33.2 Land Divisions – Partitions. ORS 215.780(2)(d)(A) prohibits new dwellings on any substandard-sized parcels in forest zones created pursuant to ORS 215.780(2)(d), including any "remainder parcels," in spite of the inartful language in ORS 215.780(6)(a) referring to "the newly created parcel," in the singular. *Russell v. Lane County*, LUBA No 2020-072 (Jan 8, 2021).

33.2 Land Divisions – Partitions. Where a local code provision defines "lot of record" to include lots or parcels created "[b]y the subdividing or partitioning of adjacent or surrounding land, leaving a remainder lot or parcel," a local governing body does not err in concluding that, even if a subdivision plat in fact creates more than one remainder parcel, only one remainder parcel can be recognized as a lot of record, even where the subdivision plat creates noncontiguous remainder parcels. *Kine v. Deschutes County*, 2018-130 (Jan 29, 2021).

33.2 Land Divisions – Partitions. Prior to the adoption of partition and subdivision ordinances, a deed was a multi-function instrument, used not only to convey existing units of land, but also to create new units of land, to vacate or consolidate units of land, and adjust property boundaries of existing units of land, without creating new units of land. Under current regulatory schemes, those functions are accomplished by different mechanisms. Absent some authority to the contrary, a 1951 deed could convey a pre-existing parcel and a newly created remainder parcel using a single legal description, without the need for a separate legal description for each parcel. *Landwatch Lane County v. Lane County*, LUBA No 2020-085 (Apr 29, 2021).

33.2 Land Divisions – Partitions. Even under the presumption that a deed conveying portions of existing parcels using a single legal description would create only a single new parcel, a hearings officer reasonably concludes that a 1951 deed conveying an existing parcel by reference to its lot number, and a remainder parcel described by metes and bounds, was intended to convey two separate parcels, and not to vacate the existing parcel. *Landwatch Lane County v. Lane County*, LUBA No 2020-085 (Apr 29, 2021).

33.2 Land Divisions – Partitions. LUBA will affirm a local government's denial of an application to create partition a 1,156-acre parcel to create two smaller parcels for nonfarm dwellings, based on a condition of a 1994 partition approval that prohibited further partitions of the "parent parcel" for nonfarm uses, where the petitioner fails to establish as a matter of law that the subject property was not the "parent parcel," or that the condition had been voided by planning staff, or otherwise that the condition no longer applied to restrict partition of the subject property. *Woods v. Wallowa County*, LUBA No 2021-064 (Nov 18, 2021).

33.2 Land Divisions – Partitions. A county's reliance on an uncodified, "fact-dependent," "longstanding county policy" to conclude that the transfer of an illegally partitioned property to the owners of contiguous property constitutes a "de facto property line adjustment," eliminating the illegally partitioned property as a separate unit of land, violates the codification requirement at ORS 215.416(8)(a). *Landwatch Lane County v. Lane County*, 81 Or LUBA 656 (2020).

33.2 Land Divisions – Partitions. Under *Schultz v. City of Grants Pass*, 131 Or App 220, 884 P2d 569 (1994), where property can be physically developed without further land use review, i.e., with uses that are allowed outright, then some level of exactions could be appropriate at the partition stage, even if physical development is not part of the partition application; however,

where nothing in the local code or elsewhere requires the local government to impose exactions at the partition stage, the local government's decision not to exact provides no basis for remand. *Dressel v. City of Tigard*, 81 Or LUBA 208 (2020).

33.2 Land Divisions – Partitions. Under ORS 215.780(2)(e)(A), in determining whether to approve the creation of a forest-zoned parcel that is less than the 80-acre minimum parcel size, the county may consider only the parcel that is the subject of the partition application, not a tax lot or other property that the subject parcel was adjacent to but not part of on November 4, 1993. *Landwatch Lane County v. Lane County*, 80 Or LUBA 19 (2019).

33.2 Land Divisions – Partitions. Arguments that a city decision approving a partition affects "livability of [an] existing house" and that the city ignored "impact on the neighborhood" provide no basis for reversal or remand where none of the criteria applicable to land divisions require the city to consider "privacy or livability" in determining whether to approve the land division. *Bohan v. City of Portland*, 80 Or LUBA 263 (2019).

33.2 Land Divisions – Partitions. An unlawful division of land creates two unlawful units of land rather than an unlawful unit of land and a lawful remainder. *Landwatch Lane County v. Lane County*, 80 Or LUBA 415 (2019).

33.2 Land Divisions – Partitions. Where separate applications to partition two parcels under a single ownership into three parcels each receive final approval in the same calendar year, the resultant units of land are not "lawfully created" where state statute requires that divisions of "an area or tract of land into four or more lots within a calendar year when such area or tract of land exists as a unit or contiguous units of land under a single ownership" receive subdivision approval. *Landwatch Lane County v. Lane County*, 79 Or LUBA 65 (2019).

33.2 Land Divisions – Partitions. When a lot is an unplatted remainder of a subdivision and is not depicted at all on the approved subdivision plat, its current configuration may have resulted from the subdivision but that does not indicate that the county approved the creation of the lot by applying subdivision approval standards. On remand, the hearings officer needs to determine if the lot was approved by applying subdivision standards. *Landwatch Lane County v. Lane County*, 78 Or LUBA 164 (2018).

33.2 Land Divisions – Partitions. ORS 92.190(3) embodies a requirement that, where local governments choose to provide an alternative procedure for property line adjustments other than using replat procedures, that alternative procedure must include local government approval of some kind. However, ORS 197.190(3) does not specify any particular procedures or form of approval, and does not necessarily require that final approval be obtained prior to recordation of the adjustment deeds. Given the absence of more specific statutory requirements a county does not err in verifying property as a legal lot, notwithstanding that the property lines were adopted in 2007 without prior county approval, where following recordation of the deeds, the county preliminarily verified the adjustments as lawful and issued a final approval in 2017 when the property owner applied for, and the county approved, a development permit. This process, although partially post-hoc, is consistent with ORS 92.190(3). *Landwatch Lane County v. Lane County*, 77 Or LUBA 486 (2018).

33.2 Land Divisions – Partitions. Oregon Laws 2008, chapter 12, legislatively overruled the holding in *Phillips v. Polk County*, 53 Or LUBA 194, *aff'd*, 213 Or App 498, 162 P3d 338 (2007), which provided that it was unlawful to adjust property boundaries in a way that results in parcels that fail to comply with applicable minimum parcel sizes. Oregon Laws 2008, chapter 12, authorizes property line adjustments of substandard size lots and parcels, even if the resulting lots or parcels continue to fail to comply with applicable minimum parcel sizes. Oregon Laws 2008, chapter 12, section 6 made that legislation retroactive to "property line adjustments approved before, on or after the effective date of this 2008 Act." Therefore, Oregon Laws 2008, chapter 12 applies to a property line adjustment that took place in 2007, because the property line adjustment was "approved * * * before, on or after" the effective date of the 2008 Act. *Landwatch Lane County v. Lane County*, 77 Or LUBA 486 (2018).

33.2 Land Divisions – Partitions. LUBA will affirm a finding that a 1985 quitclaim deed of a portion of a river meander channel from the state to an adjoining property owner represented a property line adjustment, rather than the unlawful creation of a new discrete parcel, where the petitioner identifies no statutory or local authority compelling the conclusion that the 1985 deed had the legal effect of creating a new parcel. *Landwatch Lane County v. Lane County*, 75 Or LUBA 473 (2017).

33.2 Land Divisions – Partitions. LUBA will affirm a governing body's interpretation of its lot of record provisions, to the effect that "partitioning" (one of the ways in which a parcel can be created to qualify as a lot of record) includes units of land created as undescribed remainders of a parent parcel divided by deed, at a time when county approval was not required to create a parcel by deed, where that interpretation is plausible and not inconsistent with the text and context of the lot of record provision. *Central Oregon Landwatch v. Deschutes County*, 75 Or LUBA 328 (2017).

33.2 Land Divisions – Partitions. A county does not err in examining the deed that originally created the subject parcel, or the deeds in the chain of title that conveyed and shaped the parcel between its creation and its current configuration, in determining whether the parcel is a "lot of record," defined under county code to include parcels created by deed prior to county partition laws, notwithstanding that circuit courts generally have the final say in the interpretation of ambiguous deeds or determining the grantor's intent. *Central Oregon Landwatch v. Deschutes County*, 75 Or LUBA 328 (2017).

33.2 Land Divisions – Partitions. Where a hearings officer approved a partition subject to a condition of approval requiring the developer to record, prior to the sale of any parcels, an agreement to maintain a common tract, but the condition does not identify the necessary parties to the agreement, a county does not err in interpreting the condition to be satisfied by allowing the county to enter into separate agreements with the owners of the common tract to ensure maintenance of the tract. *Kuhn v. Deschutes County*, 74 Or LUBA 190 (2016).

33.2 Land Divisions – Partitions. Where a local code provision provides that minimum lot width may be reduced if "[o]n balance, the proposed lots will have dimensions that are consistent with the purpose of this section," it is remandable error where the local code provides for nine purposes to be considered, but the decision maker considers only some of the nine purposes, and concludes

without explanation, that "on balance, the applicant has not demonstrated that the proposal is consistent with the purpose of the lot dimension regulations." In this context, such findings are inadequate because an "on balance" determination requires the city to adopt findings explaining how it balances the different purposes. *Sage Equities, LLC v. City of Portland*, 72 Or LUBA 163 (2015).

33.2 Land Divisions – Partitions. Where a local code provision requires a determination that "[o]n balance, the proposed lots will have dimensions that are consistent with the purpose of this section," and the section provides for nine purposes to be considered, a city may be able to assign greater or lesser significance to a particular purpose based on direction from the city's code, comprehensive plan or other land use document. But a city errs to the extent that it interprets the "on balance" determination to allow denial based solely on a finding of inconsistency with one or two of the nine purposes, without considering consistency with all of the purposes. *Sage Equities, LLC v. City of Portland*, 72 Or LUBA 163 (2015).

33.2 Land Divisions – Partitions. Where a local code provision regulating minimum lot size requires a determination of whether a proposal is consistent with purposes of the code section, and an applicable code section is intended to ensure that "[e]ach lot has enough room for a reasonably-sized attached or detached house[,]" a finding that the applicants have not demonstrated that "each parcel has enough room for a reasonably sized detached house[,]" is conclusory, because it fails to explain what constitutes a "reasonably-sized" house. *Sage Equities, LLC v. City of Portland*, 72 Or LUBA 163 (2015).

33.2 Land Divisions – Partitions. A county decision that approves an application to partition a 41-acre parcel located within a deer winter range overlay zone into two approximately 20-acre parcel, where the minimum parcel size for properties located in the deer winter range overlay zone is 80 acres, is "prohibited as a matter of law" under OAR 661-010-0071(1)(c). *ODFW v. Klamath County*, 66 Or LUBA 92 (2012).

33.2 Land Divisions – Partitions. A hearings officer errs in determining that a local code provision that requires that each parcel created by a partition is "suitable for the use intended considering access" is satisfied by a demonstration of satisfaction with a separate code provision that requires each parcel to have "legal access" to a public road, where the two criteria pose different questions. *Central Oregon Landwatch v. Deschutes County*, 63 Or LUBA 288 (2011).

33.2 Land Divisions – Partitions. A partition or replat that has the effect of eliminating pre-existing property lines is a "specific process" for "vacating" property lines for both parcels and lots, for purposes of ORS 92.017. *Weyerhaeuser Real Estate Development Co. v. Polk County*, 63 Or LUBA 393 (2011).

33.2 Land Divisions – Partitions. Even if it is legally possible to intentionally create a discrete parcel that consists entirely of nested, discrete lots or parcels without vacating those nested lots or parcels, LUBA will affirm a local government finding that a partition plat that creates a new parcel without depicting any nested lot lines has the effect of vacating the pre-existing lots, where there is nothing on the partition plat, description, or narrative that suggests an intent to preserve the pre-

existing lots. *Weyerhaeuser Real Estate Development Co. v. Polk County*, 63 Or LUBA 393 (2011).

33.2 Land Divisions – Partitions. An approved partition plat creating new parcels need not bisect the property lines of pre-existing lots to "vacate" those lots for purposes of ORS 92.017. Even if the boundaries of the new parcels follow the property lines of some pre-existing lots, the partition plat can have the effect of vacating or consolidating the pre-existing lots included within the newly established parcels. *Weyerhaeuser Real Estate Development Co. v. Polk County*, 63 Or LUBA 393 (2011).

33.2 Land Divisions – Partitions. A joint application for a conditional use permit by owners of illegally divided parcels cannot rectify an illegal partition under a local code provision that prohibits the approval of permits unless "the violation can be rectified as part of the proposed development," at least where the local government does not purport to validate unlawfully created parcels, pursuant to ORS 92.176. *Olstedt v. Clatsop County*, 62 Or LUBA 131 (2010).

33.2 Land Divisions – Partitions. Where a maximum setback shown on a preliminary plat was not required by law but rather was voluntarily agreed to by the property owner as an accommodation to the Oregon Department of Fish and Wildlife prior to its and the county's adoption of a setback requirement to protect wildlife habitat, and there is no evidence that the setback was to be measured in any particular way from the county road, a county need not require that the setback be measured in precisely the way shown on the plat. In that circumstance, the county may look at the underlying purpose for the setback and not require that the setback be measured solely from a short segment of the partitioned property's county road frontage. *Kuhn v. Deschutes County*, 62 Or LUBA 165 (2010).

33.2 Land Divisions – Partitions. Where a road improvement condition is imposed on a two-phase subdivision and the county subsequently approves phase I without the required road improvement and approves a partition in place of phase II without requiring compliance with the road improvement condition, the road improvement condition may not be extended to apply to a partition of one of the parcels in the partition that was approved in place of phase II of the subdivision. *MEK Properties, LLC v. Coos County*, 61 Or LUBA 360 (2010).

33.2 Land Divisions – Partitions. A county's concerns that the roads that will be needed to provide access to the parcels that will be created by a series of partitions are not sufficient to authorize the county to condition final partition plat approval on the applicant agreeing to construct those roads and provide financial guarantees to construct those road, where the county code distinguishes between partitioners and subdividers and requires that subdividers construct or guarantee construction of roads prior to final plat approval. *Sperber v. Coos County*, 60 Or LUBA 44 (2009).

33.2 Land Divisions – Partitions. Where a county approves an application for partition approval but imposes conditions of approval and LUBA determines that the county lacks authority to impose the conditions of approval, remand is appropriate so that the county can reapprove the partition without the disputed conditions of approval. *Sperber v. Coos County*, 60 Or LUBA 44 (2009).

33.2 Land Divisions – Partitions. Absent a compelling reason to do so, LUBA will not overrule its holding in *Kishpaugh v. Clackamas County*, 24 Or LUBA 164 (1992), that the ORS 92.017 prohibition on consolidating discrete lots and parcels does not prohibit a local government from adopting regulations that limit development of contiguous, substandard-size lots and parcels and effectively consolidate them for development purposes. *Thomas v. Wasco County*, 58 Or LUBA 452 (2009).

33.2 Land Divisions – Partitions. Where a city denies a partition application based on a code provision that was not listed as an approval standard in the notice of hearing and not discussed until late in the hearing, the petitioner's failure to raise issues below regarding application of that code provision does not preclude petitioner from challenging denial under that code provision before LUBA. *Stewart v. City of Salem*, 58 Or LUBA 605 (2009).

33.2 Land Divisions – Partitions. A code provision stating that when it appears that the area of a proposed partition is to be ultimately divided into four or more lots or parcels the code provisions pertaining to subdivisions apply simply authorizes the city to apply subdivision procedures and standards to a partition application, and does not itself constitute "standard" or "criteria" under which the city could deny the partition application. *Stewart v. City of Salem*, 58 Or LUBA 605 (2009).

33.2 Land Divisions – Partitions. Where a city discovers late in a proceeding on a partition application that its code may require application of certain subdivision approval standards, the city should identify any applicable subdivision standards and give the applicant the opportunity to demonstrate compliance with them, even if that would require the city to make its decision after the statutory deadline for taking final action on the application has passed. However, it is inconsistent with ORS 227.178(3) for the city to summarily deny the partition and effectively force the applicant to submit a new application, where that denial is not based on any applicable standard or criteria. *Stewart v. City of Salem*, 58 Or LUBA 605 (2009).

33.2 Land Divisions – Partitions. Reversal is not warranted under ORS 197.835(10)(a)(A) where a city denies a partition application three weeks prior to expiration of the 120-day deadline based on the city's belief that the proposed partition must be processed as a subdivision, where the city mistakenly believed that its only option was to deny the application and effectively require the applicant to submit a new application, but there is no indication in the record that the city denied the application to avoid the 120-day rule. *Stewart v. City of Salem*, 58 Or LUBA 605 (2009).

33.2 Land Divisions – Partitions. Reversal is warranted under ORS 197.835(10)(a)(B) where a city denies a partition application based on a code provision that is not an approval standard and that does not authorize denial of the application, and where no other code provision cited by the city provides a basis for denial. Denial under such circumstances is "outside the range of discretion allowed the local government under its comprehensive plan and implementing ordinances." *Stewart v. City of Salem*, 58 Or LUBA 605 (2009).

33.2 Land Divisions – Partitions. Under ORS 215.010(1), when the word "parcel" is used in ORS chapter 215, the parcel must be a lawfully created parcel, in the sense that the parcel's date of

creation either predated any applicable laws governing partitions or the parcel was created in compliance with those laws. *Reeves v. Yamhill County*, 53 Or LUBA 4 (2006).

33.2 Land Divisions – Partitions. When the definitions of the relevant terms set out in ORS chapter 92 are read together, whether a division of land creates "parcels" or "lots" depends the number units of land that one or more divisions of land in a single year produce. If the division or divisions produce four or more units of land, they are lots; if they produce three of fewer, they are parcels. *Reeves v. Yamhill County*, 53 Or LUBA 4 (2006).

33.2 Land Divisions – Partitions. Applying the contextual analysis that is required by *Maxwell v. Lane County*, 178 Or App 210, 35 P3d 1128 (2001), *adh'd to as modified on recons*, 179 Or App 409, 40 P3d 532 (2002), even though ORS 215.750(1) does not expressly state that the references in that statute to "lots" are limited to lawfully created lots, and even though the relevant definitions in ORS 92.010 do not expressly require that a lot must be a lawfully created lot, if those statutes are read in context with ORS 92.012, 92.018(1), 92.025(1) and ORS 215.010(1)(a), it is sufficiently clear that when the legislature used the term "lot" in ORS 215.750(1) it did not mean to include unlawfully created lots. *Reeves v. Yamhill County*, 53 Or LUBA 4 (2006).

33.2 Land Divisions – Partitions. County authority to approve forest template dwellings derives from ORS 215.750(1). In exercising the authority granted by ORS 215.750(1), a county may not apply a county definition of "lot" to recognize lots that could not be recognized under ORS 215.750(1). The county may not set a lower standard for approving forest template dwellings under county legislation than the standard that is set by ORS 215.750. *Reeves v. Yamhill County*, 53 Or LUBA 4 (2006).

33.2 Land Divisions – Partitions. Even if a local government could recognize partial parcel annexations as sufficient to legally divide a parcel, where a local lot of record code definition does not recognize partial parcel annexation as sufficient to legally divide the annexed portion of a parcel from the portion of a parcel that is not annexed, the annexation does not have the effect of dividing the parcel. *Masson v. Multnomah County*, 48 Or LUBA 100 (2004).

33.2 Land Divisions – Partitions. The County Assessor's assignment of a new tax lot number to the part of a 5.45-acre parcel that was annexed, while retaining the prior tax lot number for the part of the 5.45-parcel that was not annexed, is not sufficient to divide the 5.45-acre parcel into two different parcels. *Masson v. Multnomah County*, 48 Or LUBA 100 (2004).

33.2 Land Divisions – Partitions. Where 3.63 acres of a 5.45-acre parcel are located outside a city and are conveyed improperly by deed to a new owner, the original owner's subsequent recording of a final plat for the 1.82 acres inside the city, which were retained by the original owner, does not have the effect of legally creating a 3.63-acre parcel. *Masson v. Multnomah County*, 48 Or LUBA 100 (2004).

33.2 Land Divisions – Partitions. Absent some demonstration that recording a partition plat with the county clerk requires the application of statewide planning goals, comprehensive plan policies or implementing regulations, a county clerk's act of recording a signed partition plat is not a land use decision or a limited land use decision. *Hammer v. Clackamas County*, 45 Or LUBA 32 (2003).

33.2 Land Divisions – Partitions. A city's application of general land division standards to a proposed minor partition provides no basis for reversal or remand, where it is clear from the context of the provision that applications for minor partitions must satisfy more than just those requirements that apply to minor partitions alone. *Martin v. City of Dunes City*, 45 Or LUBA 458 (2003).

33.2 Land Divisions – Partitions. An earlier city decision that permitted access from a two-acre parcel via a 20-foot wide easement does not bar the city from requiring a 50-foot wide easement for two parcels subsequently created from that two-acre parcel. *Martin v. City of Dunes City*, 45 Or LUBA 458 (2003).

33.2 Land Divisions – Partitions. A city approval of a partition that creates three parcels does not constitute a "contract" that is breached when the city requires that additional access be provided for parcels created from one of those three parcels. *Martin v. City of Dunes City*, 45 Or LUBA 458 (2003).

33.2 Land Divisions – Partitions. A local ordinance that requires an applicant for a partition to improve the entire 3,500-foot length of a private road providing access to the property, including widening existing easements across private property and improving the road to full county road standards, is a possessory exaction requiring off-site improvements and is therefore subject to the "rough proportionality" requirement of *Dolan v. City of Tigard*, 512 US 374, 114 S Ct 2309, 129 L Ed 2d 304 (1994). *Dudek v. Umatilla County*, 42 Or LUBA 427 (2002).

33.2 Land Divisions – Partitions. A city's failure to respond to issues raised below regarding whether the "street frontage" of a flag lot is the same as its "front building line" provides no basis for remand, where it is clear under the city's land division ordinance that "street frontage" and "front building line" are not the same. *Webb v. City of Bandon*, 39 Or LUBA 584 (2001).

33.2 Land Divisions – Partitions. An ambiguous assertion that a driveway providing access to a proposed flag lot does not qualify as a street is insufficient to raise an issue that the proposed minor partition creates a street and therefore must be approved as a major partition and comply with the criteria applicable to major partitions. *Webb v. City of Bandon*, 39 Or LUBA 584 (2001).

33.2 Land Divisions – Partitions. Only those impacts that reasonably flow from the approval granted may be considered when imposing exactions to ameliorate those impacts. *McClure v. City of Springfield*, 37 Or LUBA 759 (2000).

33.2 Land Divisions – Partitions. During its review of a proposed partition, a city may consider the impact that future dwellings may have on public infrastructure, where the partition approval is the last land use decision necessary to establish dwellings on the resulting parcels. *McClure v. City of Springfield*, 37 Or LUBA 759 (2000).

33.2 Land Divisions – Partitions. An ordinance allowing a county to revoke otherwise final and unreviewable partition approvals is a "retroactive ordinance" within the meaning of ORS 92.285. *Church v. Grant County*, 37 Or LUBA 646 (2000).

33.2 Land Divisions – Partitions. Before 1973, ORS 92.014 subjected the creation of streets or ways to county approval only when the street or way was created for the purpose of partitioning land. Creation of a 60-foot-wide parcel to provide access across a parent parcel to a separate, pre-existing parcel in different ownership is not "for the purpose of partitioning land" and thus did not require county approval under ORS 92.014. *Tarjoto v. Lane County*, 36 Or LUBA 645 (1999).

33.2 Land Divisions – Partitions. Where a county approves an application that creates a new parcel, that approval is a partition as defined by ORS 92.010 notwithstanding that the county also approved a lot line adjustment involving the parent parcel in the same proceeding. *Hartmann v. Washington County*, 36 Or LUBA 442 (1999).

33.2 Land Divisions – Partitions. The legal effect of a "partition," as defined at ORS 92.010, is to create new parcels as of the date the partition plat is approved. The parcels resulting from a partition are thus "created" as of the date the plat is approved, for purposes of the nonfarm dwelling provisions of OAR 660-033-0130 and ORS 215.284. *Hartmann v. Washington County*, 36 Or LUBA 442 (1999).

33.2 Land Divisions – Partitions. The definition of "Date of Creation" at OAR 660-033-0020(4) expands the circumstances in which parcels are "created" for purposes of siting a nonfarm dwelling to include lot line adjustments or similar reconfigurations that have the effect of qualifying the parcel for a dwelling. The definition does not impliedly narrow the set of circumstances that create a parcel to include only those events that have the effect of qualifying a parcel for a dwelling. *Hartmann v. Washington County*, 36 Or LUBA 442 (1999).

33.2 Land Divisions – Partitions. A partition, as defined by ORS 92.010, is not a "reconfiguration" of the boundaries of a parcel within the meaning of OAR 660-033-0020(4) because the legal effect of partition is to create new parcels. *Hartmann v. Washington County*, 36 Or LUBA 442 (1999).

33.2 Land Divisions – Partitions. Where a local land division ordinance mandates that the size of proposed parcels be greater than or equal to the size of the typical commercial agricultural enterprise in the area, a local government misconstrues that ordinance by requiring only that the size of the proposed parcel be similar to the size of other parcels in the area. *Wood v. Crook County*, 36 Or LUBA 143 (1999).

33.2 Land Divisions – Partitions. Where an existing parcel is divided into three new parcels with one of the new parcels containing an existing house, the new parcel containing the house is not properly considered an existing parcel simply because it contains the existing house. *Sunningdale-Case Heights Assoc. v. Washington Co.*, 34 Or LUBA 549 (1998).

33.2 Land Divisions – Partitions. A property line adjustment is limited to relocation of common property lines. Where a decision reconfigures property lines so that entire parcels are moved and property lines that are not common are moved, the decision does not approve a property line adjustment. *Goddard v. Jackson County*, 34 Or LUBA 402 (1998).

33.2 Land Divisions – Partitions. A decision that relocates property lines that are not common to abutting properties reconfigures the property in a manner that violates the definition of "property line adjustment" at ORS 92.010(11) and the statutory distinction between a property line adjustment and replat, and such action is prohibited as a matter of law. *Goddard v. Jackson County*, 34 Or LUBA 402 (1998).

33.2 Land Divisions – Partitions. To establish implied acceptance of a road dedication: (1) the partition plat must include a dedication, and (2) parcels must have been sold with reference to the partition plat containing the dedication. Where petitioner fails to establish either the plat dedication or sales with reference to the partition plat dedication, there is no implied dedication. *Petersen v. Yamhill County*, 33 Or LUBA 584 (1997).

33.2 Land Divisions – Partitions. Where a hearings officer's interpretation that the county's street frontage requirement mandates street frontages be on a public road or street is contrary to the plain language of the county's zoning ordinance, a denial of a partition based solely on that interpretation will be reversed. *Miller v. Clackamas County*, 31 Or LUBA 104 (1996).

33.2 Land Divisions – Partitions. Where a county has never made a decision to partition a parcel, the county's approval of a lot line adjustment, which is premised on the assumption that a partition has occurred, must be reversed. *Higgins v. Marion County*, 30 Or LUBA 426 (1996).

33.2 Land Divisions – Partitions. Both the applicable county ordinance and ORS chapter 92 indicate reliance on plat recording as the event which establishes the finality and permanence of a land division. *Petree v. Marion County*, 29 Or LUBA 449 (1995).

33.2 Land Divisions – Partitions. Unless prohibited by a local ordinance, a property owner may apply for a second partition of land during the same calendar year as a first partition involving the same land is recorded. ORS chapter 92 is satisfied by a condition delaying tentative approval of the second partition to the following calendar year. *Petree v. Marion County*, 29 Or LUBA 449 (1995).

33.2 Land Divisions – Partitions. ORS 215.428(3), which states that approval or denial of an application shall be based upon the standards and criteria that were applicable at the time the application was first submitted, does not require a local government processing a partition application to proceed as if factual circumstances existing at the time of application remain unchanged. *Petree v. Marion County*, 29 Or LUBA 449 (1995).

33.2 Land Divisions – Partitions. If a local government approves a proposed partition with conditions requiring exactions, the local government must ensure that the requirement of *Dolan v. City of Tigard*, 512 US 374, 114 S Ct 2309, 2319-20, 129 L Ed2d 304 (1994), for "individualized determination[s] that the required dedication is related both in nature and extent to the impact of the proposed development" is satisfied. *Neuman v. Benton County*, 29 Or LUBA 172 (1995).

33.2 Land Divisions – Partitions. Where the local code requires a local government to make a particular determination in acting on a partition application, the local government does not lack authority to make that determination. *Hilderbrand v. Marion County*, 28 Or LUBA 703 (1995).

33.2 Land Divisions – Partitions. Identifying the area to be considered and the overall land use pattern of that area are prerequisites to determining whether a proposed partition satisfies a code requirement that it "not materially alter the stability of the land use pattern of the area." *McNamara v. Union County*, 28 Or LUBA 396 (1994).

33.2 Land Divisions – Partitions. A local government may not defer determinations of compliance with approval standards applicable to partition approval to the building permit approval stage. *Beck v. City of Happy Valley*, 27 Or LUBA 631 (1994).

33.2 Land Divisions – Partitions. Local government denial of proposed partitions because the ability of the school district to provide the level of school services required by certain plan policies has not been established does not constitute the imposition of a development moratorium prohibited by ORS 195.110(8). *Beck v. City of Happy Valley*, 27 Or LUBA 631 (1994).

33.2 Land Divisions – Partitions. Where an approval standard for partitioning timber zoned property into nonresource parcels requires that the subject property be "generally unsuitable land for the production of farm or forest products," and petitioner does not challenge a county determination that the subject property is generally suitable for *farm use*, that determination provides an independent basis for affirming the county's decision to deny the partition. *Newsome v. Clackamas County*, 27 Or LUBA 578 (1994).

33.2 Land Divisions – Partitions. ORS 215.263 authorizes counties to approve *partitions* creating new parcels for farm uses and nonfarm uses in EFU zones. However, ORS 215.263 does not authorize *subdivision* of land zoned for exclusive farm use. *1000 Friends of Oregon v. Marion County*, 27 Or LUBA 303 (1994).

33.2 Land Divisions – Partitions. A condition of partition approval requiring consolidation of existing driveways into a single driveway to address comprehensive plan and local code policies concerning traffic safety is justified, even though the property is developed and new development is not proposed as part of the partition request, where the property could be developed more intensively in the future. *Kostenborder v. City of Salem*, 25 Or LUBA 440 (1993).

33.2 Land Divisions – Partitions. A condition of partition approval requiring that three existing driveways presently serving property to be partitioned be consolidated into a single driveway does not "take" a cognizable property interest, within the meaning of the Fifth Amendment to the U.S. Constitution or Article I, section 18, of the Oregon Constitution. Such a condition simply requires that a property owner exercise the property right of access differently. *Kostenborder v. City of Salem*, 25 Or LUBA 440 (1993).

33.2 Land Divisions – Partitions. Where there is a reasonable relationship between the development potential of a parcel to be divided and the impacts reasonably attributable to the divided parcel on the one hand, and the city's need to respond to legitimate traffic concerns on the other, and it would be more difficult to address such concerns when there are three parcels rather than a single parcel, notwithstanding the lack of current plans to develop the property further, a

condition requiring consolidation of existing driveways is appropriate. *Kostenborder v. City of Salem*, 25 Or LUBA 440 (1993).

33.2 Land Divisions – Partitions. LUBA will not reverse or remand a local government decision refusing to issue a building permit for a structure to be placed on a parcel unlawfully divided, pursuant to a local code requirement that no building permit may be issued if the parcel of land on which a structure is to be placed or used is in violation of any local ordinance. *Woosley v. Marion County*, 24 Or LUBA 231 (1992).

33.2 Land Divisions – Partitions. Findings that a parcel is "an ideal size for a small roadside parcel" are inadequate to demonstrate compliance with a local code standard requiring that a parcel be no larger than necessary to accommodate the proposed use. *DLCD v. Curry County*, 24 Or LUBA 200 (1992).

33.2 Land Divisions – Partitions. A lot line adjustment is not a partition and cannot create additional units of land. ORS 92.015(7)(b). *McKay Creek Valley Assoc. v. Washington County*, 24 Or LUBA 187 (1992).

33.2 Land Divisions – Partitions. The text of ORS 92.017, and its legislative history, make it clear that the functions of ORS 92.017 are (1) to prevent local governments from refusing to recognize lawful divisions of land such that lots and parcels could not be sold to third parties, and (2) to establish that the property lines established by such land divisions remain inviolate, absent the employment of a specific process to eliminate such property lines. *Kishpaugh v. Clackamas County*, 24 Or LUBA 164 (1992).

33.2 Land Divisions – Partitions. Nothing in either the text of ORS 92.017 or its legislative history suggests that all lawfully created lots and parcels must be recognized by local government as being separately developable. *Kishpaugh v. Clackamas County*, 24 Or LUBA 164 (1992).

33.2 Land Divisions – Partitions. Where county regulations establish different approval standards for major and minor partitions, a county's error in treating an application as being for a minor partition, rather than for a major partition, is not harmless. *Schrock Farms, Inc. v. Linn County*, 24 Or LUBA 58 (1992).

33.2 Land Divisions – Partitions. Where governing land use standards are not amended or modified, the circuit court, not LUBA, has jurisdiction to determine whether an urban subdivision or partition decision violates applicable approval standards. *Sully v. City of Ashland*, 20 Or LUBA 428 (1991).

33.2 Land Divisions – Partitions. While a decision to approve a zone change does not approve a "permit," within the meaning of ORS 227.160(2), a decision which approves both a variance and a minor partition does approve a "permit." *Harvard Medical Park, Ltd. v. City of Roseburg*, 19 Or LUBA 555 (1990).

33.2 Land Divisions – Partitions. A local government commits harmless error by mischaracterizing and reviewing a "major partition" as though it were a "subdivision," as those

terms are defined in the city's code, where petitioner fails to identify any approval criteria which impose different standards on major partitions and subdivisions. *Vestibular Disorders Consult. v. City of Portland*, 19 Or LUBA 94 (1990).

33.2 Land Divisions – Partitions. A city may rely on ORS 92.090(3), which states that a subdivision or partition may not be approved unless streets are "dedicated without any reservation," to require immediate, rather than future, dedication of required rights of way. *Vestibular Disorders Consult. v. City of Portland*, 19 Or LUBA 94 (1990).

33.2 Land Divisions – Partitions. To demonstrate county denial of lot of record status exceeds the authority granted under ORS 92.017, petitioner must establish an alleged lot or parcel was lawfully created and, therefore, is within the scope of ORS 92.017. *Atkins v. Deschutes County*, 19 Or LUBA 84 (1990).

33.2 Land Divisions – Partitions. A county does not misapply its Lot of Record ordinance by failing to recognize units of land which (1) were not created under zoning regulations regulating partitions, (2) were not created pursuant to partition proceedings conducted under ORS Chapter 105, and (3) do not constitute a "partition" as that term is defined in ORS 92.010, as parcels created by partition. *Atkins v. Deschutes County*, 19 Or LUBA 84 (1990).