33.1 Land Divisions – Subdivisions. Federal Public Lands Survey System (PLSS) surveys did not create discrete units of land for development purposes. *Urstadt v. Washington County*, 81 Or LUBA 118 (2020).

33.1 Land Divisions – Subdivisions. The purpose of the federal Public Lands Survey System (PLSS) was to facilitate the identification of specific areas of property so that they could be easily referenced in conveyance documents; accordingly, PLSS surveys did not create discrete legal parcels for development purposes simply by showing 40-acre Government Lots (GLots) or other boundary lines. *Kuether v. Washington County*, 81 Or LUBA 133 (2020).

33.1 Land Divisions – Subdivisions. Lots depicted on an unrecorded survey filed with the county surveyor's office are not lawful units of land under ORS 92.010(3)(a)(B) where (1) the survey was not subject to the relevant subdivision ordinance because the ordinance defined "subdivide land" as "to partition a parcel of land into four or more parcels of less than five acres each for the purpose of transfer of ownership or building development" and only one of the depicted lots was less than five acres in size, and, (2) when the depicted lots were subsequently conveyed as separate units of land, they did not comply with the applicable minimum parcel size for the creation of new parcels. *Kuether v. Washington County*, 81 Or LUBA 133 (2020).

33.1 Land Divisions – Subdivisions. 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).

33.1 Land Divisions – Subdivisions. Traffic performance standards in the local government's transportation system plan (TSP) are not approval criteria applicable to a limited land use decision that were incorporated pursuant to ORS 197.195(1), where the applicable criteria either do not refer to the TSP at all or where they only generally "incorporate[] by reference the city's public facility master plans, including plans for domestic water, sanitary sewer, storm drainage, parks, and transportation." *Oster v. City of Silverton*, 79 Or LUBA 447 (2019).

33.1 Land Divisions – Subdivisions. 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).

33.1 Land Divisions – Subdivisions. A county does not err in failing to process an application to vacate a public easement as a modification of a condition of approval for the subdivision in which the easement is located, where the easement was not required as a condition of subdivision approval, but instead stemmed from a private agreement between the developer and others. *Neighbors for Smart Growth v. Washington County*, 76 Or LUBA 319 (2017).

33.1 Land Divisions – Subdivisions. Where the text of a county comprehensive plan policy limits redevelopment of areas developed as golf courses or designated open space or common area within a resort, but includes no language prohibiting redevelopment of other areas within the resort, interpreting the policy to implicitly prohibit new residential development anywhere within the resort would impermissibly insert what has been omitted pursuant to ORS 174.010, and may not survive even the deferential review required under ORS 197.829(1) and *Siporen v. City of Medford*, 349 Or 247, 243 P3d 776 (2010). *Kine v. Deschutes County*, 75 Or LUBA 419 (2017).

33.1 Land Divisions – Subdivisions. Where the city code requires a "Type III" procedure for a land division that includes four or more lots, but defines "lots" to exclude "tracts," the city correctly rejects arguments that a division that creates three lots and two open space tracts must be processed under the "Type III" procedure. *Frewing v. City of Portland*, 74 Or LUBA 59 (2016).

33.1 Land Divisions – Subdivisions. LUBA will reject arguments that a hearings officer committed procedural error in not returning a subdivision application to the neighborhood association for additional review based on minor changes that staff requested to the subdivision plat, where the petitioner identifies nothing in the city code that requires additional review by the neighborhood association when the subdivision plat is amended during the proceedings before the hearings officer. *Frewing v. City of Portland*, 74 Or LUBA 59 (2016).

33.1 Land Divisions – Subdivisions. Arguments that future construction of a potential pedestrian trail within a subdivision tract will violate applicable environmental review standards are not a basis to reverse or remand the subdivision decision that creates the tract, where the subdivision decision before LUBA does not approve the pedestrian trail or conduct environmental review, but defers those determinations to a future application for environmental review, when and if the applicant proposes to construct the pedestrian trail. *Frewing v. City of Portland*, 74 Or LUBA 59 (2016).

33.1 Land Divisions – Subdivisions. A city errs in requiring an applicant seeking to create four lots within a planned unit development (PUD) as contemplated by the PUD approval to file an application to "modify" the PUD, where the proposed subdivision proposes no modification to the PUD. *Tokarski v. City of Salem*, 74 Or LUBA 124 (2016).

33.1 Land Divisions – Subdivisions. ORS 92.040 requires local governments to apply to development of subdivision lots only those approval standards in effect when the subdivision application was filed. Where a prior subdivision decision approved a flag lot under standards that contemplated locating development in the flag portion of the lot, a local government errs in applying post-subdivision standards that would force all development of the lot to be located in the pole portion of the flagpole, and effectively make the lot undevelopable. *Group B, LLC v. City of Corvallis*, 72 Or LUBA 74 (2015).

33.1 Land Divisions – Subdivisions. Because it is common for a multi-phased tentative subdivision approval to include conditions of approval that apply only to certain phases of development, it is incumbent on a petitioner to raise at the local proceeding any issues involving a legal standard that requires either (1) independent approval of a particular phase of development or (2) the conditioning of construction of an earlier phase of development on fulfillment of

conditions applicable to a subsequent phase. *Carver v. Washington County*, 70 Or LUBA 23 (2014).

33.1 Land Divisions – Subdivisions. A petitioner does not establish that a hearings officer erred in failing to condition approval of the first phase of a multi-phase development on completion of the second phase, where the petitioner does not identify any code standard or condition governing Phase I that will be violated if Phase II is not completed. *Carver v. Washington County*, 70 Or LUBA 23 (2014).

33.1 Land Divisions – Subdivisions. Where a local code provides that "Significant Natural Areas" are a subset of "Significant Natural Resources," a hearings officer does not err in failing to find that a proposed subdivision complies with a local code section that only applies to "Significant Natural Areas," absent a demonstration that the area in question is not only a "Significant Natural Resource," but also a "Significant Natural Area." *Carver v. Washington County*, 70 Or LUBA 23 (2014).

33.1 Land Divisions – Subdivisions. A local code provision authorizing a private street if the street is "not needed to provide access to other properties in the area" is not violated by a required pedestrian/bicycle connection between the proposed private street and offsite transit facilities, because "other properties in the area" does not refer to transit facilities in a public right-of-way. *Carver v. Washington County*, 70 Or LUBA 23 (2014).

33.1 Land Divisions – Subdivisions. Where a hearings officer provides two independent bases to approve a private street and a petitioner wishes to challenge both bases, it is improper for the petitioner to challenge one of the bases in a footnote to an assignment of error that challenges the other basis for approving the private street. LUBA generally does not consider arguments in footnotes that set out a different legal theory than that presented in the assignment of error itself. *Carver v. Washington County*, 70 Or LUBA 23 (2014).

33.1 Land Divisions – Subdivisions. While a 4.4 units per acre maximum density standard may limit the number of lots that would otherwise be possible with a 5,000-square-foot minimum lot size without the maximum density standard, the minimum lot size and maximum density standards are not inconsistent. Therefore, there would be no textual inconsistency in interpreting the development code to impose a maximum density standard. *Greller v. City of Newberg*, 70 Or LUBA 499 (2014).

33.1 Land Divisions – Subdivisions. The procedure provided by ORS 92.234, which allows local governments to revise, replat, or eliminate undeveloped subdivisions through local ordinance, is not the exclusive process for "vacating" existing property lines for purposes of ORS 92.017. *Weyerhaeuser Real Estate Development Co. v. Polk County*, 63 Or LUBA 393 (2011).

33.1 Land Divisions – Subdivisions. 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).

33.1 Land Divisions – Subdivisions. 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).

33.1 Land Divisions – Subdivisions. 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).

33.1 Land Divisions – Subdivisions. A property line adjustment cannot create new parcels. Where a property line adjustment depicts with dashed lines the interior property lines of lots vacated by a prior partition, the subsequent property line adjustment does not have the legal effect of re-establishing the prior existing lots. *Weyerhaeuser Real Estate Development Co. v. Polk County*, 63 Or LUBA 393 (2011).

33.1 Land Divisions – Subdivisions. For purposes of attorney fees under the "probable cause" standard in ORS 197.830(15)(b), no reasonable attorney would argue on appeal that a decision that reduces minimum residential density in a proposed five-lot subdivision violates a code provision that expressly authorizes reducing minimum residential density, without presenting some challenge to findings that address the code provision and conclude that reducing the density complies with the code provision. *Kane v. City of Beaverton*, 63 Or LUBA 522 (2011).

33.1 Land Divisions – Subdivisions. For purposes of attorney fees under the "probable cause" standard in ORS 197.830(15)(b), a reasonable attorney could argue that a Metro code provision mandating a minimum residential density is violated by a decision that approves less than the minimum density, where the Metro code provision directly applies on its face to city subdivision decisions, but is no longer applicable due to the effect of other Metro code provisions and the city's implementation of the Metro minimum residential density requirement. *Kane v. City of Beaverton*, 63 Or LUBA 522 (2011).

33.1 Land Divisions – Subdivisions. Where a petitioner notes a code provision below requiring that subdivisions comply with lot size and dimensions requirements, but does not argue that including internal roads in the calculation of lot size violates the five-acre minimum lot size, the issue of how internal roads affect calculation of lot size is not raised with the specificity required by ORS 197.763(1) and is waived. *Burness v. Douglas County*, 62 Or LUBA 182 (2010).

33.1 Land Divisions – Subdivisions. A reasonable person could conclude from the plat of a neighboring subdivision showing a spur road ending in turnaround bordering the common property line with the proposed subdivision, and a notation that the roads are intended to "benefit this plat,"

that the spur road is not intended to be a connecting road between the two subdivisions. *Burness v. Douglas County*, 62 Or LUBA 182 (2010).

33.1 Land Divisions – Subdivisions. A code provision requiring the "continuation" of existing streets in adjoining subdivisions is not properly interpreted to require that connections be made to internal roads in the adjoining subdivision, where such a connection would have to cross existing platted residential lots. *Burness v. Douglas County*, 62 Or LUBA 182 (2010).

33.1 Land Divisions – Subdivisions. An argument raised below that the application fails to address a general code section that includes a sub-section requiring that private roads be vested in a homeowner's association is insufficient to raise with the specificity required by ORS 197.763(1) the issue of whether proposed private roads located on easements must have the underlying fee vested in the homeowner's association. *Burness v. Douglas County*, 62 Or LUBA 182 (2010).

33.1 Land Divisions – Subdivisions. Attorney fees under ORS 197.830(15)(b) are not warranted where the petitioner argued that the county was required under its code to provide for continuation of existing streets in adjoining subdivisions and reasonable persons could disagree, based on the plat of the adjoining subdivision that showed a street apparently stubbed to the common property line, whether the code provision required that street to be continued into the proposed subdivision. *Burness v. Douglas County*, 62 Or LUBA 555 (2011).

33.1 Land Divisions – Subdivisions. Under ORS 92.100(7), a city decision that approves or withholds approval of a final subdivision plat is not a land use decision or limited land use decision and is not reviewable by LUBA. *Calvary Construction v. City of Glendale*, 61 Or LUBA 50 (2010).

33.1 Land Divisions – Subdivisions. ORS 92.040(2) provides that "only those local government laws * * * that are in effect at the time of [subdivision] application shall govern subsequent construction on the property * * *." A local government does not violate ORS 92.040(2) by applying access standards that were adopted after a subdivision was recorded to deny a request for direct driveway access onto an arterial road adjoining one of the subdivision lots where the proposed driveway would be constructed in part "off" the property and the approved master plan showed access to the lot from an internal local roadway. *Athletic Club of Bend, Inc. v. City of Bend*, 61 Or LUBA 349 (2010).

33.1 Land Divisions – Subdivisions. When approving a subdivision where approval criteria must be applied in a proceeding where the public has participatory rights, a city may defer findings on a required approval criterion to a later proceeding, so long as that later proceeding is one in which the public has participatory rights. *Boucot v. City of Corvallis*, 61 Or LUBA 459 (2010).

33.1 Land Divisions – Subdivisions. Approving or denying a tentative subdivision plat within an urban growth boundary is a limited land use decision and therefore not a "permit" decision. Because the ORS 227.175(10)(a) directive that local appeal issues not be limited to those issues identified in the notice of appeal only applies to permit decisions, that statute does not apply to decisions involving the approval or denial of subdivisions. *Frewing v. City of Tigard*, 59 Or LUBA 23 (2009).

33.1 Land Divisions – Subdivisions. Even when an applicant forfeits the right to process a subdivision application under the limited land use provisions of a local code and processes the application under the procedures for permits, the decision approving or denying the subdivision is still a limited land use decision and the provisions of ORS 227.175(10)(a) do not apply. *Frewing v. City of Tigard*, 59 Or LUBA 23 (2009).

33.1 Land Divisions – Subdivisions. 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).

33.1 Land Divisions – Subdivisions. 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).

33.1 Land Divisions – Subdivisions. 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).

33.1 Land Divisions – Subdivisions. 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).

33.1 Land Divisions – Subdivisions. A preliminary subdivision plat approval decision that post-dates a vested rights determination under Measure 49 is a land use decision subject to LUBA's review and is not a decision concerning the "nature and extent of [just] compensation" under Measure 49. *DLCD v. Clatsop County*, 58 Or LUBA 714 (2009).

33.1 Land Divisions – Subdivisions. Where applicable subdivision regulations provide that a subdivision applicant need not demonstrate a water supply is present to serve the proposed subdivision so long as the average lot size is equal to or larger than five acres, a county does not err by approving a proposal to subdivide a 217-acre parcel into a 92-acre lot and other lots that

range between two acres and six acres in size, because the average lot size is equal to or greater than five acres. *Hines v. Marion County*, 56 Or LUBA 333 (2008).

33.1 Land Divisions – Subdivisions. If subdivision applicants actually waived their right to submit a subdivision application without a hydrogeology review, they likely could not submit a subdivision application with the hydrogeology review and later insist that the application be considered without a hydrogeology review when the hydrogeology review or other evidence showed that a more detailed hydrogeology study is needed. But where the subdivision applicants did not waive that right, they are not barred from taking the position that a hydrogeology review is not required, simply because they voluntarily submitted one. *Hines v. Marion County*, 56 Or LUBA 333 (2008).

33.1 Land Divisions – Subdivisions. A zoning regulation that neither authorizes nor prohibits road construction in exclusive farm use zones provides no basis for reversal or remand of a decision that approves a subdivision of exclusive farm use zoned land, pursuant to Ballot Measure 37 waivers, where that subdivision will require the construction of some roads. *Hines v. Marion County*, 56 Or LUBA 333 (2008).

33.1 Land Divisions – Subdivisions. Where a city "overrides" code provisions requiring that a subdivision developer construct sidewalks without identifying a basis in the city's code or comprehensive plan to waive or vary the sidewalk requirement, LUBA will remand the decision for the city to adopt findings explaining what authority allows the city to override the sidewalk requirement. *Soares v. City of Corvallis*, 56 Or LUBA 551 (2008).

33.1 Land Divisions – Subdivisions. A county subdivision approval standard requiring that there is "an adequate quantity and quality of water to support the proposed use" is not preempted by state regulations and is a standard that the county must address in approving a subdivision application. *Reeves v. Yamhill County*, 55 Or LUBA 452 (2007).

33.1 Land Divisions – Subdivisions. Where the preliminary subdivision plat approval appears to defer a determination of compliance with a discretionary subdivision approval standard to the final plat decision, but does not explain why the standard does not apply at the time of preliminary plat approval, LUBA will remand the decision to the county to determine when the standard applies and, if it applies at the time of final plat approval, whether the proceedings that govern final plat approval are consistent with the county's statutory obligation to address discretionary land use standards as part of a public process that affords notice and opportunity for public input. *Reeves v. Yamhill County*, 55 Or LUBA 452 (2007).

33.1 Land Divisions – Subdivisions. A hearings officer's failure to address arguments that the applicant should improve transportation facilities affected by a proposed destination resort provides no basis for reversal or remand, where a prior development agreement and two earlier development approvals conclusively established the type and extent of transportation improvements the applicant is obligated to make in developing the resort, and the petitioners cite no authority for the hearings officer to require different improvements in approving a subdivision within that resort. *Broken Top Community Assoc. v. Deschutes County*, 54 Or LUBA 84 (2007).

33.1 Land Divisions – Subdivisions. The applicant's failure to provide a survey of individual trees on property to be subdivided is not a basis for reversal or remand, where the applicable approval standards do not require preservation of individual trees, and the information necessary to show compliance with those standards need not include that level of detail. *Broken Top Community Assoc. v. Deschutes County*, 54 Or LUBA 84 (2007).

33.1 Land Divisions – Subdivisions. Where subdivision approval criteria require consideration of competing goals or factors, such as contributing to orderly development and preserving natural features, it is permissible and even necessary to conduct a weighing or balancing process between development and preservation of natural features. *Broken Top Community Assoc. v. Deschutes County*, 54 Or LUBA 84 (2007).

33.1 Land Divisions – Subdivisions. A subdivision approval standard requiring preservation of natural features that is written to apply to circumstances where there have been no previous efforts to identify natural features plays a more limited role where the subdivision application is preceded by two final, binding land use decisions that have already largely determined which natural features will be preserved and which will be lost to development. *Broken Top Community Assoc. v. Deschutes County*, 54 Or LUBA 84 (2007).

33.1 Land Divisions – Subdivisions. Where a city's land use code defines the term "lot" but excludes a lot from that definition if "[t]he lot as originally platted is no longer whole and consists of individual property remnants," all remnants, large and small, are considered remnants and are no longer within the definition of "lot." *Jackson v. City of Portland*, 54 Or LUBA 138 (2007).

33.1 Land Divisions – Subdivisions. Absent some expression of intent in a deed that separately listed lots or parcels are to be merged into a single unit of land, the listing of multiple lots or parcels in a single paragraph or a single sentence of a deed does not operate to merge those lots or parcels into a single unit of land. The lots retain their separate identify following the transfer. *Jackson v. City of Portland*, 54 Or LUBA 138 (2007).

33.1 Land Divisions – Subdivisions. 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).

33.1 Land Divisions – Subdivisions. 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).

33.1 Land Divisions – Subdivisions. 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).

33.1 Land Divisions – Subdivisions. LUBA will reverse a county decision that approves a rural subdivision in a forest zone following a county Ballot Measure 37 waiver, where the owner has not obtained a waiver of applicable state regulations. The county has no authority to approve development inconsistent with state regulations, unless and until the state waives those regulations. *DLCD v. Jackson County*, 53 Or LUBA 580 (2007).

33.1 Land Divisions – Subdivisions. Under a preliminary subdivision approval standard requiring a finding, based on the preliminary grading plan, that it is feasible for the *final* grading plan to comply with code standards governing final grading plans, a finding to that effect is not a deferral of findings of compliance with the standards governing final grading plans. *Angius v. Washington County*, 52 Or LUBA 222 (2006).

33.1 Land Divisions – Subdivisions. Absent some authority to the contrary, in approving a preliminary grading plan the local government is not required to determine what procedures will govern consideration of the final grading plan. Where the decision approving the preliminary grading plan does not determine and is not required to determine the procedures that govern the final grading plan, LUBA will reject arguments that the local government erred in failing to impose conditions requiring the county to provide notice and opportunity to request a hearing in considering the final grading plan. *Angius v. Washington County*, 52 Or LUBA 222 (2006).

33.1 Land Divisions – Subdivisions. A hearings officer's findings are sufficient to explain why a proposed subdivision complies with criteria that require preserving existing natural drainage channels where those findings explain that drainage within the historic drainage area has largely been diverted and there is no evidence that more than a *de minimis* flow of drainage will cross a shallow swale on the property to be subdivided. *Kyle v. Washington County*, 52 Or LUBA 399 (2006).

33.1 Land Divisions – Subdivisions. Where LUBA remands a preliminary subdivision plat approval to the local government to address an issue, the local government may limit the hearing on remand to that issue, and need not address as part of the remand hearing other issues raised by petitioner regarding whether detailed development plans required by the preliminary plat approval are inconsistent with the approved conceptual plans approved. *Frewing v. City of Tigard*, 52 Or LUBA 518 (2006).

33.1 Land Divisions – Subdivisions. A petitioner fails to demonstrate that the decision maker is biased or improperly influenced to approve a subdivision by the possibility that the developer may donate open space land to the city, where the decision maker twice voted to approve the subdivision prior to learning that the developer and staff had discussed donation. *Frewing v. City of Tigard*, 52 Or LUBA 518 (2006).

33.1 Land Divisions – Subdivisions. Where neither the local government nor LUBA has jurisdiction to resolve the legality of a condition requiring necessary facilities to be constructed prior to obtaining final approval of a two-step subdivision approval process, the local government may (1) adopt findings establishing that fulfillment of the condition of approval is not precluded as a matter of law, and (2) ensure that the condition will be fulfilled prior to final subdivision approval or actual development. *Butte Conservancy v. City of Gresham*, 52 Or LUBA 550 (2006).

33.1 Land Divisions – Subdivisions. LUBA need not resolve the parties' legal dispute over whether a condition of subdivision approval requiring construction of a street through a neighboring development is consistent with conditions, covenants and restrictions governing that neighboring development, where only the circuit court has jurisdiction to finally resolve that dispute, and the local government has adequately established an alternative basis to impose the condition regardless of how that legal dispute is resolved. *Butte Conservancy v. City of Gresham*, 52 Or LUBA 550 (2006).

33.1 Land Divisions – Subdivisions. ORS 223.930(1) does not require that a city, rather than a subdivision developer, construct public street improvements, in order to exercise its condemnation authority to acquire the street right-of-way. *Butte Conservancy v. City of Gresham*, 52 Or LUBA 550 (2006).

33.1 Land Divisions – Subdivisions. LUBA will reject a petitioner's challenge to a condition of subdivision approval requiring construction of a public street in a neighboring subdivision notwithstanding that the street may violate covenants, conditions, and restrictions (CC&Rs) governing that neighboring subdivision, where the city adequately demonstrates that it has statutory authority to condemn the land and construct the street notwithstanding the CC&Rs, and the city adequately ensures that the condition requiring construction of the street will be fulfilled prior to final development approval. *Butte Conservancy v. City of Gresham*, 52 Or LUBA 550 (2006).

33.1 Land Divisions – Subdivisions. Absent some authority to the contrary, a local government need not approve a property line adjustment necessary to effect a proposed subdivision prior to or contemporaneously with adopting the preliminary subdivision approval. A finding that it is feasible to obtain a property line adjustment, combined with a condition requiring that the adjustment be obtained prior to final subdivision approval, is sufficient. *Bollam v. Clackamas County*, 52 Or LUBA 738 (2006).

33.1 Land Divisions – Subdivisions. A hearings official does not improperly substitute state agency permit approval criteria for a local subdivision drainage criterion, where she denies subdivision approval based on a finding that the applicant failed to demonstrate that proposed drywells that would be needed for adequate drainage could be approved by the Oregon Department of Environmental Quality or that there were alternative methods of drainage if the drywells could not be approved. *Weiskind v. City of Eugene*, 52 Or LUBA 753 (2006).

33.1 Land Divisions – Subdivisions. A condition that purports to impose system development charges as a condition of approving conversion of a mobile home park to a manufactured dwelling

subdivision is prohibited by ORS 92.845(1)(b), unless it falls within some exception to that statute. *D & B Home Investments v. City of Donald*, 51 Or LUBA 1 (2006).

33.1 Land Divisions – Subdivisions. ORS 92.845(1)(c) allows local governments to impose system development charges on conversion of a mobile home park to a manufactured dwelling subdivision only when such charges are "based on the prior approval" of the park. Where the prior park approval did not impose system development charges, ORS 92.845(1)(c) does not apply. *D & B Home Investments v. City of Donald*, 51 Or LUBA 1 (2006).

33.1 Land Divisions – Subdivisions. A city does not err in interpreting a code provision requiring that a subdivision plat provide access "that will allow its development in accordance" with the code to not require that the applicant provide additional access to a parcel that is already developed consistent with applicable zoning. The code does not require the applicant to provide access to allow for potential redevelopment of developed parcels. *Cutsforth v. City of Albany*, 51 OR LUBA 56 (2006).

33.1 Land Divisions – Subdivisions. Where it appears that providing access to phase 1 of a proposed subdivision is feasible, but the tentative plat application does not show how access will be provided, a hearings officer does not err in imposing a condition of final plat approval requiring that the applicant provide a specific plan for access to phase 1. *Paterson v. City of Bend*, 49 Or LUBA 160 (2005).

33.1 Land Divisions – Subdivisions. In order to "incorporate" a comprehensive plan standard into a local government's land use regulations within the meaning of ORS 197.195(1) and thus apply that plan standard to a limited land use decision as an approval criterion, the local government must at least amend its land use regulation to identify specific plan policies or provisions that apply to a limited land use decision as approval criteria. A code requirement to "comply with the comprehensive plan" is insufficient to incorporate any comprehensive plan standard under ORS 197.195(1). *Paterson v. City of Bend*, 49 Or LUBA 160 (2005).

33.1 Land Divisions – Subdivisions. A general code standard requiring streets to be improved with curbs and other facilities "if required" is not properly interpreted to require curbs for a private street, where the specific standards governing private streets do not require curbs. *Paterson v. City of Bend*, 49 Or LUBA 160 (2005).

33.1 Land Divisions – Subdivisions. A hearings officer errs in approving a cul-de-sac under subdivision criteria that allow a cul-de-sac only where existing development on adjacent property prevents a street connection and a connected street pattern is not possible, where (1) the "existing development" is on the same property being subdivided, (2) there is evidence that a street connection is possible, and (3) there are no findings explaining why a street connection is not possible. *Paterson v. City of Bend*, 49 Or LUBA 160 (2005).

33.1 Land Divisions – Subdivisions. Where the approved tentative plat does not propose curbs on a private street, but the hearings officer's findings suggest that curbs will be provided to direct storm water to catch basins and there is expert testimony that curbs are necessary to direct storm water to catch basins, remand is necessary to address whether the decision requires curbs and, if

not, how storm water will be directed to catch basins. *Paterson v. City of Bend*, 49 Or LUBA 160 (2005).

33.1 Land Divisions – Subdivisions. Where the decision approves a cul-de-sac that may be longer than 600 feet, depending on how the "block" is measured, remand is necessary to explain how the blocks created by the cul-de-sac comply with a subdivision approval standard prohibiting blocks longer than 600 feet as measured between the centerline of "through cross streets." *Paterson v. City of Bend*, 49 Or LUBA 160 (2005).

33.1 Land Divisions – Subdivisions. A subdivision approval standard that requires a subdivision street layout must "best balance needs for economy, safety, efficiency and environmental compatibility" does not require that one or more alternative street layouts necessarily must be evaluated in all cases. *Doob v. City of Grants Pass*, 48 Or LUBA 245 (2004).

33.1 Land Divisions – Subdivisions. A decision that allows modifications to an existing berm intended to protect a neighboring subdivision from sight and smells of the city sewage treatment plant is consistent with that subdivision's conditions of approval, where the conditions do not require a berm of any particular size, shape or height, and the decision allows only modifications that do not degrade the function of the berm. *Cove at Brookings Homeowners Assoc. v. City of Brookings*, 47 Or LUBA 1 (2004).

33.1 Land Divisions – Subdivisions. City planning staff cannot informally modify or void two earlier final, written decisions issued pursuant to code-required procedures that altered the deadlines for filing a final plat approval application. At a minimum, modification or revocation of those final, written decisions to restore the original deadline must be accomplished by a final, written decision. *Butte Conservancy v. City of Gresham*, 47 Or LUBA 282 (2004).

33.1 Land Divisions – Subdivisions. A final, written decision that effectively, if implicitly, restores the original deadline for filing the final subdivision plat application, and then extends that deadline, is properly viewed as a modification or revocation of an earlier decision that places the tentative plat approval on inactive status, subject to a different final plat application deadline. *Butte Conservancy v. City of Gresham*, 47 Or LUBA 282 (2004).

33.1 Land Divisions – Subdivisions. The ORS 197.763(6)(b) right to request that a hearing be continued must be exercised prior to the close of the initial evidentiary hearing. Where the initial evidentiary hearing was held before the planning commission, a party has no right under ORS 197.763(6)(b) to request a continuance in a subsequent hearing before the city council, notwithstanding that the planning commission was evenly divided and could not reach a majority vote to approve or to deny an application for subdivision approval. *Frewing v. City of Tigard*, 47 Or LUBA 331 (2004).

33.1 Land Divisions – Subdivisions. Where a local government's findings explain that a subdivision applicant's plan for achieving visual clearance is adequate and that the applicant is negotiating with the adjoining property owner to secure the easement that will be necessary to implement that plan and is confident that the easement can be secured, the local government does not err by failing to require that the applicant obtain the easement prior to preliminary plan

approval and failing to find that it is feasible for the applicant to secure the easement. *Frewing v. City of Tigard*, 47 Or LUBA 331 (2004).

33.1 Land Divisions – Subdivisions. Where property is zoned for minimum lot sizes of five acres, with smaller lots to be allowed when services become available, approval of a five-acre-lot subdivision is not a de facto zone change. *Nez Perce Tribe v. Wallowa County*, 47 Or LUBA 419 (2004).

33.1 Land Divisions – Subdivisions. Where a challenged decision approving a subdivision does not purport to adopt a zone change, grant a variance or grant conditional use approval, the county's failure to grant such approvals, even if required, does not convert the decision from a "limited land use decision" into a "land use decision." *Nez Perce Tribe v. Wallowa County*, 47 Or LUBA 419 (2004).

33.1 Land Divisions – Subdivisions. A finding that a proposed dead-end street can exceed the code maximum grade because there are no turning movements on the street is inadequate, where the finding fails to take into account turning movements at the intersection of the local street and the nearest public road, where the grade also exceeds the maximum. *McCulloh v. City of Jacksonville*, 46 Or LUBA 267 (2004).

33.1 Land Divisions – Subdivisions. Even if city adoption of the Uniform Fire Code (UFC) makes the UFC standards applicable approval standards, ORS 368.039(1) authorizes the city to adopt standards that supersede UFC requirements. *McCulloh v. City of Jacksonville*, 46 Or LUBA 267 (2004).

33.1 Land Divisions – Subdivisions. Where the local code requires that any "features explicitly included" in a subdivision application must comply with applicable development standards, a city errs in declining to consider whether existing houses and a proposed shared driveway easement shown on a subdivision application comply with applicable development standards. *McKeown v. City of Eugene*, 46 Or LUBA 494 (2004).

33.1 Land Divisions – Subdivisions. ORS 227.175(10)(a)(E)(ii), which was adopted in response to the Court of Appeals' decision in *Johns v. City of Lincoln City*, 146 Or App 594, 933 P2d 978 (1997), and specifically provides that a *de novo* appeal of a permit decision under 227.175(10)(a) may not be limited to issues raised in the local notice of appeal, does not apply to appeals of limited land use decisions. *McKeown v. City of Eugene*, 46 Or LUBA 494 (2004).

33.1 Land Divisions – Subdivisions. Where the definition of "lot width" in a local code is written with regularly shaped lots in mind, and city's interpretation and application of that definition to an irregularly shaped lot produces a lot width that is no stranger than the lot width that is produced by petitioner's interpretation and application of that definition, LUBA will defer to the city's interpretation. *McKeown v. City of Eugene*, 46 Or LUBA 494 (2004).

33.1 Land Divisions – Subdivisions. Proposed creation of 39 condominium units does not constitute a "subdivision" under a code definition that implements the Oregon Subdivision and Series Partition Control Law at ORS 92.305 to 92.495, which in relevant part defines "subdivision"

to exclude property interests created pursuant to the Oregon Condominium statute. *Friends of the Metolius v. Jefferson County*, 46 Or LUBA 509 (2004).

33.1 Land Divisions – Subdivisions. Where there is conflicting believable expert testimony regarding the efficacy of a subdivision applicant's proposed measures to ensure that construction of a road near large trees with intertwined roots can be accomplished without so damaging the roots that the trees will die, LUBA will defer to the city's choice of which expert to believe. *Miller v. City of Tigard*, 46 Or LUBA 536 (2004).

33.1 Land Divisions – Subdivisions. A city does not err in approving a subdivision applicant's tree protection plan with a condition that the applicant provide the city arborist with construction documents so that the arborist can determine whether additional trees must be removed. While that condition could be viewed as an improper deferral of a finding concerning the adequacy of the tree protection plan, it does not do so where the condition does not specify that the tree protection plan may be revised without additional public hearings and the condition simply creates a more structured approach for computing the mitigation that would be required in any event without the condition. *Miller v. City of Tigard*, 46 Or LUBA 536 (2004).

33.1 Land Divisions – Subdivisions. There is no inconsistency in a city council subdivision approval decision that (1) refuses to delay approval or require setbacks for a possible future freeway, (2) requires elimination of a proposed subdivision access to the existing roadway that might be displaced by the possible future freeway, and (3) eliminates a planning commission requirement for pedestrian access to the roadway that might be displaced by the possible future freeway where (a) the possible future freeway is not yet included in the city's comprehensive plan, (b) the decision to eliminate the proposed roadway connection is based on an Oregon Department of Transportation policy that would preclude approval of the roadway connection, and (c) a code provision excuses pedestrian connections where they are found to be "infeasible or inappropriate" and the city council adopts an unchallenged finding that the pedestrian connection is "not necessary." *Baida v. City of Medford*, 44 Or LUBA 473 (2003).

33.1 Land Divisions – Subdivisions. Although LUBA might be required to defer to a city interpretation of a subdivision criterion that requires that a proposed subdivision provide access to adjoining property as not applying where an adjoining property currently has access that it may lose in the future through condemnation, LUBA will not assume the criterion does not apply where the challenged decision does not adopt that interpretation. *McFall v. City of Sherwood*, 44 Or LUBA 493 (2003).

33.1 Land Divisions – Subdivisions. Where a decision approving a subdivision that finds it is infeasible to extend a road from the proposed subdivision to an adjoining property and a petitioner at LUBA argues that the finding is not supported by substantial evidence, LUBA will remand where the respondent cites no evidence that supports the finding. *McFall v. City of Sherwood*, 44 Or LUBA 493 (2003).

33.1 Land Divisions – Subdivisions. A city council decision approving a subdivision with modifications for required road access must be remanded where it is unclear which documents if any the city council adopted as part of its decision, and the city council decision includes no

findings explaining the modification, or reducing the required road access to a condition of approval. petitioner's appeal is sufficient to allege prejudice to petitioner's substantial rights. *Shaffer v. City of Happy Valley*, 44 Or LUBA 536 (2003).

33.1 Land Divisions – Subdivisions. The record does not "clearly support" a finding that petitioner's property is undevelopable, relieving a subdivision applicant of the obligation to provide access to petitioner's property, where the record includes conflicting expert testimony on that point, and the city's decision can be read to agree with petitioner's evidence that his property is developable petitioner's appeal is sufficient to allege prejudice to petitioner's substantial rights. *Shaffer v. City of Happy Valley*, 44 Or LUBA 536 (2003).

33.1 Land Divisions – Subdivisions. Where no code, statute or condition of preliminary subdivision plat approval requires that the city resolve an issue regarding an alleged encroachment before granting final subdivision plat approval, the city's failure to resolve such issues do not provide a basis for reversal or remand. *Jordan v. City of Portland*, 44 Or LUBA 586 (2003).

33.1 Land Divisions – Subdivisions. An apparent discrepancy between the sidewalks depicted on the site plan submitted for design review approval and the sidewalk depicted on the approved final subdivision plat does not provide a basis for reversal or remand, where the design review decision did not address sidewalks or approve a particular sidewalk design. *Jordan v. City of Portland*, 44 Or LUBA 586 (2003).

33.1 Land Divisions – Subdivisions. A finding that a 1973 deed satisfied then existing subdivision regulations so as to legalize a parcel that was described in the 1973 deed is inadequate, where the finding does not address the terms of the subdivision ordinance nor explain why property described in a deed constitutes a "replat" or "resubdivision," as those terms are used in the subdivision ordinance. *Palaske v. Clackamas County*, 43 Or LUBA 202 (2002).

33.1 Land Divisions – Subdivisions. Under a standard requiring that a proposed subdivision not create a "significant hazard to life or property," a city may require evidence that development of property subject to flooding not present a significant flood hazard. That the subject is not mapped as a floodway on the city's hazard maps and therefore not subject to the city's flood hazard regulations does not mean that the city cannot address flood hazards under other applicable criteria. *Starks Landing, Inc. v. City of Rivergrove*, 43 Or LUBA 237 (2002).

33.1 Land Divisions – Subdivisions. A city has authority under ORS 92.040 and 92.180 to review and approve subdivision plats. Where a city requires an application for a subdivision replat to show revised easements and applies its land use regulations to approve the replat, the city's decision is a land use decision or limited land use decision subject to LUBA's review. *Haber v. City of Gates*, 39 Or LUBA 137 (2000).

33.1 Land Divisions – Subdivisions. LUBA owes no deference to a city's decision *requiring* replat of a previously approved subdivision to modify private easements where it is clear that the city's decision was based solely on the provisions of ORS chapter 92, notwithstanding that the city subsequently applied local code provisions to determine the relevant approval criteria for the replat

and how those approval criteria should be applied. *Haber v. City of Gates*, 39 Or LUBA 137 (2000).

33.1 Land Divisions – Subdivisions. ORS 92.185 provides a specific requirement that *public* easements within a recorded plat must be reconfigured by replatting. However, the express reference in that statute to "public easements" and the absence of an express reference to "private easements" make it clear that reconfiguration of *private* easements within an existing subdivision plat does not require a replat under ORS 92.185. *Haber v. City of Gates*, 39 Or LUBA 137 (2000).

33.1 Land Divisions – Subdivisions. Where a condition of approval for preliminary plat approval does not require the condition to be fulfilled as a condition of final plat approval, whether or not the condition is satisfied is a matter of post-approval enforcement rather than a basis to find the final plat not in conformance with the preliminary plat approval. *Bauer v. City of Portland*, 38 Or LUBA 715 (2000).

33.1 Land Divisions – Subdivisions. Petitioner fails to establish error in approving a subdivision without environmental review required for development in an environmental zone, where the applicant proposes no development in an environmental zone and the only impact on an off-site environmental zone is the release of storm water at predevelopment rates. *Bauer v. City of Portland*, 38 Or LUBA 432 (2000).

33.1 Land Divisions – Subdivisions. Required findings that a variance is "necessary" due to "special conditions or circumstances peculiar to the property" are inadequate, where the findings are equivocal about whether the problems identified are present and fail to explain why the cited problems could not be eliminated by redesigning the proposed subdivision or by eliminating one or more lots. *Robinson v. City of Silverton*, 37 Or LUBA 521 (2000).

33.1 Land Divisions – Subdivisions. A city's findings of compliance with a variance criterion that requires that the variance be "necessary for the proper development of the subdivision and the preservation of property rights and values," are inadequate where the findings do not identify any "property rights" or "property values" that would be threatened by the required 60-foot right-of-way or why the proposed subdivision could not be designed to accommodate the required 60-foot right-of-way. *Robinson v. City of Silverton*, 37 Or LUBA 521 (2000).

33.1 Land Divisions – Subdivisions. LUBA will affirm a hearings officer's choice between conflicting expert testimony where a reasonable person could conclude, based on the testimony of applicant's expert, that a proposed intersection provides a sight distance exceeding that required by the code, notwithstanding the contrary testimony of opponents' engineer. *Mitchell v. Washington County*, 37 Or LUBA 452 (2000).

33.1 Land Divisions – Subdivisions. A decision approving a subdivision pursuant to county comprehensive plan and land use regulations is a land use decision under ORS 197.015(10)(a). That a subdivision approval decision is conditioned on construction of road access for the subdivision does not convert that decision or any part of the decision into the type of transportation facility decision that is excluded from the statutory definition of "land use decision" by ORS 197.015(10)(b)(D). *Warrick v. Josephine County*, 36 Or LUBA 81 (1999).

33.1 Land Divisions – Subdivisions. The property that is the "subject of the notice," within the meaning of ORS 197.763(2)(a), depends on the proposal being considered. Where an applicant for subdivision approval proposes construction of a right-of-way across a parcel that adjoins the parcel to be subdivided, the notice must be given to the properties within the distances specified by ORS 197.763(2)(a) from both the adjoining parcel and the subdivided parcel. *Warrick v. Josephine County*, 36 Or LUBA 81 (1999).

33.1 Land Divisions – Subdivisions. Where subdivision approval criteria do not require that the city determine whether a particular access route would be the "primary" access route, the city's failure to adopt such a finding and a lack of substantial evidence that the particular access route would be the primary access route provides no basis for reversal or remand. *Hunt v. City of Ashland*, 35 Or LUBA 467 (1999).

33.1 Land Divisions – Subdivisions. There is no applicable legal standard that requires a city to have a reasonable basis for refusing to impose a requested condition of approval that a subdivision access road be blocked to all but emergency travel. *Hunt v. City of Ashland*, 35 Or LUBA 467 (1999).

33.1 Land Divisions – Subdivisions. A city does not err by failing to require that a subdivision access road be improved to particular city standards, where the applicable city criterion merely requires that the subdivision provide "paved" access. *Hunt v. City of Ashland*, 35 Or LUBA 467 (1999).

33.1 Land Divisions – Subdivisions. Where LUBA concludes on review that a local decision approving a proposed subdivision cannot be corrected unless the subdivision is first revised by modifying the original application or submitting a new application, reversal rather than remand is appropriate. *Angius v. Washington County*, 35 Or LUBA 462 (1999).

33.1 Land Divisions – Subdivisions. ORS 92.040(2) limits a city's authority to apply new land use regulations to construction of subdivisions approved after September 9, 1995. However, in considering an appeal of a city decision adopting new land use regulations, LUBA will not assume the city intends to apply those regulations in a way that is prohibited by ORS 92.040(2). *Rogue Valley Assoc. of Realtors v. City of Ashland*, 35 Or LUBA 139 (1998).

33.1 Land Divisions – Subdivisions. ORS 227.178(3) provides that the standards and criteria that are in effect when a subdivision application is submitted govern approval of the subdivision application, but ORS 227.178(3) does not limit a local government's authority to adopt construction or development standards that apply after the subdivision is approved. *Rogue Valley Assoc. of Realtors v. City of Ashland*, 35 Or LUBA 139 (1998).

33.1 Land Divisions – Subdivisions. A code provision that requires that final subdivision and PUD plans be submitted within three years after preliminary approval is granted does not require that the versions of the final subdivision and PUD plans that are ultimately approved be submitted before the three-year deadline. Provided the subdivision and PUD plans are submitted before the

deadline, the plans may be modified after the deadline in response to city review or public input. *Rochlin v. City of Portland*, 34 Or LUBA 379 (1998).

33.1 Land Divisions – Subdivisions. Where a code requires that the final subdivision and PUD plans be in "substantial conformance" with the preliminary approval and the city interprets the "substantial conformance" requirement by analogizing to the distinction drawn in the code between "major" subdivision/PUD amendments, which must be approved quasi-judicially, and "minor" amendments, which may be approved administratively, the city's interpretation will be upheld. *Rochlin v. City of Portland*, 34 Or LUBA 379 (1998).

33.1 Land Divisions – Subdivisions. A city's denial of an application to *develop* a legally transferable lot has no bearing on the city's obligation to recognize that lot as legally transferable under ORS 92.017. *Eagle Point Development v. City of Shady Cove*, 33 Or LUBA 509 (1997).

33.1 Land Divisions – Subdivisions. That a parcel may be separately transferable under ORS 92.017 does not determine whether the parcel may be separately developed. *Eagle Point Development v. City of Shady Cove*, 33 Or LUBA 509 (1997).

33.1 Land Divisions – Subdivisions. In determining whether a previous local decision vacated lot lines, LUBA considers only what the record establishes the county did in that previous decision, not what the county should have done. *Koo v. Polk County*, 33 Or LUBA 487 (1997).

33.1 Land Divisions – Subdivisions. Where the city makes a determination that it is feasible to comply with a local code standard requiring that each lot in a proposed subdivision be buildable, it may defer addressing engineering details to a later date. *Brown v. City of Ontario*, 33 Or LUBA 180 (1997).

33.1 Land Divisions – Subdivisions. Where a condition of approval requires that the developer shall provide a "turnaround" at the end of a platted street, and the existence of the turnaround will bring the street within the definition of a cul-de-sac under local code, the city's tentative plat approval must be remanded where it does not satisfy the applicable local criteria for a cul-de-sac. *Wicks-Snodgrass v. City of Reedsport*, 32 Or LUBA 292 (1997).

33.1 Land Divisions – Subdivisions. Local government approval of a subdivision tentative plan, with a condition that prior to final plat approval the plan be reconfigured to provide only one access point from the subdivision onto adjoining roads, a change advocated in an alternative plan submitted by neighbors, does not constitute approval of a new subdivision application. *Carter v. Umatilla County*, 29 Or LUBA 181 (1995).

33.1 Land Divisions – Subdivisions. If a local government's comprehensive plan and land use regulations are acknowledged as being in compliance with the statewide planning goals, and the challenged decision approving a residential subdivision does not amend the local government's plan or land use regulations, the statewide planning goals to do not apply to the challenged decision. *McCrary v. City of Talent*, 29 Or LUBA 110 (1995).

33.1 Land Divisions – Subdivisions. A local governing body in considering an appeal of a planning commission decision approving a subdivision may not shift the burden of proof from the applicant to the opponents of the subdivision. *Andrews v. City of Prineville*, 28 Or LUBA 653 (1995).

33.1 Land Divisions – Subdivisions. A local governing body acts within its interpretive authority in construing a comprehensive plan provision employing nonmandatory language as not imposing a mandatory approval criterion for approval of a subdivision. *Andrews v. City of Prineville*, 28 Or LUBA 653 (1995).

33.1 Land Divisions – Subdivisions. A local governing body acts within its interpretive authority in construing a code provision stating local street design and construction cost provisions apply "unless otherwise approved in the tentative development plan," as allowing the local government to waive those local street standards when granting tentative subdivision plan approval. *Andrews v. City of Prineville*, 28 Or LUBA 653 (1995).

33.1 Land Divisions – Subdivisions. A hearings officer's interpretation of the local code is incorrect where the hearings officer determines a private easement that will be generally used by members of the public and occupants of a proposed subdivision, is not an "area to be dedicated for new roads" to serve the proposed subdivision. *Ellison v. Clackamas County*, 28 Or LUBA 521 (1995).

33.1 Land Divisions – Subdivisions. Where the local code creates a process for the submittal and review of an applicant's "development impact statement" (DIS) as part of preliminary subdivision plat approval, the local governing body has considerable discretion in interpreting the role of the DIS process and must determine, in the first instance, whether the DIS content requirements are mere requests for information or impose substantive approval standards. *ONRC v. City of Oregon City*, 28 Or LUBA 263 (1994).

33.1 Land Divisions – Subdivisions. If a city council decision approving a subdivision does not explain how the city interprets relevant comprehensive plan and code provisions to allow a 40-foot street right-of-way, the decision must be remanded for the city council to interpret the local provisions in the first instance. *Woodstock Neigh. Assoc. v. City of Portland*, 28 Or LUBA 146 (1994).

33.1 Land Divisions – Subdivisions. A local government does not exceed its authority under a code section authorizing it to control "the nature and scale of development" by prohibiting development of two lots, as configured in a proposed seven-lot subdivision. *Davis v. City of Bandon*, 28 Or LUBA 38 (1994).

33.1 Land Divisions – Subdivisions. Even if a local code provision requiring that six percent of the gross area of a proposed subdivision be dedicated for open space is properly interpreted as a minimum rather than a maximum requirement, a decision requiring dedication of much more than six percent of the gross area of a proposed subdivision must be remanded so that the local government may adopt findings explaining that interpretation and showing the "rough

proportionality" requirement of *Dolan v. City of Tigard* is satisfied. *Davis v. City of Bandon*, 28 Or LUBA 38 (1994).

33.1 Land Divisions – Subdivisions. A decision approving a tentative subdivision plat for land within an urban growth boundary is a "limited land use decision." ORS 197.015(12)(a). *Barrick v. City of Salem*, 27 Or LUBA 417 (1994).

33.1 Land Divisions – Subdivisions. Where an application for subdivision tentative plan approval does not contain information on the location of driveways and easements required by the code, but petitioners fail to establish the missing information is relevant to any applicable approval standard, the error is harmless and does not provide a basis for reversal or remand. *Barrick v. City of Salem*, 27 Or LUBA 417 (1994).

33.1 Land Divisions – Subdivisions. Code provisions which allow a local government to impose conditions of approval "reasonably calculated to fulfill public needs," and to require right-of-way dedication and road improvements, authorize the local government to require modification of a proposed subdivision plat to eliminate a one-foot "spite strip" separating a new street serving the subdivision from the adjoining property. *J.C. Reeves Corp. v. Clackamas County*, 27 Or LUBA 318 (1994).

33.1 Land Divisions – Subdivisions. The Statewide Planning Goals are not directly applicable to a local government decision that approves a subdivision without amending the local government's acknowledged comprehensive plan. *J.C. Reeves Corp. v. Clackamas County*, 27 Or LUBA 318 (1994).

33.1 Land Divisions – Subdivisions. Where a proposed subdivision will add traffic to an abutting arterial street, although direct access to the subdivision will be provided by local streets, a local government approval condition requiring that the developer construct sidewalks, storm sewers and other frontage improvements along the portion of the arterial abutting the subdivision is reasonably related to the impacts of the proposed subdivision and is not an unconstitutional taking. *J.C. Reeves Corp. v. Clackamas County*, 27 Or LUBA 318 (1994).

33.1 Land Divisions – Subdivisions. 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).

33.1 Land Divisions – Subdivisions. Where one part of a comprehensive plan states it is implemented through legislative acts, but another part states that subdivisions must be in conformance with the plan and the code expressly states all subdivision decisions must be consistent with the plan, it is not contrary to the express words, purpose or policy of either the code or the plan for the city to apply certain plan housing policies to a subdivision application. *Shelter Resources, Inc. v. City of Cannon Beach*, 27 Or LUBA 229 (1994).

33.1 Land Divisions – Subdivisions. A letter by a city planning director concerning the application of code provisions relevant to the validity of tentative plan approvals and approval of

final plats, for certain subdivisions within an urban growth boundary, is a limited land use decision. *Forest Park Neigh. Assoc. v. City of Portland*, 27 Or LUBA 215 (1994).

33.1 Land Divisions – Subdivisions. Where a city has created a two-stage (tentative plan and final plat) approval process for subdivision applications, under ORS 227.178(3), both subdivision tentative plan and final plat approvals must be based on the "standards and criteria" in effect when the subdivision application is initially filed. *Forest Park Neigh. Assoc. v. City of Portland*, 27 Or LUBA 215 (1994).

33.1 Land Divisions – Subdivisions. Where petitioners contend certain information required by the local code "prior to the approval of subdivisions" must be in the record at the time of tentative plat approval, and the challenged tentative plat approval decision does not interpret the local code with regard to *at what stage* of the subdivision approval process the required information must be submitted to the county, LUBA must remand the decision for the local government to interpret its code in the first instance. *Cummings v. Tillamook County*, 26 OR LUBA 139 (1993).

33.1 Land Divisions – Subdivisions. Where a local government order granting subdivision preliminary plat approval defers a determination of compliance with a particular approval standard, and also allows final plat approval to occur in phases, the local government may interpret that order as allowing it to grant final plat approval for a phase, so long as each lot in the phase for which final plat approval is sought has been found to comply with the deferred standard. *Perry v. Yamhill County*, 26 Or LUBA 73 (1993).

33.1 Land Divisions – Subdivisions. A local government may interpret a local subdivision approval standard requiring that each lot have "an adequate quantity and quality of water to support the proposed use of the land" as not requiring consideration of the impacts of providing water to the subdivision lots on the water supplies of adjacent properties. *Perry v. Yamhill County*, 26 Or LUBA 73 (1993).

33.1 Land Divisions – Subdivisions. Where the applicant submits a drainage plan for a proposed subdivision to a local government, and the local government relies on that drainage plan in determining compliance with a local drainage standard in its order granting subdivision approval, the drainage plan is effectively made part of the approved subdivision plat. In these circumstances, it is not necessary for the local government to adopt a separate condition of approval requiring compliance with the drainage plan. *Perry v. Yamhill County*, 26 Or LUBA 73 (1993).

33.1 Land Divisions – Subdivisions. A variance criterion requiring that there be no reasonably practical alternatives to granting the variance is met where the local government finds the subdivision roadway necessitating the variance is needed for compliance with the comprehensive plan, and petitioners do not challenge that finding. *Eola-Glen Neighborhood Assoc. v. City of Salem*, 25 Or LUBA 672 (1993).

33.1 Land Divisions – Subdivisions. Although Goal 11 requires that local governments include schools in comprehensive plan provisions for public facilities and services, there is no legal requirement that subdivision approval decisions include a determination that schools are adequate,

unless the acknowledged comprehensive plan or land use regulations impose such a requirement. *Eola-Glen Neighborhood Assoc. v. City of Salem*, 25 Or LUBA 672 (1993).

33.1 Land Divisions – Subdivisions. A comprehensive plan policy requiring cooperative efforts among neighboring jurisdictions concerning public facilities and services, with no mention of schools, does not provide a basis for reversing or remanding a decision approving a subdivision despite allegedly inadequate schools. *Eola-Glen Neighborhood Assoc. v. City of Salem*, 25 Or LUBA 672 (1993).

33.1 Land Divisions – Subdivisions. An erroneous finding that the local government cannot impose a condition of subdivision approval requiring measures to mitigate off-site traffic impacts, provides no basis for reversal or remand, where the local government adopts superseding findings explaining why it believes such measures are not warranted and the local government's authority to require such measures is permissive rather than mandatory. *Eola-Glen Neighborhood Assoc. v. City of Salem*, 25 Or LUBA 672 (1993).

33.1 Land Divisions – Subdivisions. Where a challenged decision grants subdivision approval, petitioner's challenge to a finding that the property is located in two residential zones provides no basis for reversal or remand, where petitioner makes no attempt to explain why the zoning of the property is critical to the decision and both zones impose the same minimum lot area. *Eola-Glen Neighborhood Assoc. v. City of Salem*, 25 Or LUBA 672 (1993).

33.1 Land Divisions – Subdivisions. Where a challenged decision simply expresses a conclusion that the county court has discretion to act on a subdivision application without that application having first been acted on by the county planning commission, but does not identify the source of that discretion or interpret apparently relevant code provisions, the basis for the challenged decision is not sufficiently articulated for review, and the challenged decision must be remanded. *Larson v. Wallowa County*, 25 Or LUBA 537 (1993).

33.1 Land Divisions – Subdivisions. That an existing garage violates lot line setback requirements provides no basis for denial of a requested subdivision of the adjoining property to be served by a private roadway running along the lot line in front of the existing garage. *Day v. City of Portland*, 25 Or LUBA 468 (1993).

33.1 Land Divisions – Subdivisions. Arguments that a proposed subdivision roadway alignment violates a Fire Bureau policy provides no basis for reversal or remand of the subdivision approval decision, where the Fire Bureau policy is not a mandatory subdivision approval standard. *Day v. City of Portland*, 25 Or LUBA 468 (1993).

33.1 Land Divisions – Subdivisions. A comprehensive plan policy directed at how a city expends funds for public facilities and services is not an approval standard applicable to approval of individual subdivision requests. *Day v. City of Portland*, 25 Or LUBA 468 (1993).

33.1 Land Divisions – Subdivisions. In the absence of a code provision to the contrary, a local government is not required to allow modifications to a subdivision application to enable its approval. *Schatz v. City of Jacksonville*, 25 Or LUBA 327 (1993).

33.1 Land Divisions – Subdivisions. Where local subdivision approval standards adopted pursuant to ORS 92.044(1) specifically provide that a subdivision application may be approved with modifications, the local government may accept a modified application for subdivision approval following submittal of the initial application without requiring that the entire approval process be repeated. *Miller v. Washington County*, 25 Or LUBA 169 (1993).

33.1 Land Divisions – Subdivisions. Although ORS 92.010 to 92.190 do not specifically envision a subdivision approval process that combines approval of a subdivision and a lot line adjustment, neither do those statutes prohibit such a process. Absent such a prohibition, a local government commits no error in following such a combined process. *Miller v. Washington County*, 25 Or LUBA 169 (1993).

33.1 Land Divisions – Subdivisions. Where a local government's subdivision approval standards limit the length of cul-de-sac streets, as measured from through-traffic streets, and it is reasonable to interpret the limitation as being measured from either existing through-traffic streets or both existing and proposed through-traffic streets, LUBA will defer to the local government's selection of the latter interpretation. *Miller v. Washington County*, 25 Or LUBA 169 (1993).

33.1 Land Divisions – Subdivisions. A school district letter rating schools as adequate to serve a proposed subdivision is adequate to demonstrate compliance with a code requirement for documentation of school facility adequacy, notwithstanding a subsequent letter from the school district raising questions about the earlier rating, where the executive director of school district facilities expressly reaffirms the earlier rating of the schools as adequate. *Miller v. Washington County*, 25 Or LUBA 169 (1993).

33.1 Land Divisions – Subdivisions. A local government interpretation of a local code provision that prohibits direct access to major collectors by commercial, industrial and institutional uses with more than 150 feet of frontage as not applying to proposed residential subdivisions with more than 150 feet of frontage is reasonable. *Miller v. Washington County*, 25 Or LUBA 169 (1993).

33.1 Land Divisions – Subdivisions. 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).

33.1 Land Divisions – Subdivisions. 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).

33.1 Land Divisions – Subdivisions. Where a local government determines that lots of less than one acre are not permissible under the density provisions of the applicable zoning district, it is error for it to approve a subdivision preliminary plat that includes lots smaller than one acre. *Larson v. Wallowa County*, 23 Or LUBA 527 (1992).

33.1 Land Divisions – Subdivisions. A local code requirement for findings of preliminary PUD or subdivision plan feasibility does not require the kind of certainty or supporting evidence that may ultimately be required for approval of final construction plans. *Bartels v. City of Portland*, 23 Or LUBA 182 (1992).

33.1 Land Divisions – Subdivisions. Where a subdivision ordinance provision limiting the length of blocks states that exceptions to the limitation may be granted where justified by topography or location of adjoining streets, a variance need not be granted to allow a block in excess of the length specified in the subdivision ordinance. *Southwood Homeowners Assoc. v. City of Philomath*, 22 Or LUBA 742 (1992).

33.1 Land Divisions – Subdivisions. Although a local government may not be oblivious to costs in satisfying its obligation to find that required subdivision improvements are feasible, it is not required to conduct an economic feasibility analysis. *Southwood Homeowners Assoc. v. City of Philomath*, 22 Or LUBA 742 (1992).

33.1 Land Divisions – Subdivisions. Nothing in ORS 92.044, 92.205, or 92.285 prevents a local government from imposing zoning restrictions on the uses that may occur within previously platted subdivisions. *Alexiou v. Curry County*, 22 Or LUBA 639 (1992).

33.1 Land Divisions – Subdivisions. A comprehensive plan standard establishing a minimum building site requirement of one acre is not inconsistent with plan and code requirements that subdivision lots in a zoning district allowing development at a density of one unit per five acres be clustered to provide not less than 30 percent common open space. Such a plan standard simply sets a minimum area requirement for each clustered lot. *Reed v. Clatsop County*, 22 Or LUBA 548 (1992).

33.1 Land Divisions – Subdivisions. A code provision that developers "may be required to participate financially in improving [off-site] roadways sufficient to accommodate traffic generated by the development" applies to both improvement of existing off-site roads and construction of new off-site roads, and is directly applicable to the local government's imposition of a condition of preliminary subdivision plat approval requiring the subdivider to pay for construction of an off-site road. *J.C. Reeves Corp. v. Clackamas County*, 22 Or LUBA 360 (1991).

33.1 Land Divisions – Subdivisions. Where a local code requires a determination of compliance with applicable ordinance requirements at the time of subdivision outline plan approval and that the final plat be approved if it is "in substantial conformance with the outline plan," a petitioner may not fail to appeal the decision granting outline plan approval and thereafter, in an appeal of the final plan approval, challenge the subdivision's compliance with plan and code provisions found to be satisfied at the time of outline plan approval. *Sandler v. City of Ashland*, 21 Or LUBA 483 (1991).

33.1 Land Divisions – Subdivisions. Where a condition of subdivision outline plan approval requiring that driveway slopes not exceed 15 percent does not specify when the condition must be met, and the local code requires approval of the final plat if it is "in substantial conformance with

the outline plan," the local government need not find the condition is or can be met at the time of final plat approval. *Sandler v. City of Ashland*, 21 Or LUBA 483 (1991).

33.1 Land Divisions – Subdivisions. Where a local code standard provides blocks may not exceed 1,000 feet unless topography or location of adjoining streets justifies an exception, and an issue is raised during the local proceedings concerning a proposed block in excess of 1,000 feet, the local government must adopt findings explaining why a block in excess of 1,000 feet is justified. *Southwood Homeowners Assoc. v. City of Philomath*, 21 Or LUBA 260 (1991).

33.1 Land Divisions – Subdivisions. The evidence submitted in support of a request for tentative subdivision plan approval must be adequate to permit the local government to find (1) the applicable standards are met, or (2) it is feasible to meet such standards. Where the latter approach is appropriate, final technical solutions to development of the subdivision may be arrived at later without additional public hearings. *Southwood Homeowners Assoc. v. City of Philomath*, 21 Or LUBA 260 (1991).

33.1 Land Divisions – Subdivisions. Where a local government's findings concede that a tentative plan does not comply with applicable lot-grading standards, the local government may not defer further consideration of the lot-grading standards to the final plat approval stage. The local government must either require that the tentative plan be revised to comply with the lot-grading standards or adopt findings explaining why the standards may be exceeded under local code provisions allowing such deviations. *Southwood Homeowners Assoc. v. City of Philomath*, 21 Or LUBA 260 (1991).

33.1 Land Divisions – Subdivisions. Although a local government need not, under applicable code provisions, require a complete hydrologic analysis and storm drainage plan before granting tentative subdivision plan approval, it must adopt findings supported by substantial evidence that the general storm drainage plan proposed is feasible before granting approval. *Southwood Homeowners Assoc. v. City of Philomath*, 21 Or LUBA 260 (1991).

33.1 Land Divisions – Subdivisions. 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).

33.1 Land Divisions – Subdivisions. 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).

33.1 Land Divisions – Subdivisions. 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).

33.1 Land Divisions – Subdivisions. 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).

33.1 Land Divisions – Subdivisions. Under ORS 92.100(1), a board of county commissioners' role in signing a final subdivision plat prior to recording is simply to determine that the plat is in proper form for recording and, therefore, county approval of a final subdivision plat pursuant to ORS 92.100(1) is not a statutory test land use decision. *Elliott v. Lane County*, 18 Or LUBA 871 (1990).

33.1 Land Divisions – Subdivisions. No purpose would be served by recognizing county approval of a final plat for a subdivision within city limits for recording as a "significant impact" test land use decision, when the same impacts are inherent in one or more city approvals which are statutory land use decisions. *Elliott v. Lane County*, 18 Or LUBA 871 (1990).