

NOTICE OF DECISION

PLANNING DIVISION
555 LIBERTY ST. SE, RM 305
SALEM, OREGON 97301
PHONE: 503-588-6173
FAX: 503-588-6005



*Si necesita ayuda para comprender esta informacion, por favor llame
503-588-6173*

DECISION OF THE HEARINGS OFFICER

VALIDATION OF UNITS OF LAND CASE NO.: VUL18-02

APPLICATION NO. : 18-122728-LD

NOTICE OF DECISION DATE: JANUARY 29, 2019

SUMMARY: A proposal to validate a unit of land that was created as a separate tax lot through a sale by deed in 1998.

REQUEST: The request is to lawfully establish a tax lot created by Kuebler Boulevard right of way acquisition that was later sold to a third party creating the subject unit of land. The sale effectively divided the parent parcel into two separate units of land, without a land use approval. The applicant is requesting to validate property known as Marion County Tax Assessor's number 083W11D / 601. The subject unit of land is approximately 1.45 acres in size, zoned RA (Residential Agriculture), and located east of 4826 Battle Creek Road SE (Marion County Assessor Map and Tax Lot Number: 083W11D / 601).

APPLICANT: Boulder Hill, LLC (Robert Nunn)

LOCATION: 2500 Block Kuebler BV S / 97302

CRITERIA: Salem Revised Code (SRC) Chapter 205.060(d)

FINDINGS: The findings are in the attached Order dated January 29, 2019.

DECISION: The **Hearings Officer APPROVED** Validation of Units of Land VUL18-02 based upon the application materials deemed complete on November 29, 2018 and the findings as presented in this report.

Application Deemed Complete:	<u>November 29, 2018</u>
Public Hearing Date:	<u>January 9, 2019</u>
Notice of Decision Mailing Date:	<u>January 29, 2019</u>
Decision Effective Date:	<u>February 14, 2019</u>
State Mandate Date:	<u>March 29, 2019</u>

Case Manager: Olivia Glantz, OGlantz@cityofsalem.net, 503-540-2343

This decision is final unless written appeal from an aggrieved party is filed with the City of Salem Planning Division, Room 305, 555 Liberty Street SE, Salem OR 97301, no later than **5:00 p.m., Wednesday, February 13, 2019**. Any person who presented evidence or testimony at the hearing may appeal the decision. The notice of appeal must contain the information required by SRC 300.1020 and must state where the decision failed to conform to the provisions of the applicable code section, SRC Chapter 205. The appeal must be filed in duplicate with the City of Salem Planning Division. The appeal fee must be paid at the time of filing. If the appeal is

untimely and/or lacks the proper fee, the appeal will be rejected. The Planning Commission will review the appeal at a public hearing. After the hearing, the Planning Commission may amend, rescind, or affirm the action, or refer the matter to staff for additional information.

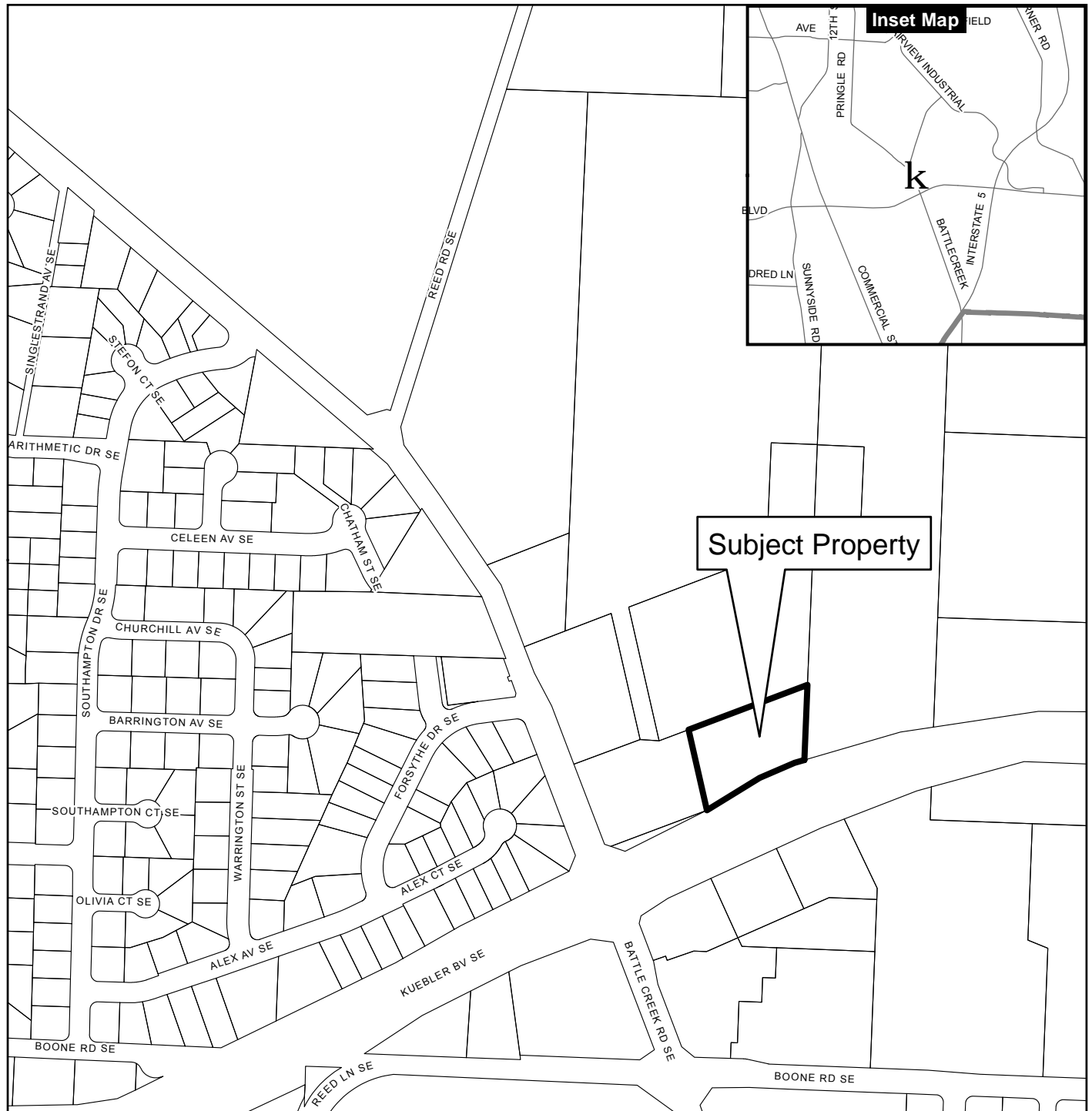
The complete case file, including findings, conclusions and conditions of approval, if any, is available for review at the Planning Division office, Room 305, City Hall, 555 Liberty Street SE, during regular business hours.

<http://www.cityofsalem.net/planning>

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Vicinity Map

2500 Block Kuebler Blvd SE



Legend

Taxlots

Urban Growth Boundary

City Limits

Outside Salem City Limits

Historic District

Schools

Parks

CITY OF Salem
AT YOUR SERVICE
Community Development Dept.

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0 100 200 400 Feet

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NARRATIVE

THE PURPOSE OF THIS SURVEY IS TO VALIDATE A TRACT OF LAND ORIGINALLY DESCRIBED IN R. 1536, P. 749, MARION COUNTY DEED RECORDS. THE BASIS OF BEARING IS ON THE EAST LINE OF SECTION 11 PER MCSR 14257.

I RETRACED THE NORTH RIGHT OF WAY OF KUEBLER BOULEVARD USING MONUMENTS E, F, G, AND J. I DETERMINED THE TRUE POSITION OF THE SOUTHEAST CORNER BY INTERSECTING THE SECTION LINE WITH LINE G-K.

THE EAST LINE OF SECTION 11 IS THE EAST LINE OF THIS PARCEL. I SET MONUMENTS BETWEEN MONUMENTS A AND C ON THIS LINE. MONUMENT A IS NOT ON THE SECTION LINE.

MONUMENTS A AND C FIT FOR DISTANCE, BUT NOT LINE WHEN CONSIDERING MONUMENT E. I HELD RECORD DISTANCE FROM MONUMENTS A AND E TO DETERMINE THE BEARING OF THE NORTH LINE. AS A CHECK, I FOUND THAT MONUMENT D FELL ON AN EXTENSION OF THIS NORTH LINE. I HELD MONUMENT E AS THE SOUTHWEST CORNER, AND RETRACED A LINE FROM IT TO THE CALCULATED NORTHWEST CORNER.

SURVEYOR'S CERTIFICATE:

I, ROBERT D. HAMMAN, A REGISTERED PROFESSIONAL LAND SURVEYOR IN THE STATE OF OREGON DO HEREBY CERTIFY THAT I HAVE SURVEYED AND MARKED WITH PROPER MONUMENTS THE LAND REPRESENTED ON THE ATTACHED MAP, THE BOUNDARY OF WHICH IS DESCRIBED AS FOLLOWS:

BEGINNING AT A 1/2" IRON PIPE AT THE SOUTHEAST CORNER OF THE TRACT OF LAND DESCRIBED IN REEL 3032, PAGE 486, MARION COUNTY DEED RECORDS IN THE SOUTHEAST QUARTER OF SECTION 11, TOWNSHIP 8 SOUTH, RANGE 3 WEST OF THE WILLAMETTE MERIDIAN; THENCE ALONG THE NORTH RIGHT OF WAY OF KUEBLER BOULEVARD THE FOLLOWING THREE CALLS: NORTH 56°39'11" EAST 167.25 FEET TO A 5/8" IRON ROD WITH ALUMINUM CAP; NORTH 64°58'18" EAST 102.80 FEET TO A 5/8" IRON ROD WITH ALUMINUM CAP; NORTH 71°57'25" EAST 28.52 FEET TO THE EAST LINE OF SAID SECTION 11; THENCE ALONG SAID SECTION LINE NORTH 00°30'00" EAST 202.84 FEET TO A 5/8" IRON ROD; THENCE ALONG THE SOUTH LINE OF THE TRACT OF LAND DESCRIBED IN REEL 3602, PAGE 265, MARION COUNTY DEED RECORDS SOUTH 67°24'55" WEST 344.88 FEET TO THE NORTHEAST CORNER OF THE TRACT DESCRIBED IN REEL 3032, PAGE 486, MARION COUNTY DEED RECORDS; THENCE ALONG THE EAST LINE OF SAID TRACT SOUTH 14°47'28" EAST 220.00 FEET TO THE POINT OF BEGINNING AND CONTAINING 1.43 ACRES, MORE OR LESS.

MULTI/TECH ENGINEERING SERVICES, INC.

BY:

ROBERT D. HAMMAN
REGISTERED PROFESSIONAL LAND SURVEYOR NO. 64202LS

DECLARATION:

KNOW ALL MEN BY THESE PRESENTS THAT BOULDER HILL, LLC., BEING THE OWNER OF THE LAND DESCRIBED IN THE SURVEYOR'S CERTIFICATE HEREON, AND DESIRING TO DISPOSE OF THE SAME INTO A PARCEL, HAS CAUSED THE SAME TO BE SURVEYED AND PLATTED.

BY:

ROBERT NUNN, MANAGER
BOULDER HILL, LLC.

STATE OF OREGON }
COUNTY OF MARION } S.S.

ON THIS _____ DAY OF _____, 2018, THAT PERSONALLY APPEARED BEFORE ME, A NOTARY PUBLIC FOR OREGON, ROBERT NUNN, MANAGER OF BOULDER HILL, LLC., WHO ACKNOWLEDGED THE FOREGOING INSTRUMENT TO BE HIS VOLUNTARY ACT AND DEED.

NOTARY SIGNATURE

NOTARY PUBLIC FOR OREGON

COMMISSION NO. _____

MY COMMISSION EXPIRES: _____

PARTITION PLAT 2018-
IN THE SE 1/4 SEC. 11, T. 8 S., R. 3 W., W.M.
CITY OF SALEM, MARION COUNTY, OREGON

BY:
MULTI/TECH ENGINEERING SERVICES, INC.
1155 13TH ST. S.E. SALEM, OREGON 97302
503-363-9227

NOTES:

1. ALL MONUMENTS FOUND IN GOOD CONDITION AND WITHIN 0.2' OF THE SURFACE OF THE GROUND UNLESS OTHERWISE NOTED.

● = FOUND MONUMENT, SEE TABLE

○ = SET 5/8" X 30" IRON ROD WITH YELLOW PLASTIC CAP SCRIBED "MULTI/TECH ENG"

REFERENCE SURVEYS:

1. REMON B. 4409, P. 098
2. MCSR 1689
3. MCSR 6400
4. MCSR 14257
5. MCSR 21333
6. MCSR 37442

REFERENCE DEEDS:

- D1. R. 1536, P. 749, MCDR

R. 3602,
P. 265

R. 1950,
P. 327



EXPIRES: 6-30-2019

567°24'55"W 431.08' (S67°30'00"W 431.28') 5 - BETWEEN FOUND MONUMENTS
[345.77'] 5 - BETWEEN FOUND MONUMENTS
344.88' - PARCEL DIMENSION

1" = 40'
10/12/2018
#6234

NORTH

R. 3032,
P. 486

S14°47'28"E (222.00') 5
S14°34'00"E

(N54°40'44"E 167.14') D1
N56°39'11"E 167.25'

(N63°02'05"E 102.74') D1
N64°58'18"E 102.80'

(N69°58'53"E 24.48') D1
N71°57'25"E 28.52'

N00°30'00"E 1063.22' (1064.65') 4
BASIS OF BEARING

N71°57'25"E 298.35'

PSC 663-8696
[185.00'] 2

MCSR = MARION COUNTY SURVEY RECORD
MCDR = MARION COUNTY DEED RECORD
BOTP = BOOK OF TOWN PLATS
R. = REEL
B. = BOOK
P. = PAGE

MONUMENT TABLE:

- A. 5/8" IRON ROD SET IN MCSR 14257, N67°24'55"E 0.89' FROM TRUE CORNER
B. STONE AT QUARTER CORNER COMMON TO SECTIONS 11 AND 12 SCRIBED "CS X" PER MCSR 6400, HELD
C. 1/2" IRON PIPE PER MCSR 21333, N32°04'03"W 0.20' FROM TRUE CORNER
D. 5/8" IRON ROD PER MCSR 14257
E. 1/2" IRON PIPE PER MCSR 21333, HELD
F. 5/8" IRON ROD WITH ALUMINUM CAP SCRIBED "CITY OF SALEM" PER MCSR 1689, HELD
G. 5/8" IRON ROD WITH ALUMINUM CAP SCRIBED "CITY OF SALEM" PER MCSR 1689, HELD
H. 5/8" IRON ROD WITH YELLOW PLASTIC CAP SCRIBED "ANDREWS RLS 1626" PER MCSR 37442, N85°59'27"W 0.11' FROM TRUE CORNER
J. 3" BRASS CAP PER REMON BOOK 4409, PAGE 098, HELD
K. 5/8" IRON ROD WITH ALUMINUM CAP SCRIBED "CITY OF SALEM" PER MCSR 1689, HELD

APPROVALS:

CITY PLANNING ADMINISTRATOR _____ DATE _____
PARTITION CASE NO. PAR _____

CITY OF SALEM SURVEYOR _____ DATE _____

MARION COUNTY ASSESSOR _____ DATE _____

TAXES AND ASSESSMENTS ON THE ABOVE DESCRIBED PROPERTY HAVE BEEN PAID IN FULL TO _____

MARION COUNTY TAX COLLECTOR _____ DATE _____

CONDITIONS OF APPROVAL FOR THIS PARTITION PLAT ARE RECORDED IN REEL 4066, PAGE 133 MARION COUNTY DEED RECORDS.

STATE OF OREGON }
COUNTY OF MARION } S.S.

I DO HEREBY CERTIFY THAT THE ATTACHED PARTITION PLAT No. _____ WAS RECEIVED FOR RECORDING ON THE _____ DAY OF _____, 2018, AT _____ O'CLOCK _____ M, AND RECORDED IN THE BOOK OF PARTITION PLATS. IT IS ALSO RECORDED IN THE MARION COUNTY DEED RECORDS IN REEL _____ PAGE _____.

BILL BURGESS, MARION COUNTY CLERK

BY: _____
DEPUTY COUNTY CLERK

**CITY OF SALEM
BEFORE THE HEARINGS OFFICER**

A REQUEST TO VALIDATE PROPERTY KNOWN AS MARION COUNTY TAX ASSESSOR S NUMBER 083W11D / 601. THE SUBJECT UNIT OF LAND IS APPROXIMATELY 1.45 ACRES IN SIZE, ZONED RA (RESIDENTIAL AGRICULTURE), AND LOCATED EAST OF 4826 BATTLE CREEK ROAD SE (MARION COUNTY ASSESSOR MAP AND TAX LOT NUMBER: 083W11D / 601).	} } } } } } } } } }	VUL18-02 FINDINGS OF FACT, CONCLUSIONS, AND DECISION
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DATE AND PLACE OF HEARING:

January 9, 2019, Salem City Council Chambers, Room 240, Civic Center, 555
Liberty Street SE, Salem, Oregon.

APPEARANCES:

<u>Staff:</u>	Olivia Glantz, Planner III
<u>Neighborhood Association:</u>	None
<u>Proponents:</u>	Brandi Dalton, Multi Tech Engineering Services, Agent for Applicant; Robert Nunn, Boulder Hill LLC, Applicant.
<u>Opponents:</u>	None

SUMMARY OF THE APPLICATION AND HEARING

BACKGROUND

The City of Salem held a duly authorized and noticed public hearing on January 9, 2019, regarding a request to validate property known as Marion County Tax Assessors number 083W11D/ 601. The request is to establish a tax lot created by Kuebler Boulevard right of way acquisition that was later sold to a third party creating the subject unit of land. The sale effectively divided the parent parcel into two separate units of land, without a land use approval. Prior to the close of the public hearing, the applicant waived the additional 7-day period for additional testimony.

FINDINGS OF FACT AND CONCLUSIONS

1. Salem Area Comprehensive Plan (SACP) designation

Comprehensive Plan Map: The subject property, is designated “Residential Agriculture” on the Salem Area Comprehensive Plan (SACP) Map.

Urban Growth Policies: The subject property, is located inside of the Salem Urban Growth Boundary and inside the corporate city limits.

Growth Management: The subject property is located outside of the Urban Service Area.

2. Zoning and Surrounding Land Use

The subject property is zoned RA (Residential Agriculture). The property subject to the validation request, Tax Lot 601, is currently vacant. The surrounding properties are zoned and used as follows:

North: RA (Residential Agriculture); Vacant

South: Across Kuebler BLVD; CR (Retail Commercial); Commercial development

East: RA (Residential Agriculture); Vacant

West: RA (Residential Agriculture); Vacant

3. Existing Site Condition

The subject property (Tax Lot 601) is rectangular. Kuebler Blvd SE, a parkway, provides access to the subject property or Battle Creek Road SE through legal parcels under the same ownership.

The overall subject property is sloping, varying in elevation from approximately 392 feet in elevation near the northeast corner to approximately 382 feet in elevation at the southwest corner.

4. Neighborhood and Citizen Comments

The subject property is located within the boundaries of Morningside Neighborhood Association (Morningside) and adjacent to South Gateway Neighborhood Association. Notification was sent to the neighborhood associations and surrounding property owners within 250 feet of the property on December 20, 2018. Notice of the proposed application was also

posted on the subject property. As of the date of the staff report, no written comments were received from Morningside or South Gateway.

5. City Department and Public Agency Comments

- The Public Works Department, Development Services and City Surveyor staff reviewed the proposal and provided these comments and recommendations for plat approval:

1) Plat Submittal: Require project surveyor to submit his or her Partition Plat to the City Surveyor for review as per ORS 672.005(2)(g)&(h), ORS 672.007(2)(b), ORS 672.045(2), ORS 672.060(4), OAR 820-020-0015(4)&(10), OAR 820-020-0020(2) and OAR 820-020-0045(5).

2) Final Plat Application: Provide preliminary plat information to Development Services staff as outlined in the City of Salem Land Surveys and Plats webpage. Once the application has been deemed complete, complete the Final Plat Application.

3) Pre-Plat Review Meeting: Please request a Pre-Plat Review Meeting between the City Surveyor and the applicant's project surveyor to ensure compliance with comments (1) and (2) as described above.

4) ORS and SRC: The application shall provide the required field survey and partition plat as per the statute and code requirements outlined in the Oregon Revised Statutes (ORS) and the Salem Revised Code (SRC). If the said documents are not in compliance with the requirements outlined in ORS and SRC, and as per SRC 205.035, the approval of the partition plat by the City Surveyor may be delayed or held indefinitely based on the non-compliant violation.

- The Building and Safety Division reviewed the proposal and identified no apparent issues.
- The Salem Fire Department reviewed the proposal and indicated that they have no concerns for this land division.

6. Public Agency and Private Service Provider Comments

Public agencies and public and private service providers for the subject property were mailed notification of the proposal.

Portland General Electric commented that development cost per current tariff and service requirements will apply to the subject property and a 10-foot PUE is required on all front street lots.

7. Criteria for Granting a Validation of Unit of Land

SRC 205.060(d) sets forth the criteria that must be met before a unit of land can be validated. In order to approve a validation of unit of land, the Hearing Officer is required to make findings based on evidence provided by the applicant demonstrating that all criteria and factors discussed below are satisfied.

The applicable criteria are stated below in **bold print**. Following each criterion are the findings relative to the proposed tentative partition. The applicant provided justification for all applicable criteria that is included as Attachment B in the staff report.

SRC 205.060(d)(1): The unit of land is not a lawfully established unit of land.

The Hearings Officer notes that the property was annexed into the City of Salem in July, 1990. As the Applicant explained, the original parcel of land was bisected by Kuebler Boulevard in 1988, which did not legally divide the property. The unit of land subject to the validation request was created in 1998 through a deed recorded at the time of the sale of the subject property. Therefore, Tax Lot 601 was not a lawfully established unit of land.

The Hearings Officer finds this criterion is met.

SRC 205.060(d)(2): The unit of land was created through sale or deed or land sales contract executed and recorded before January 1, 2007.

The Hearings Officer notes that the subject unit of land was not created solely to establish a separate tax account and was not created by gift or any other method that is not considered a sale. The applicant has provided a copy of the recorded deed creating the subject unit of land through sale as evidence that this criterion is met.

SRC 205.060(d)(3): The unit of land could have complied with applicable criteria for the creation of the unit of land in effect when the unit of land was sold.

The Hearings Officer finds that the subject property was entirely zoned RA (Residential Agriculture), when the land area was created by deed. The applicant provided Salem Revised Code Chapter 63, Subdivisions (repealed) and Chapter 145, RA Zone (repealed), which were in effect when the land area was created. The development standards of the RA zone had a minimum 4,000 square foot lot size, 40-foot width and 70-foot depth, dimension requirement. Tax Lot 601 has more than 40-feet in width, 70-foot in depth and 4,000 square foot square footage. The City of Salem Ordinance in effect

when the deed was recorded in 1998 could have allowed the parcel as a lawful parcel through a land use determination decision. This criterion is met.

SRC 205.005(d)(4): The plat complies with SRC 205.035 and ORS 92.

The Hearings Officer notes that the applicant submitted a copy of a proposed plat that is included as Attachment C in the staff report. The Public Works Department reviewed the proposal and submitted comments describing the procedure and submittal requirements for recording of a final plat.

DECISION

The Hearings Officer **GRANTS** the request to validate one unit of land that was created through sale rather than through an approved subdivision or partition plat process for property zoned RA (Residential Agriculture) and located east of 4826 Battle Creek Road SE.

DATED: January 29, 2019.

A handwritten signature in black ink, appearing to read 'James K. Brewer', written over a horizontal line.

James K. Brewer, Hearings Officer