

## 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 PLANNING ADMINISTRATOR

**VALIDATION OF UNIT OF LAND CASE NO.: VUL20-04**

**APPLICATION NO.: 20-113443-LD**

**NOTICE OF DECISION DATE:** December 14, 2020

**SUMMARY:** An application to validate and lawfully establish a unit of land which was unlawfully created through the recording of a deed.

**REQUEST:** An application to validate and lawfully establish a unit of land which was unlawfully created through the recording of a deed in 2001 without receiving required land use approval. The land area is approximately 7.19 acres in size, zoned CR (Retail Commercial), and located at 867 Hawthorne Avenue SE - 97301 (Marion County Assessors Map and Tax Lot Number: 073W36A / 1100).

**APPLICANT:** Steve Freeburg

**LOCATION:** 867 Hawthorne Ave SE, Salem OR 97301

**CRITERIA:** Salem Revised Code (SRC) Chapter 205.060 – Validation of Unit of Land

**FINDINGS:** The findings are in the attached Decision dated December 14, 2020

**DECISION:** The **Planning Administrator APPROVED** Validation of Units of Land VUL20-04.

The rights granted by the attached decision must be exercised, or an extension granted, by December 30, 2022, or this approval shall be null and void.

Application Deemed Complete:	<u>November 23, 2020</u>
Notice of Decision Mailing Date:	<u>December 14, 2020</u>
Decision Effective Date:	<u>December 30, 2020</u>
State Mandate Date:	<u>March 23, 2021</u>

Case Manager: Steven McAtee, [smcatee@cityofsalem.net](mailto:smcatee@cityofsalem.net), 503-540-2363

This decision is final unless written appeal and associated fee (if applicable) from an aggrieved party is filed with the City of Salem Planning Division, Room 320, 555 Liberty Street SE, Salem OR 97301, or by email at [planning@cityofsalem.net](mailto:planning@cityofsalem.net), no later than 5:00 p.m., Tuesday, December 29, 2020. 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 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 Hearings Officer will review the appeal at a public hearing. After the hearing, the Hearings Officer 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 by contacting the case manager, or at the Planning Desk in the Permit Application Center, Room 305, City Hall, 555 Liberty Street SE, during regular business hours.

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

**BEFORE THE PLANNING ADMINISTRATOR  
OF THE CITY OF SALEM  
(VALIDATION OF UNIT OF LAND NO. 20-04)**

*Si necesita ayuda para comprender esta información, por favor llame 503-588-6173.  
<http://www.cityofsalem.net/planning>*

**IN THE MATTER OF THE  
VALIDATION OF UNIT OF LAND  
NO. 20-04;  
867 HAWTHORNE AVE SE**

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**FINDINGS AND ORDER  
  
DECEMBER 14, 2020**

**REQUEST**

Summary: A proposal to validate a unit of land that was created through the recording of a deed in 2001.

Request: An application to validate and lawfully establish a unit of land which was unlawfully created through the recording of a deed in 2001 without receiving required land use approval. The land area is approximately 7.19 acres in size, zoned CR (Retail Commercial), and located at 867 Hawthorne Avenue SE - 97301 (Marion County Assessors Map and Tax Lot Number: 073W36A / 1100).

**DECISION**

The tentative plat for a validation of unit of land is APPROVED subject to the applicable standards of the Salem Revised Code and the findings contained herein.

**PROCEDURAL FINDINGS**

1. On August 13, 2020, an application for a validation of unit of land was filed proposing to legally establish the subject property identified as tax lots 073W36A / 1100, located at 867 Hawthorne Avenue SE (**Attachment A**). The application was accepted on September 22, 2020 when the applicant submitted materials supporting the request.
2. After requesting additional information from the applicant, the application was deemed complete for processing on November 23, 2020 and notice to surrounding property owners was mailed the same day, pursuant to Salem Revised Code. The state-mandated local decision deadline is March 23, 2021.

**APPLICANT'S STATEMENT**

A request for a validation of unit of land must be supported by proof that it conforms to all applicable criteria imposed by the Salem Revised Code. The applicant submitted such statements and proof, which are included in their entirety as **Attachment B** in this land use decision. Staff utilized the information from the applicant's statements to evaluate the applicant's proposal and to compose the facts and findings within the decision.

## **SUBSTANTIVE FINDINGS**

### **1. Salem Area Comprehensive Plan (SACP) Designation**

*Comprehensive Plan Map:* The subject property is designated COM (Commercial) on the Salem Area Comprehensive Plan (SACP) Map.

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

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

### **2. Zoning and Surrounding Land Use**

In 2019, the subject property underwent a comprehensive plan map change and neighborhood map change, both from Industrial to Commercial, and a zone change from IP (Industrial Park) to CR (Retail Commercial). Class 3 Site Plan Review, Driveway Approach Permit Case No. SPR-DAP18-03MOD1 granted approval for a government services and office use on the subject property. The validation of the property is necessary in order to divide the property into two parcels. The surrounding properties are zoned and used as follows:

North: IP (Industrial Park)

South: CR (Retail Commercial)

East: Across Hawthorne Avenue SE, IC (Industrial Commercial)

West: PA (Public Amusement)

### **3. Existing Site Conditions**

The subject property abuts Mill Creek to the north and Hawthorne Avenue SE to the east. It is irregularly shaped with an average approximate width of 725-feet and an average approximate depth of 515-feet.

### **4. Neighborhood and Citizen Comments**

The subject property is located within the boundaries of the Southeast Salem Neighborhood Association (SESNA). Notification was sent to the neighborhood association and surrounding property owners and residents within 250 feet of the property on November 23, 2020. No comments were received from the neighborhood association or surrounding residents.

## 5. City Departments 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.
  - Final Plat Submittal: 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 the ORS and the 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 had no comments.
- The Salem Fire Department reviewed the proposal and indicated that they have no concerns with the validation of unit of land. Any future construction shall comply with the OFC that is adopted at that time. Items may include, but not be limited to, fire department access and water supply.

## 6. Private Agency and Service Provider Comments

Public agencies and public and private service providers for the subject property were mailed notification of the proposal. No Comments were received.

## 7. Criteria for Granting a Validation of Unit of Land

SRC 205.060(d) establishes the criteria that must be met before a unit of land can be validated.<sup>1</sup> In order to approve a validation of unit of land, the review authority shall make findings based on evidence provided by the applicant demonstrating that all the following criteria and factors are satisfied.

The applicable criteria are stated below in bold print. Following each criterion is a response and/or finding relative to the proposed tentative partition. The applicant provided justification for all applicable criteria (**Attachment B**).

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

**Finding:** The subject property was annexed into the City of Salem in August of 1981. The subject property, in its current configuration, was created in 2001 per Reel 1853 Page 193-196 of Marion County Deed records and transferred to Mill Creek Inn LLC. The current vesting deed, according to Marion County records, is Reel

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<sup>1</sup> Notwithstanding criterion SRC205.060 (d)(3), the Review Authority may approve an application to validate a unit of land that was unlawfully created prior to January 1, 2007, if approval was issued for a permit to allow the construction of placement of a dwelling or other building on the unit of land after the sale.

3352, Page 102, recorded in 2012, which describes the property in the configuration established unlawfully in 2001. Because the subject property was not created through proper land use procedures, 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.**

**Finding:** According to the written statement and staff research, the unit of land was created prior to January 1, 2007, by a recorded deed (Reel 1853, Page 193-196) in 2001. 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. 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.**

**Finding:** Prior to the Comprehensive Plan Change and Zone Change described above, the subject property was zoned IP (Industrial Park). The applicant provided City of Salem zoning code Chapter 157; IP zone – Industrial Park, which was in effect when the unit of land was created by deed. The development standards of the IP zone had no minimum lot area or dimension requirements, except for the minimum 16 feet of street frontage requirements of SRC 130.260. The subject property has approximately 295 feet of street frontage and would have complied with the applicable criteria for the creation of the unit of land in effect when the property was created in 2001. This criterion is met.

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

**Finding:** The applicant submitted a copy of a proposed plat (**Attachment C**). The Public Works Department reviewed the proposal and submitted comments describing the procedure and submittal requirements for recording of a final plat.

## **8. Conclusion**

Based upon review of SRC 205.060, the findings contained under Section 7 above, and the comments described, the validation of unit of land complies with the requirements for an affirmative decision. Approval will not adversely affect the safe and healthful development and access to any adjoining lands.

## **IT IS HEREBY ORDERED**

The tentative Plat for the Validation of Unit of Land Case No. 20-04, on property approximately 7.19 acres in size, zoned CR (Retail Commercial), and located at 867 Hawthorne Avenue SE - 97301 (Marion County Assessors Map and Tax Lot Number: 073W36A / 1100).

is hereby **APPROVED** subject to the applicable standards of the Salem Revised Code and the findings contained herein.



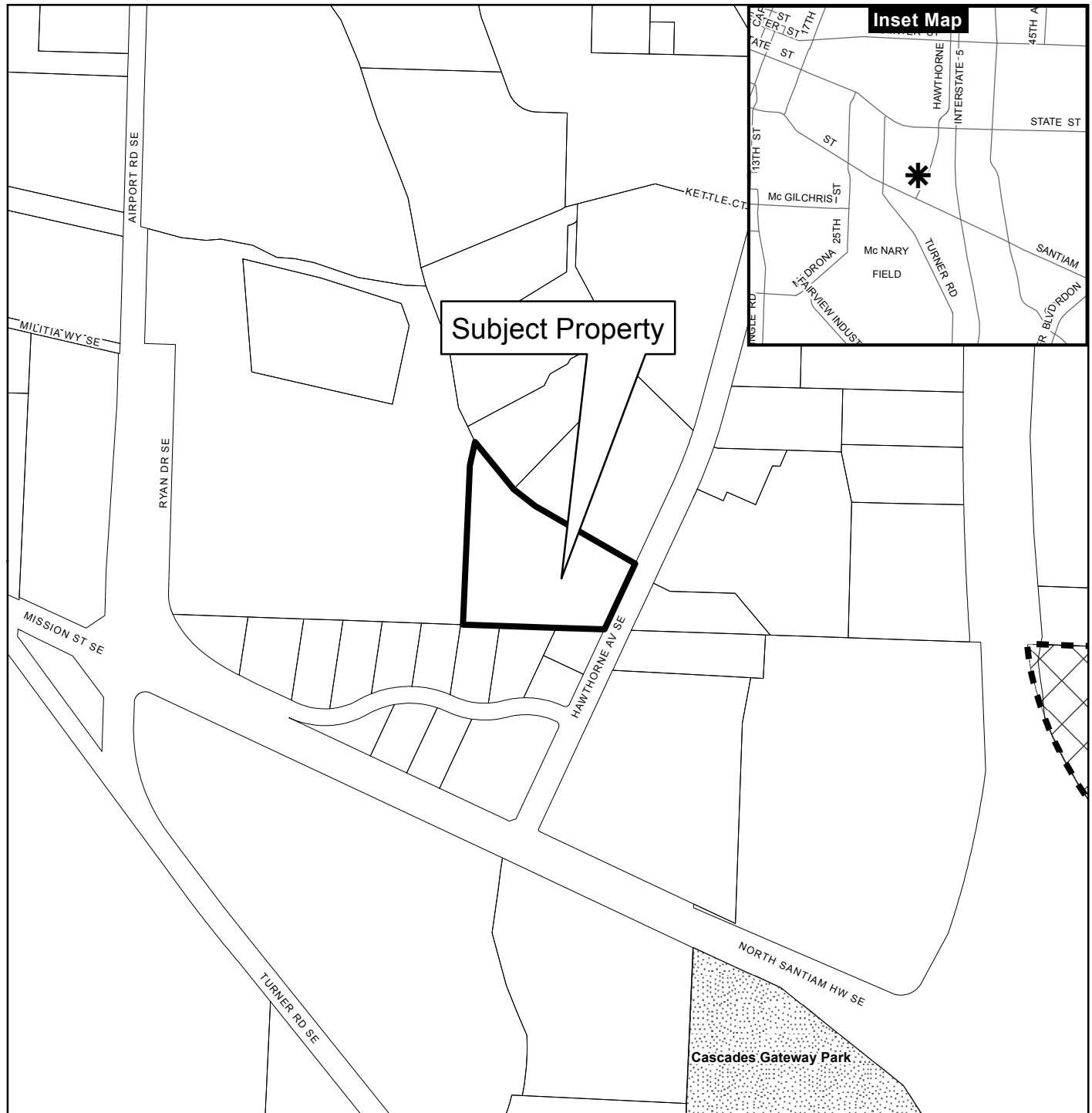
Steven McAtee, Planner II, on behalf of  
Lisa Anderson-Ogilvie, AICP  
Planning Administrator

Prepared by Steven McAtee, Planner II

Attachments: A. Vicinity Map  
B. Applicant's Written Statement  
C. Applicant's Proposed Plat

# Vicinity Map

## 867 HAWTHORNE AVE 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.

This product is provided as is, without warranty. In no event is the City of Salem liable for damages from the use of this product. This product is subject to license and copyright limitations and further distribution or resale is prohibited.

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# BARKER SURVEYING

3657 KASHMIR WAY SE SALEM OR 97317-9315

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## Written Statement

PJS Land Development LLC  
Steven P. Freeburg  
3125 Ryan Dr SE  
Salem, OR, 97301

It is our intention to validate that property known as Tax Lot 1100 (7.19 acres) of Marion County Assessor's Map 07 3W 36A, located West of Hawthorne Avenue and South of Mill Creek, by creating a legal unit of land by a single Parcel Partition Plat. The owners seek to validate the property so they can move forward with a two Parcel Partition Plat for the Oregon State Treasury building and other commercial development.

The Subject Property is described in that instrument recorded in Reel 1853, Page 193, Marion County Deed Records. Said instrument was recorded on October 24, 2001 and the first time the property was conveyed, thus causing the Subject Property to be unlawfully created without City of Salem Planning approval before January 1, 2007.

The IP (Industrial Park) Zoned Subject Property could have complied with applicable criteria for the creation of the unit of land when the unit of land was sold per SRC Chapter 63 and 157. It has recently gone through a zone change to IBC (Industrial Business Campus).

The plat complies with SRC 205.035 as well as ORS 92. The Subject Property can be adequately served by City infrastructure. A 16" Water Main and 8" Sanitary Sewer Main run parallel and adjacent to the south property line.

Respectfully submitted,

Keith Kohler  
On behalf of Steven P. Freeburg

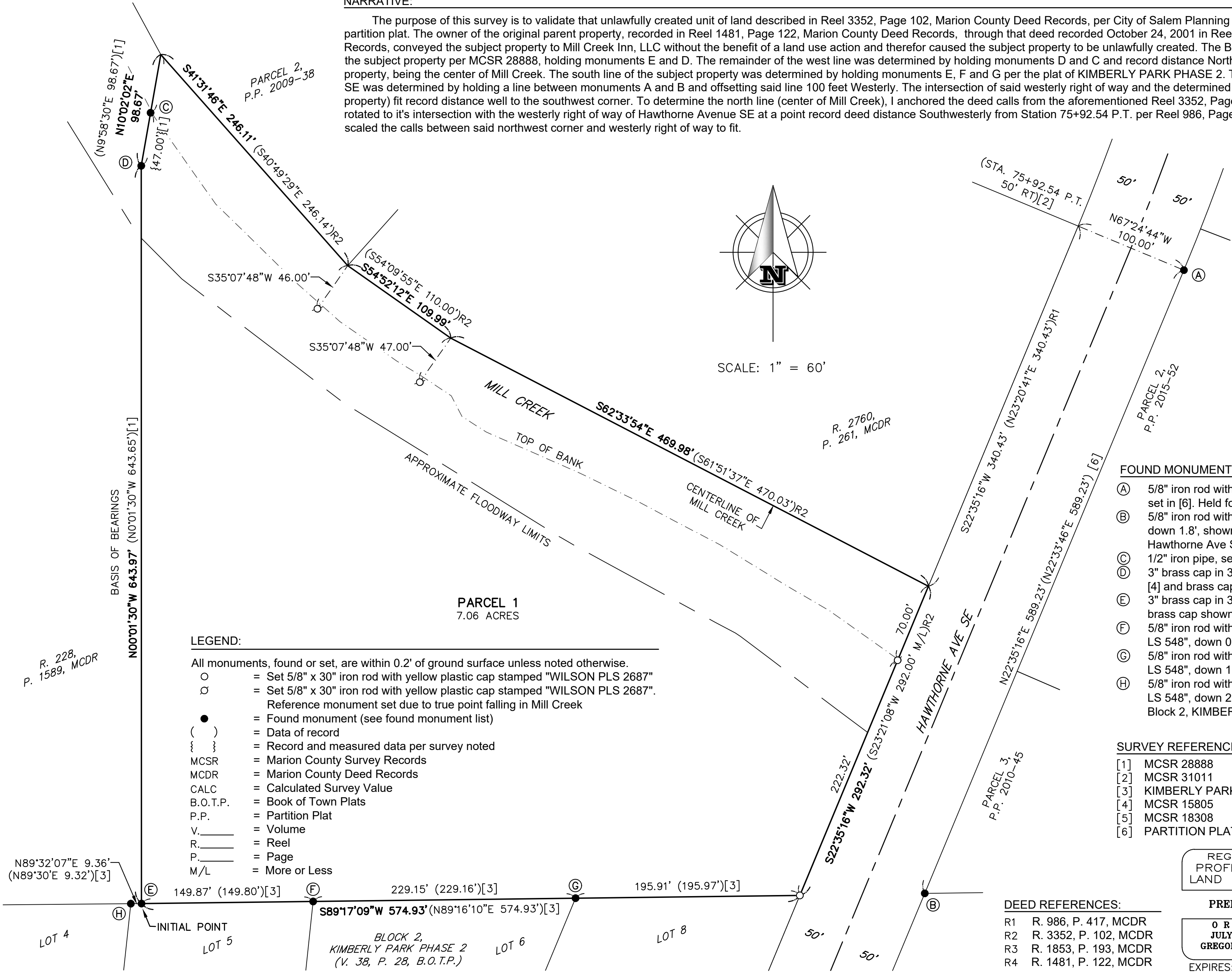
[WWW.BARKERWILSON.COM](http://WWW.BARKERWILSON.COM)

OFFICE 503-588-8800 FAX 503-363-2469 [INFO@BARKERWILSON.COM](mailto:INFO@BARKERWILSON.COM)

PARTITION PLAT NO. \_\_\_\_\_  
LOCATED IN THE N.E. 1/4 OF SECTION 36, T. 7 S., R. 3 W., W.M.,  
CITY OF SALEM, MARION COUNTY, OREGON  
NOVEMBER 6, 2020

**NARRATIVE:**

The purpose of this survey is to validate that unlawfully created unit of land described in Reel 3352, Page 102, Marion County Deed Records, per City of Salem Planning Case No. VUL \_\_\_\_\_, by means of a partition plat. The owner of the original parent property, recorded in Reel 1481, Page 122, Marion County Deed Records, through that deed recorded October 24, 2001 in Reel 1853, Page 193, Marion County Deed Records, conveyed the subject property to Mill Creek Inn, LLC without the benefit of a land use action and therefor caused the subject property to be unlawfully created. The Basis of Bearings used is along the west line of the subject property per MCSR 28888, holding monuments E and D. The remainder of the west line was determined by holding monuments D and C and record distance Northeasterly to the northwest corner of the subject property, being the center of Mill Creek. The south line of the subject property was determined by holding monuments E, F and G per the plat of KIMBERLY PARK PHASE 2. The westerly right of way of Hawthorne Avenue SE was determined by holding a line between monuments A and B and offsetting said line 100 feet Westerly. The intersection of said westerly right of way and the determined south line (the southeast corner of the subject property) fit record distance well to the southwest corner. To determine the north line (center of Mill Creek), I anchored the deed calls from the aforementioned Reel 3352, Page 102, at the calculated northwest corner and rotated to it's intersection with the westerly right of way of Hawthorne Avenue SE at a point record deed distance Southwesterly from Station 75+92.54 P.T. per Reel 986, Page 417, Marion County Deed Records. I then scaled the calls between said northwest corner and westerly right of way to fit.



# PARTITION PLAT NO. \_\_\_\_\_

SHEET 2 OF 2

LOCATED IN THE N.E. 1/4 OF SECTION 36, T. 7 S., R. 3 W., W.M.,  
CITY OF SALEM, MARION COUNTY, OREGON  
NOVEMBER 6, 2020

## SURVEYOR'S CERTIFICATE:

I, Gregory L. Wilson, a Registered Professional Land Surveyor in Oregon, do hereby depose and say that I did accurately survey and mark with proper monuments the lands represented on the attached map, situated in the northeast one-quarter of Section 36, Township 7 South, Range 3 West of the Willamette Meridian, City of Salem, Marion County, Oregon, being described as follows:

Beginning at the Initial Point of this partition plat, said point being marked by a 3/4-inch iron pipe with 3-inch brass cap found at the southwest corner of that property described in that instrument recorded in Reel 3352, Page 102, Marion County Deed Records, said point bearing North 89°32'07" East 9.36 feet from the northwest corner of Lot 5, Block 2, KIMBERLY PARK PHASE 2, as platted and recorded in Volume 38, Page 28, Book of Town Plats for Marion County, Oregon; and running thence:

North 00°01'30" West 643.97 feet along the west line of said property to a 3/4-inch iron pipe with 3-inch brass cap;

thence North 10°02'02" East 98.67 feet along said west line to the center of Mill Creek;

thence South 41°31'46" East 246.11 feet along said center of Mill Creek to a point which bears North 35°07'48" East 46.00 feet from a 5/8-inch iron rod with yellow plastic cap stamped "WILSON PLS 2687";

thence South 54°52'12" East 109.99 feet along said center of Mill Creek to a point which bears North 35°52'12" East 47.00 feet from a like iron rod;

thence South 62°33'54" East 469.98 feet along said center of Mill Creek to a point on the westerly right of way of Hawthorne Avenue SE which bears North 22°35'16" East 70.00 feet from a like iron rod;

thence South 22°35'16" West 292.32 feet along said westerly right of way to the northeast corner of Lot 8 in said Block 2, KIMBERLY PARK PHASE 2;

thence South 89°17'09" West 574.93 feet along the north line of said Block 2 to the Point of Beginning, containing 7.06 acres of land, more or less.

\_\_\_\_\_  
Gregory L. Wilson  
Registered Professional Land Surveyor No. 2687  
License expires June 30, 2022

REGISTERED  
PROFESSIONAL  
LAND SURVEYOR

PRELIMINARY

O R E G O N  
JULY 19, 1994  
GREGORY L. WILSON  
2687

EXPIRES: 6/30/2022

## THE WITHIN PLAT IS HEREBY APPROVED:

\_\_\_\_\_  
Planning Administrator, City of Salem

\_\_\_\_\_  
Date

\_\_\_\_\_  
Salem City Surveyor

\_\_\_\_\_  
Date

\_\_\_\_\_  
Marion County Assessor

\_\_\_\_\_  
Date

Taxes and assessments on the above described property as provided by ORS 92.095, have been paid through \_\_\_\_\_.

\_\_\_\_\_  
Marion County Tax Collector

\_\_\_\_\_  
Date

STATE OF OREGON

S.S.

COUNTY OF MARION

I do hereby certify that the attached Partition Plat No. \_\_\_\_\_ was received for recording on the \_\_\_\_ day of \_\_\_\_\_, 20 \_\_, at \_\_\_\_\_ .m. o'clock and recorded in Record of Partition Plats. Also referenced in Marion County Deed Records in Reel \_\_\_\_\_, at Page \_\_\_\_\_.

\_\_\_\_\_  
Bill Burgess, Marion County Clerk

By: \_\_\_\_\_  
Deputy County Clerk

## DECLARATION:

Know all people by these presents that PJS Land Development LLC, an Oregon limited liability company, being the owner of the land described in the Surveyor's Certificate hereon made and desiring to dispose of the same in parcels, has caused the same to be partitioned and surveyed as shown on the attached map in accordance with the provisions of O.R.S. Chapter 92.

In witness whereof, I set my hand and seal this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_.

PJS Land Development LLC

By: \_\_\_\_\_

Steven Freeburg, Member

## ACKNOWLEDGEMENT:

STATE OF OREGON

S.S.

COUNTY OF \_\_\_\_\_

This instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_, by Steven Freeburg, as Member of PJS Land Development LLC, an Oregon limited liability company, being the identical person described in the above instrument and who personally acknowledged to me that they executed the same freely and voluntarily for the uses and purposes stated therein and without fear or compulsion from anyone.

\_\_\_\_\_  
NOTARY PUBLIC - OREGON

\_\_\_\_\_  
(PRINT NAME)

COMMISSION NO. \_\_\_\_\_

MY COMMISSION EXPIRES \_\_\_\_\_

Planning Administration Conditions of Approval pertaining to this Partition Plat are recorded in Reel \_\_\_\_\_, Page \_\_\_\_\_, Records for Marion County, Oregon.



**BARKER**  
SURVEYING

3657 KASHMIR WAY SE  
SALEM, OREGON 97317  
PHONE (503) 588-8800  
FAX (503) 363-2469  
EMAIL: INFO@BARKERWILSON.COM