LE 14-92 & LD 49-92 and that was David Looney, 2525 NE Knott Street, 97212 as seen clearly on page one of LE 14-92 & LD 49-92. The hearings officer seems to incorrectly be implying that Lightcap was an applicant in full favor of the application and the proposed outcome dividing Parcel 1 into two Lot of Record with Lots of Exception, as the county was pushing for. In fact, Lightcap was only ever in favor of the lot line adjustment portion of LE 14-92 & LD 49-92 and was completely opposed and blindsided by the Lot of Exception rule. The county's aggressive pursuit of the Lot of Exception at the expense of and fully knowing of the simpler alternative is case and point. As the hearings office writes in LE 14-92 & LD 49-92 from his interview with Lightcap, Lightcap intended to retain the option for a dwelling in the future. Why would Lightcap then be in favor of a Lot of Record restricted by a Lot of Exception as LE 14-92 & LD 49-92 claims? What Lightcap was in favor of was the Lot Line Adjustment provision of LE 14-92 & LD 49-92 as it retains both historical lots of record and the rights to have a dwelling that come with it.

Following the decision of case file T2-2018-10124 that upheld the known historical fact that LE 14-92 & LD 49-92 is void, I told the planning director a simple Lot Line Adjustment method needs to be the path forward. The county clearly ignored me to meet their own ends and pushed Looney to pursue a "Lot Legalization" application. If you do not believe me about Looney being coerced, your heard it for yourself when the County responded to your direct question during our Zoom conference call, when the County reply was an intentionally vague answer about forcing me into the Lot Legation scheme, as you heard. The County again refers to their scheming for me as written in their decision in section 5.1 of case file: T2-2022-16204. I later submitted this same proposal to Looney, but was met with silence, as they have had enough of this torture as well. I can imagine the pressure they faced not wanting to cross the planning director telling them they need to apply for Lot Legalization. I proposed to Looney and was willing to participate in a lot line adjustment between Parcel 1 and Parcel 3 to adjust our property lines to where the voided LE 14-92 & LD 49-92 attempted to set the property boundary with the lot of adjustment. In this way Looney could retain their adequate space for their septic field from where they choose to place their replacement dwelling.

So, what happened to Parcel 3's historical Lot of Record? Did it just vanish? Or did the county's demanding of Lot Legalization and subsequent approval of Case file:T1-2018-11141 with the conditional consolidation requirement of all Looney Parcels in actuality and effectually perform a Lot Line Adjustment? The county would just want to call it by another name of "Lot Legalization" so they can try to justify the stealing of the Lot of Record from my Parcel 1.

I want to know what the hearings officer has to say, because it seems to me that hearings officers should be as just as outraged with the county as I am. The county has continuous and blatant disregard for hearing officer decisions and hearing precedent from not just one but two case hearing decisions, as the county attempts to remove my property's Lot of Record, along with other rights of my property. The county's strategy here has been to wait until the hearings officer is "safely" out of the picture, then continue to go about their bad acting as judge and jury. Because the county knows that compared to me, they have unlimited resources, they get salaries with benefits every day to engage like this. They know that every time it takes to get back to an actual unbiased third party hearings officer, it means I have to go through months if not years of county "process" at considerable and debilitating cost to me, since as they so bluntly put it to me to "get a lawyer."

In Summary:

Parcel 1 is and always has been a lot of record that predates zoning law. In your decision, please speak to and clarify that the lot of record is indeed the same historical lot of record that predates zoning law. The county falsely claims that their approval of Case file:T1-2018-11141, of which I was not an applicant nor did I approve, somehow effectually removes the historical Lot of Record from Parcel 1 of which I was majority owner as shown in precedent of LE 14-92 & LD 49-92, again in case file T2-2018-10124, and as the very words the county uses in their Looney Lot Legalizing case file states. At the same time the county approved Case file:T1-

2018-11141 to carved out a Lot of Record from Looney's ~7% interest in Parcel 1. In Case file: T1-2018-11141, the County also deliberately, illegally, and literately stole Lightcap real estate property interest and handed it to Looney, declaring the voided lot line adjustment boundary was a border. The County only months earlier that same year were fresh from being directly told by hearing officer decision in case file T2-2018-10124 that the lot line adjustment is void, yet the County again intentionally choose to ignore the hearing officer decisions. The county cannot be allowed to deny Parcel 1's Lot of Record via their intentionally false and over-reaching approval of Case file:T1-2018-11141.

It is proven that the county planning office for decades has attempted to eliminate the lot of record though manipulation, misdeeds, and blatant disregard of the landowner and especially of hearings officer decisions. Evidence shows they are in turn trying to cover up this bad acting and they should not be trusted to have their decisions taken in good faith as they act with impunity as judge and jury against me. Watch carefully as their actions are speaking louder than their words. My family has done nothing to deserve this from the county. Please stand up and help protect me and my family from the county by not letting them steal away the rights from my family's farm.

Sincerely,

Andrew Lightcap
Property Owner (See all attached maps)

First American Title Insurance Company of Oregon

An assumed business name of TITLE INSURANCE COMPANY OF OREGON

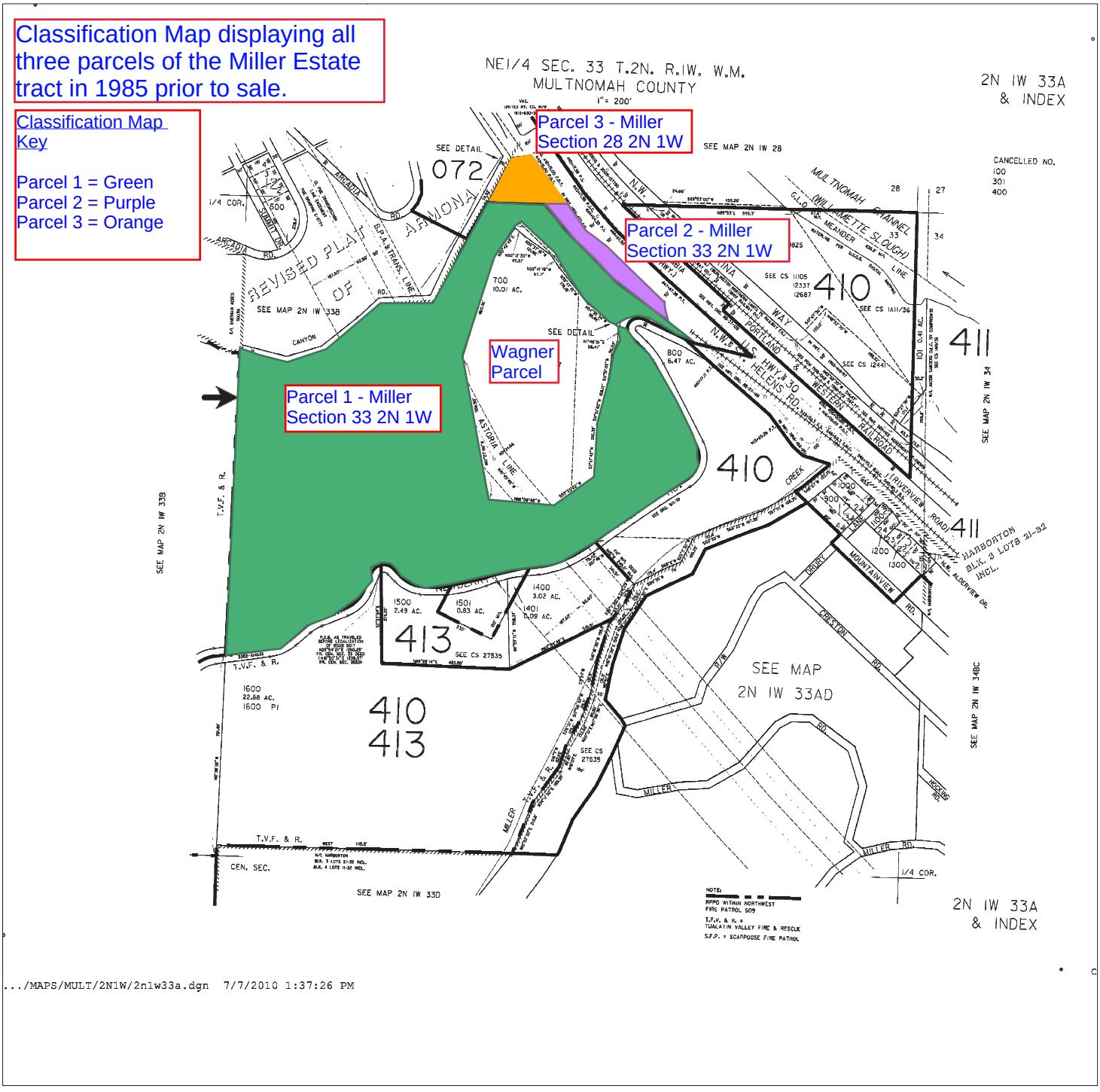
This map is provided as a convenience in locating property
First American Title Insurance Company assumes no liability for any variations as may be disclosed by an actual survey

Reference Parcel Number 2N1W33A 00600

Classification Map displaying all three parcels of the Miller Estate tract in 1985 prior to sale.

Classification Map Key

Parcel 1 = Green
Parcel 2 = Purple
Parcel 3 = Orange



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First American Title Insurance Company of Oregon

An assumed business name of TITLE INSURANCE COMPANY OF OREGON

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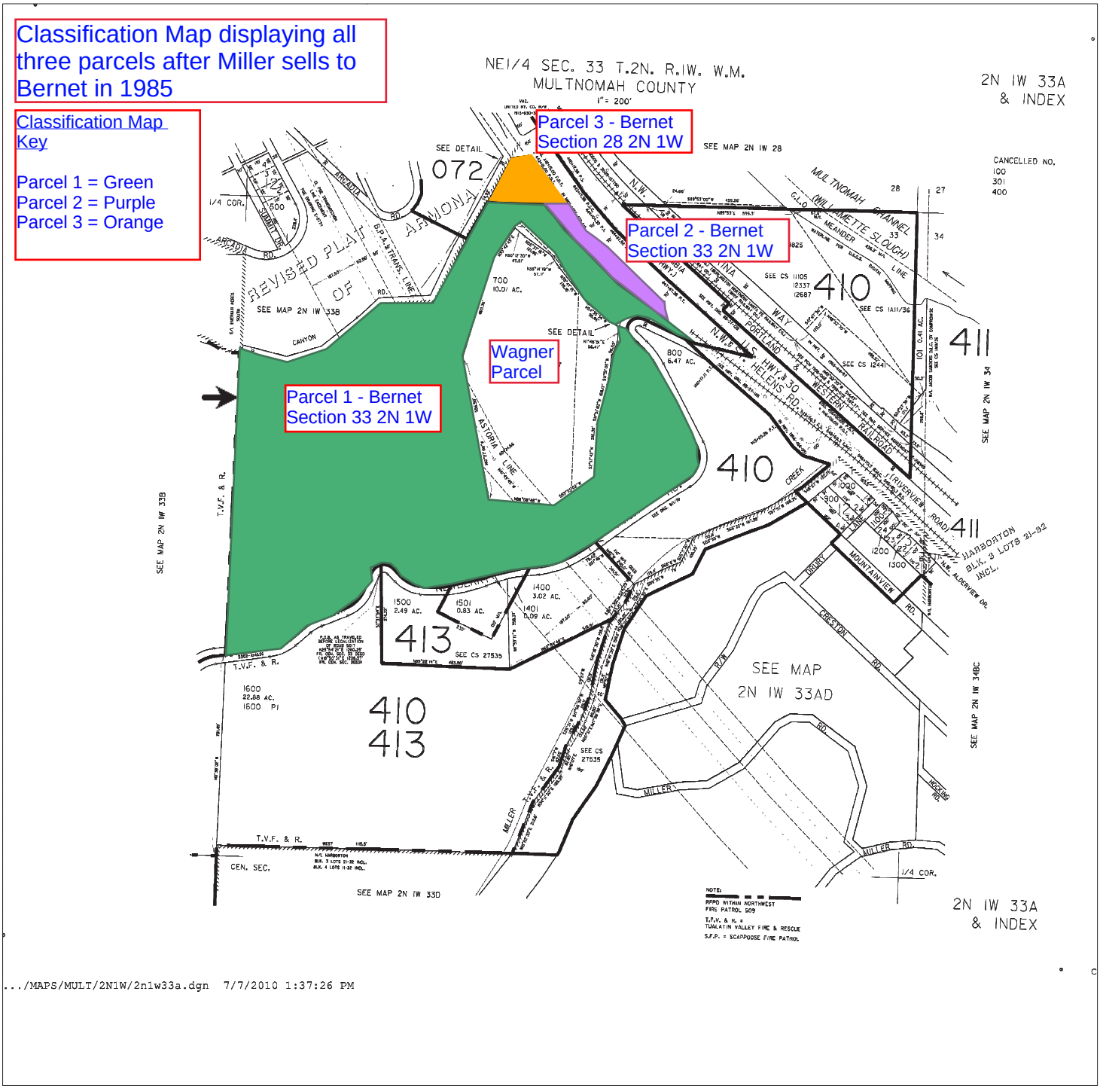
Reference Parcel Number 2N1W33A 00600

Classification Map displaying all three parcels after Miller sells to Bernet in 1985

Classification Map Key

Parcel 1 = Green
Parcel 2 = Purple
Parcel 3 = Orange



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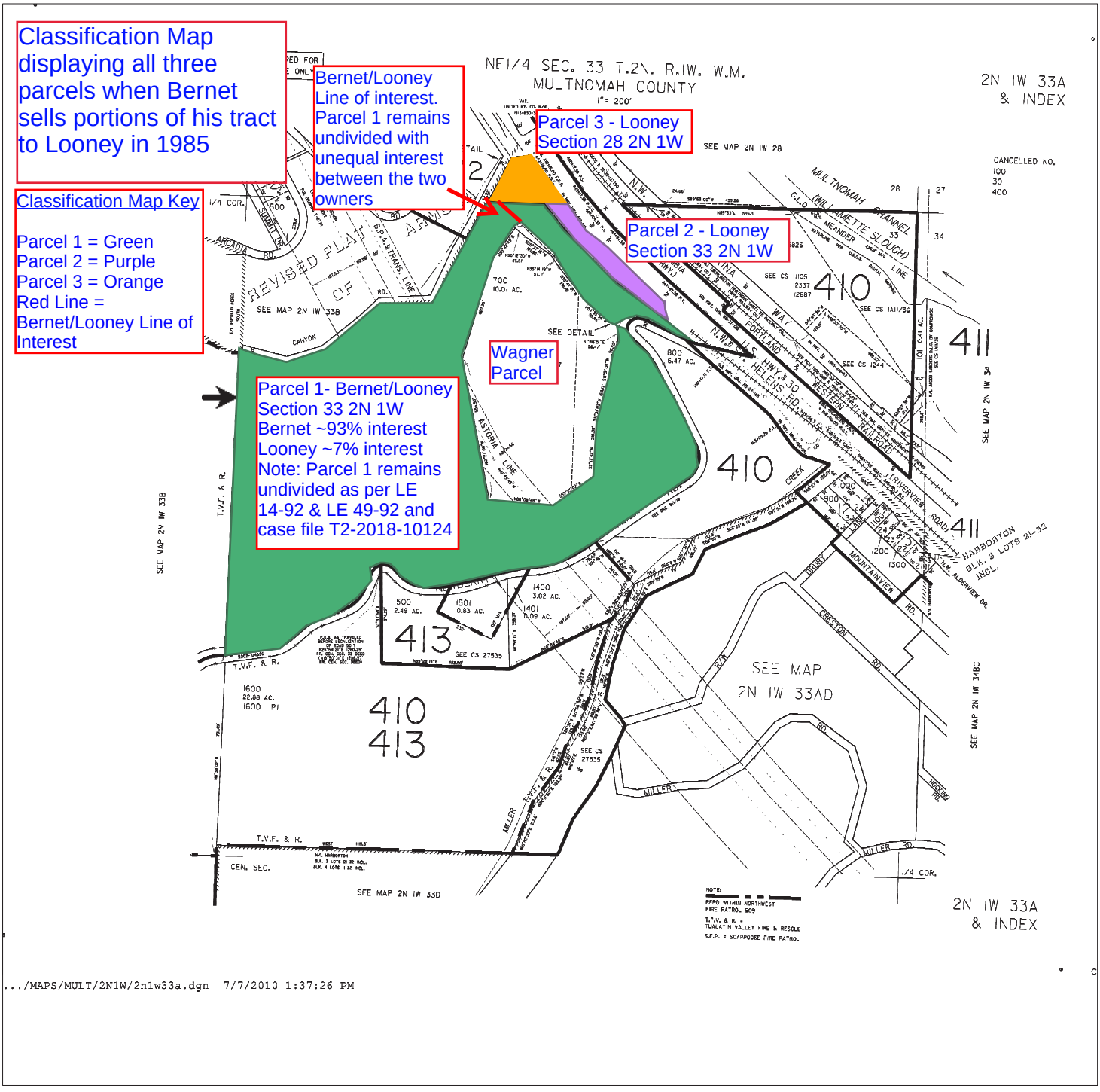

FORM No. 1483—DEED—CONSERVATOR (Individual or Corporate). STEVENS-NESS LAW PUBLISHING CO., PORTLAND, OR. 97204

CA

CONSERVATOR'S DEED

BOOK 1862 PAGE 2227

541638

THIS INDENTURE Made this 30th *day of* October, 1985, *by and between* WINONA J. MATHEWS, *the duly appointed, qualified and acting conservator of the* Estate of ALBERTA E. MILLER, *a protected person, hereinafter called the first party, and* FRED R. BERNET, individually and dba K.C.B. Construction *hereinafter called the second party; WITNESSETH:*

For value received and the consideration hereinafter stated, the receipt whereof hereby is acknowledged, the first party has granted, bargained, sold and conveyed, and by these presents does grant, bargain, sell and convey unto the said second party and second party's heirs, successors-in-interest and assigns all the estate, right and interest of the said protected person in that certain real property situate in the County of Multnomah, *State of Oregon, described as follows, to-wit:*

Recorded By Ticor Title Insurance Company

PARCEL 1: The following described property in the County of Multnomah and State of Oregon:

That part of the Northeast quarter of Section 33, Township 2 North, Range 1 West of the Willamette Meridian, in the County of Multnomah and State of Oregon, bounded on the West by the half section line running North and South through the center of said Section 33, on the Southeasterly and Easterly side by the Newbury County Road #325 on the Northeasterly side by the St. Helens Road, on the North side by the North line of said Section 33, and on the Northwesterly side by the Southeasterly side of the plat of Aromona; EXCEPTING therefrom the following described property:

Beginning at a stone monument at road angle four of County Road #325 (said monument being on the Northwesterly side of the road as now traveled) and running thence along the Southerly side of a pivate roadway North 60° 40' West 41.6 feet to a point; thence North 48° 14' West 102.0 feet to a point; thence North 41° 30' West 74.00 feet to a point; thence North 36° 28' West 121.6 feet to a point; thence North 47° 12' West 189.0 feet to a point beyond said private roadway; thence South 33° 43' West 174.8 feet to a point; thence South 14° 33' West 403.0 feet to a point; thence South 12° 30' East 556.5 feet to a point; thence South 87° 30' East 238.8 feet to a point; thence North 51° 40' East 190.3 feet to a point; thence North 0° 23' East 211.3 feet to a point; thence North 9° 50' East 158.8 feet to a point; thence North 4° 28' East 113.8 feet to a point; thence North 18° 11' East 57.3 feet to a point; thence North 0° 11' West 71.0 feet to the point of beginning; FURTHER EXCEPTING the portions conveynd to the United Railways Company by deed recorded June 19, 1913 in Book 630 page 34 of Deed Records, and to the State of Oregon by deed recorded April 24, 1934 in Book 238 page 393 of Deed Records, in the name of Cecil J. Miller.

PARCEL 2: That portion of the following described property lying Northerly of Newbury Road, and Southerly of Canyon Road in the County of Multnomah and State of Oregon:

A strip of land 50 feet in width being 25 feet in width on each side of and parallel with and adjacent to the center line of United Railways Co. Tract across part of the Northeast quarter of the Northeast quarter of Section 33 and part of the Southwest quarter of the Southwest quarter of Section 28, Township 2 North, Range 1 West, ALSO a strip 47-1/2 feet in width being 25 feet in width on the Easterly side and 22-1/2 feet in width on the Westerly side of and parallel with and adjacent to the said center line across the Northwest quarter of the Northeast quarter of Section 33, said center line of tract (now abandoned) being described as follows:

Beginning at quarter corner between Sections 33 and 34, Township 2 North, Range 1 West; thence North along the section line 2310.4 feet to the center line of tract; thence Northwesterly along said center line 405 feet to the center of W.J. Miller Canyon in the Northeast quarter of the Northeast quarter of Section 33 for the trye point of beginning of tract described; thence continuing Northwesterly along the said center line of tract 1743.85 feet to the center of Havilik Canyon in the Southwest quarter of the Southeast quarter of Section 28, above being vacated right of way of United Railways Co. as described in Book 630 page 349, Deed Records; EXCEPT the portion in roads, in the name of Cecil J. Miller as to an undivided 1/3 interest and in the name of Cecil J. Miller and Alberta E. Miller as to a 3/2 interest.

PARCEL 3: The following described property in the County of Multnomah and State of Oregon:

All that piece or parcel of land lying and being in Section 28, Township 2 North, Range 1 West of the Willamette Meridian, which was conveyed by Verlin Ennis and Ellen E. Ennis to Mamie C. Miller by deed dated November 19, 1898, recorded November 26, 1898 in page 186 in Volume 253, Records of Deeds for Multnomah County, Oregon, described as follows:

Commencing at a point on the Section line between Sections 28 and 33, Township 2 North, Range 1 West of the Willamette Meridian where the same is intersected by the West boundary line of the Portland and St. Helens County Road, running thence in a Northerly direction along the West boundary line of said County Road 222 feet to South Margin of a ravine thence in a Southwesterly course along the South margin of said ravine 315 feet to the dividing line betweens Section 28 and 33, Township and range aforesaid; thence East along said dividing line between said Sections 28 and 33 to the place of beginning.