33.4 Land Divisions – Generally. 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).

33.4 Land Divisions – Generally. 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).

33.4 Land Divisions – Generally. 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).

33.4 Land Divisions – Generally If the law at the time that land was divided required local government approval, and the local government in fact approved the land division, then any procedural or substantive errors the local government might have made in issuing that approval are not a basis to conclude that the unit of land is not a lawful lot or parcel. *Landwatch Lane County v. Lane County*, 79 Or LUBA 65 (2019).

33.4 Land Divisions – Generally. Where a parcel is lawfully created, but later divided unlawfully under ORS 215.750(1)(a), a county may rely on the parcel as it existed prior to the unlawful division in determining whether a unit of land qualifies for a forest template dwelling on January 1, 2003. Under ORS 92.017, such parcel "remain[s] discrete" unless it is "further divided, as provided by law." *Landwatch Lane County v. Lane County*, 79 Or LUBA 111 (2019).

33.4 Land Divisions – Generally. 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).

33.4 Land Divisions – Generally. A legal lot verification decision cannot itself result in the creation of a unit of land. At most, a legal lot verification decision would recognize that a unit of land was lawfully created by some other process or event. *Wolcott v. Lane County*, 77 Or LUBA 165 (2018).

33.4 Land Divisions – Generally. Where the last paragraph of a legal lot verification decision states that it is a "preliminary" decision and that the "decision" on whether the property is a legal lot will be made when a development permit is approved, the legal lot verification decision is not a final, binding decision that determines that the property is a lawfully created lot. *Wolcott v. Lane County*, 77 Or LUBA 165 (2018).

33.4 Land Divisions – Generally. ORS 92.176 provides in certain circumstances for validation of illegally created lots or parcels. Where a parcel is validated under ORS 92.176, an adjoining parcel that was also illegally created is not thereby validated as a lawful "remainder" parcel. The adjoining parcel must itself be separately validated under ORS 92.176. *Wolcott v. Lane County*, 77 Or LUBA 165 (2018).

33.4 Land Divisions – Generally. ORS 197.830(6) is a statute of ultimate repose, providing that appeal periods to LUBA may not exceed either a three-year or 10-year period, depending on whether notice of the final decision is required but not provided. However, ORS 197.830(6) cannot be applied to require a county in 2016 to recognize property as a lawfully created parcel pursuant to a 2003 legal lot verification decision, on the theory that the 2003 decision was a "final," unappealed, and now unappealable decision under ORS 197.830(6), where the 2003 decision itself states that it was only a "preliminary" decision. Because only final decisions can be appealed to LUBA, the statute of ultimate repose is inapplicable. *Wolcott v. Lane County*, 77 Or LUBA 165 (2018).

33.4 Land Divisions – Generally. 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).

33.4 Land Divisions – Generally. 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).

33.4 Land Divisions – Generally. A hearings officer's erroneous statement that a portion of a meander channel that the State of Oregon quitclaimed to an adjoining property owner in 1985 was "in existence" prior to 1985 is harmless error, where the remainder of the hearings officer's findings make it clear that he was not finding that the quitclaimed portion of land existed as a

discrete and lawful unit of land prior to 1985, but that the meander channel as a whole existed as, or as part of, a discrete unit of land owned by the state since statehood in 1859. *Landwatch Lane County v. Lane County*, 75 Or LUBA 473 (2017).

33.4 Land Divisions – Generally. A one-half-acre size requirement threshold for requiring PUD approval is not a mere application requirement that can be overlooked to require PUD approval for proposals of less than one-half acre. Even if the city intended to delete that threshold for PUD proposals near transit stations, where the threshold clearly applies it cannot be overlooked to give effect to an intent that is inconsistent with the text of the zoning ordinance. *Mintz v. City of Beaverton*, 66 Or LUBA 118 (2012).

33.4 Land Divisions – Generally. 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).

33.4 Land Divisions – Generally. 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).

33.4 Land Divisions – Generally. 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).

33.4 Land Divisions – Generally. 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).

33.4 Land Divisions – Generally. 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).

33.4 Land Divisions – Generally. Under *McKay Creek Valley Assoc. v. Washington County*, 24 Or LUBA 187 (1992), where an approval criterion requires a determination that property is a legal or lawfully created parcel, the relevant question is whether any local government approvals required at the time were obtained, not whether the local government correctly applied the

applicable approval criteria to create the property. *Brodersen v. City of Ashland*, 62 Or LUBA 329 (2010).

33.4 Land Divisions – Generally. Under *Maxwell v. Lane County*, 178 Or App 210, 35 P3d 1128 (2001), where the applicable criteria expressly or implicitly require a determination that a unit of land proposed for development is a legal or lawfully created "parcel" under code definitions that set out several ways to create a "parcel," the relevant question is whether the unit of land was in fact created in one of the ways set out in the definition, not whether substantive or procedural errors might have been made in the process of creating the parcel. *Brodersen v. City of Ashland*, 62 Or LUBA 329 (2010).

33.4 Land Divisions – Generally. Under a code provision defining a lot or parcel as (1) a unit of land created by partition or subdivision, or (2) a unit of land under single ownership, which complies with all applicable laws at the time the lot or parcel was created, the phrase "complies with all applicable laws" modifies the immediately preceding phrase, units of land created by means other than partition or subdivision, and does not require a determination that a parcel created by partition complies with all applicable laws at the time it was created. *Brodersen v. City of Ashland*, 62 Or LUBA 329 (2010).

33.4 Land Divisions – Generally. 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).

33.4 Land Divisions – Generally. ORS 374.310(3), which prohibits denying reasonable access from property adjoining a public road, is not applicable where a property has access to a public road and the county is not denying the applicant for a three-parcel partition access from that public road. *Pelz v. Clackamas County*, 59 Or LUBA 219 (2009).

33.4 Land Divisions – Generally. A division of land that creates an EFU-zoned parcel that is smaller than the 80-acre minimum set forth in ORS 215.780(1) violates that statute, and the land division is prohibited as a matter of law. *Jouvenat v. Douglas County*, 58 Or LUBA 378 (2009).

33.4 Land Divisions – Generally. ORS 92.010 to 92.190 address the creation of new lots or parcels; there is no explicit prohibition in those statutes preventing a local government from making a determination regarding the legal or illegal status of lots or parcels that were not created in conformance with applicable county laws and regulations at the time they were initially created. *Porter v. Marion County*, 56 Or LUBA 635 (2008).

33.4 Land Divisions – Generally. A comprehensive plan policy that directs a county to "adopt large lot zoning to protect rural, agricultural and forest areas," does not apply directly to an application to subdivide rural agricultural land. *Pete's Mtn. Home Owners Assoc. v. Clackamas County*, 55 Or LUBA 287 (2007).

33.4 Land Divisions – Generally. 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).

33.4 Land Divisions – Generally. 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).

33.4 Land Divisions – Generally. ORS 92.100(7), which provides that a decision approving a final subdivision or partition plat is not a land use decision or limited land use decision, effectively removes such decisions from LUBA's jurisdiction. Nothing in the text or legislative history of ORS 92.100(7) suggests that the exclusion applies only to nondiscretionary final subdivision or partition plat decisions. *Wagon Trail Ranch v. Klamath County*, 54 Or LUBA 654 (2007).

33.4 Land Divisions – Generally. Under *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), if directly applicable legislation expressly requires that an analysis of existing lots or parcels must be limited to an analysis of *legally created* lots or parcels, then it follows that only lawfully created lots or parcels can be considered. However, even if the directly applicable legislation does not expressly require that lots or parcels have been legally created, that requirement may be found in related enactments and the legislative context in which the directly applicable legislation appears. *Reeves v. Yamhill County*, 53 Or LUBA 4 (2006).

33.4 Land Divisions – Generally. 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).

33.4 Land Divisions – Generally. 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).

33.4 Land Divisions – Generally. 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).

33.4 Land Divisions – Generally. 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).

33.4 Land Divisions – Generally. Where the "Decision" section of a land use decision expressly grants only "planned unit development subdivision plan" approval, but the decision read as a whole clearly also grants the zoning map amendment that was included in the planned unit development and subdivision plan application, LUBA will interpret the decision to grant all three of the requested approvals. *Wasserburg v. City of Dunes City*, 52 Or LUBA 70 (2006).

33.4 Land Divisions – Generally. Where an application for city subdivision approval includes a request for planned unit development approval that allows the property to be divided in ways that the property could not be divided without planned unit development approval, the decision granting planned unit development subdivision approval is a land use decision, not a limited land use decision. *Wasserburg v. City of Dunes City*, 52 Or LUBA 70 (2006).

33.4 Land Divisions – Generally. As a general rule there is no reason why a local government could not interpret an "orderly development" land division criterion to impose a more stringent standard than Oregon Department of Transportation's standard that the performance of failing intersections not be worsened by a proposal. However, where such an interpretation appears to be inconsistent with other city criteria and those apparent inconsistencies are not addressed in the decision maker's findings, LUBA will reject the interpretation as incorrect. *Wal-Mart Stores, Inc. v. City of Bend*, 52 Or LUBA 261 (2006).

33.4 Land Divisions – Generally. Where a local code provision is expressly directed at building permits and a hearing officer finds that the provision does not apply to a request for subdivision approval, and petitioners do not assign error to those findings, petitioners' assignment of error that the hearings officer should have applied the provision in approving the subdivision will be denied. *Bickford v. City of Tigard*, 52 Or LUBA 301 (2006).

33.4 Land Divisions – Generally. Where a hearings officer finds that a proposed subdivision complies with all approval criteria and imposes a condition of subdivision approval that requires preparation of a habitat enhancement plan at a later date, but says nothing about what procedures will be required to review and approve the habitat enhancement plan, opponent's arguments that a public hearing will be required to review and approve the habitat enhancement plan are premature. *Kyle v. Washington County*, 52 Or LUBA 399 (2006).

33.4 Land Divisions – Generally. The dedication of a mere easement or right to use a strip of land for roadway purposes is not sufficient to divide land. *Lovinger v. Lane County*, 51 Or LUBA 29 (2006).

33.4 Land Divisions – Generally. Where a strip of land was transferred in fee title to the county for roadway purposes, the resulting units of land lying on either side of that strip do not violate the requirement in ORS 92.014 (1955) that "[n]o person shall create a street or way for the purpose of partitioning a parcel of land without the approval of the agency or body authorized to give approval

of plans for subdivision," where the record does not indicate that the roadway was created "for the purpose of partitioning land." Accordingly, the county does not err in determining that one of those resulting units of land is a lawfully created "parcel," and complies with the requirement in ORS 215.705(1)(a) that the lot or parcel on which a forest template dwelling is proposed was lawfully created. *Lovinger v. Lane County*, 51 Or LUBA 29 (2006).

33.4 Land Divisions – Generally. Where all parties believed that a two-variance subdivision proposal was before the planning commission, the planning commission voted to approve the two-variance subdivision, but the planning commission's final written decision approved a prior, withdrawn three-variance subdivision proposal with a slightly different lot configuration, remand is required so that the city can adopt a written decision that approves the two-variance subdivision that the planning commission intended to approve. *Lockwood v. City of Salem*, 51 Or LUBA 334 (2006).

33.4 Land Divisions – Generally. For land use planning purposes "tracts" rather than "lots" or "parcels" may be the required unit of analysis if the relevant law so specifies. However, a legal requirement to consider "tracts" does not mean that the individual "lots" or "parcels" that make up those tracts lose their separate legal identity. *Just v. Lane County*, 50 Or LUBA 399 (2005).

33.4 Land Divisions – Generally. 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).

33.4 Land Divisions – Generally. 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).

33.4 Land Divisions – Generally. 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).

33.4 Land Divisions – Generally. Under ORS 92.017, a lawfully created lot or parcel remains a discrete lot or parcel, unless the lot lines are vacated or the lot or parcel is further divided. Consolidation of several lots into one tax lot does not consolidate or affect the discrete existence of those lots. Therefore, no process of "lot segregation" is necessary in order to adjust property boundaries within a tax lot that is composed of several discrete lots or parcels. *South v. City of Portland*, 48 Or LUBA 555 (2005).

33.4 Land Divisions – Generally. Absent some statute or code authority, a local government cannot recognize the existence of only one internal lot line within a four-lot tract and move that lot line around within the tract in a manner that crosses or ignores the still existing lot lines of other

discrete lots in the tract. A decision with that effect is arguably a "partition" or "replat" as those terms are defined in ORS chapter 92, and does not qualify as a "property line adjustment." *South v. City of Portland*, 48 Or LUBA 555 (2005).

33.4 Land Divisions – Generally. A decision that approves a "property line adjustment" as that term is defined in ORS chapter 92 will usually fall within the ministerial exception to LUBA's jurisdiction. However, determining whether a particular lot configuration in fact qualifies as property line adjustment, as opposed to something else such as a partition or replat, may require interpretation and exercise of legal judgment. If so, the decision does not fall within the ministerial exception, and is subject to LUBA's jurisdiction. *South v. City of Portland*, 48 Or LUBA 555 (2005).

33.4 Land Divisions – Generally. A county's decision to accept a deed for a road easement is a land use decision, where the county has adopted procedures as part of its subdivision regulations that require the county to apply standards in those regulations and its zoning ordinance in accepting land for use as county roads. *Niederhof v. Deschutes County*, 48 Or LUBA 626 (2004).

33.4 Land Divisions – Generally. Where a county has not yet adopted land division regulations that apply to minor partitions, a minor partition nevertheless requires prior county approval of a variance under the zoning ordinance where one of the parcels created by the minor partition does not comply with the minimum parcel size that is required under the zoning ordinance. *DeBoer v. Jackson County*, 46 Or LUBA 24 (2003).

33.4 Land Divisions – Generally. In applying a standard that requires that development within 100 feet of a wetland minimize wildlife impacts, a county commits no error in finding that it is uncertain whether there are wetlands present and imposing a condition of approval that the subdivision applicant prepare a wetlands study and demonstrate that the standard is satisfied in a subsequent quasi-judicial administrative review before final plat approval. *Willhite v. Clackamas County*, 46 Or LUBA 340 (2004).

33.4 Land Divisions – Generally. Where the text of a local code standard does not require that an applicant establish that a proposed subdivision will not adversely affect nearby wells and does not require a finding that the applicant will be able to secure state agency approvals for its water supply, the local government is within its interpretative discretion under OAR 197.829(1) in interpreting that standard not to impose those obligations. *Paddock v. Yamhill County*, 45 Or LUBA 39 (2003).

33.4 Land Divisions – Generally. A local government's failure to adopt findings addressing the potential impacts a subdivision will have on nearby wells and whether the applicant will be able to secure required state permits for its water supply could only provide a basis for remand by LUBA if there is some legal requirement that the local government adopt such findings. *Paddock v. Yamhill County*, 45 Or LUBA 39 (2003).

33.4 Land Divisions – Generally. ORS 215.263(7), which provides for the division of land resulting from lien foreclosure, does not authorize a county to "legalize" an existing but illegally

created parcel that happens to be subject to foreclosure after its illegal creation. *Perkins v. Umatilla County*, 45 Or LUBA 445 (2003).

33.4 Land Divisions – Generally. Even assuming that a parcel formed without required local government approval has not been "created" in any meaningful sense, the legislature did not intend ORS 215.263(7), which provides for division of land resulting from lien foreclosure, to authorize counties to effectively legalize such parcels for development. *Perkins v. Umatilla County*, 45 Or LUBA 445 (2003).

33.4 Land Divisions – Generally. Vacation of a right-of-way attaches the portion of the vacated right-of-way between the centerline and adjoining parcels to those adjoining parcels. Such vacations do not create new, separate parcels between the former centerline and the adjoining parcels. *Smith v. City of St. Paul*, 45 Or LUBA 281 (2003).

33.4 Land Divisions – Generally. Where the property description in a deed fails to reference an adjoining vacated right-of-way, the deed nevertheless conveys the previously vacated right-of-way between the former centerline and the adjoining property that is described in the deed. *Smith v. City of St. Paul*, 45 Or LUBA 281 (2003).

33.4 Land Divisions – Generally. Where county code requires that "all owners" sign a subdivision application, a conclusion that that standard is met is supported by substantial evidence where the record includes a certificate signed by the applicant certifying that the applicant owns the property and other documents in the record name the applicant as the grantee or as a representative of the owner. *Neketin v. Washington County*, 45 Or LUBA 495 (2003).

33.4 Land Divisions – Generally. While statutory provisions governing land partitions were adopted in October 1973, they were not self-executing; the statutory requirements for land partitions did not apply to individual applications to partition land until after local governments adopted ordinances that implemented those statutory requirements. *Palaske v. Clackamas County*, 43 Or LUBA 202 (2002).

33.4 Land Divisions – Generally. Where a hearings officer concludes that a local code provision setting out seven potential methods of creating a parcel applies in determining whether a parcel was lawfully created, the hearings officer is obligated to consider each of the arguably applicable methods, notwithstanding that the applicant below did not specifically raise issues regarding which of the arguably applicable methods applies. *DeBoer v. Jackson County*, 43 Or LUBA 219 (2002).

33.4 Land Divisions – Generally. ORS 197.175 requires that land use decisions comply with the applicable comprehensive plan. However, whether a particular plan provision is an approval criterion for a particular quasi-judicial land division application depends on the language of the comprehensive plan and its implementing regulations, with appropriate deference to any explicit or implicit interpretations of the comprehensive plan and implementing regulations by the local government. *Donivan v. City of La Grande*, 43 Or LUBA 477 (2003).

33.4 Land Divisions – Generally. Under *McKay Creek Valley Assoc. v. Washington County*, 118 Or App 543, 848 P2d 624 (1993), the county need not inquire into the legality of parcels subject

to a rezoning application, where the applicable rezoning criteria do not expressly require a "lawfully created parcel" or a "legal parcel," or impose a similar requirement of legality. *Maxwell v. Lane County*, 39 Or LUBA 556 (2001).

33.4 Land Divisions – Generally. A local code provision allowing lots or parcels that "were conveyed by one deed and were subsequently consolidated" to be *recreated* does not set forth a specific process for *vacating* property boundaries, as contemplated by ORS 92.017. Therefore, that provision does not operate to consolidate several parcels that were conveyed in a single deed into a single parcel, absent some further process to vacate property lines. *Smith v. Jackson County*, 37 Or LUBA 779 (2000).

33.4 Land Divisions – Generally. 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).

33.4 Land Divisions – Generally. The deadline for submitting a final plat is a "review procedure" rather than an "informational" or "other [subdivision] requirement" for purposes of choosing whether the two-year deadline imposed on subdivisions or the three-year deadline imposed on PUDs applies, where petitioner does not explain why the two-year time limit is informational or substantive and interpreting the requirement as being substantive would be inconsistent with the code's purpose of allowing concurrent processing of the final subdivision and PUD plans. *Rochlin v. City of Portland*, 34 Or LUBA 379 (1998).

33.4 Land Divisions – Generally. Where preliminary subdivision and PUD approval is not modified, approval of the final subdivision and PUD plans is governed by the standard in effect when the application for preliminary approval was submitted. *Rochlin v. City of Portland*, 34 Or LUBA 379 (1998).

33.4 Land Divisions – Generally. A code requirement that deeds to property in a PUD shall stipulate that no "private structure of any type" shall be constructed in common areas does not apply to and does not prohibit construction of drainfields by the "developer" in common areas. *Rochlin v. City of Portland*, 34 Or LUBA 379 (1998).

33.4 Land Divisions – Generally. A code requirement that each lot in a subdivision be approved with provisions for sewage disposal is reasonably interpreted as not applying to lots that are not to be developed. *Rochlin v. City of Portland*, 34 Or LUBA 379 (1998).

33.4 Land Divisions – Generally. Where the same person owns separate, adjoining parcels but the property line separating those parcels is not vacated, the two parcels remain separate and distinct parcels under ORS 92.017. *Tarjoto v. Lane County*, 34 Or LUBA 124 (1998).

33.4 Land Divisions – Generally. 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).

33.4 Land Divisions – Generally. Unless a specific process is followed to eliminate lot lines, under ORS 92.107 lots remain discrete lots. *Koo v. Polk County*, 33 Or LUBA 487 (1997).

33.4 Land Divisions – Generally. A local government acts within its interpretational discretion in construing local code provisions that treat "contiguous" parcels in "common ownership" as a single unit of land as not including parcels in common ownership which meet only at a common corner and share no common sides. *Tognoli v. Crook County*, 28 Or LUBA 527 (1995).

33.4 Land Divisions – Generally. A local government commits error by approving a modified partition application after the local evidentiary hearing is closed and refusing petitioner an opportunity to comment on the modified application before approving it. *Tognoli v. Crook County*, 28 Or LUBA 527 (1995).

33.4 Land Divisions – Generally. The legal effect of recording an approved plat showing 50- and 60-acre parcels, originally created by deed, as a single 110-acre parcel is to vacate the line dividing the 50- and 60-acre parcels. *Van Veldhuizen v. Marion County*, 26 Or LUBA 468 (1994).

33.4 Land Divisions – Generally. Allegations that a local code provision consolidating commonly owned parcels conflicts with ORS 92.017, which provides that a lawfully created lot or parcel shall remain a discrete lot or parcel, are rendered moot and provide no basis for reversal or remand, where the parcels in question were combined in an approved and recorded plat. *Van Veldhuizen v. Marion County*, 26 Or LUBA 468 (1994).

33.4 Land Divisions – Generally. It is appropriate for a local government to interpret its code definition of the term "lot" consistently with ORS 92.017, so that individual legally established lots are recognized as such and may be individually conveyed, even though they are substandard under existing zoning regulations and are in common ownership with adjoining substandard lots. *Campbell v. Multnomah County*, 25 Or LUBA 479 (1993).

33.4 Land Divisions – Generally. Although ORS 92.017 requires that legally established lots continue to be recognized as individual, separately transferable lots, even where subsequent changes in land use regulations make those lots nonconforming, a local government may impose land use regulations requiring that two or more of such nonconforming lots be combined for development purposes. *Campbell v. Multnomah County*, 25 Or LUBA 479 (1993).

33.4 Land Divisions – Generally. A local government interpretation of a code "lot of record" provision as allowing legally created but now substandard lots to be separately developed if adjoining lots are held in separate ownership or if the lots were shown on a plat of record prior to the date the relevant zoning requirements took effect is reasonable, and LUBA will defer to that interpretation. *Campbell v. Multnomah County*, 25 Or LUBA 479 (1993).

33.4 Land Divisions – Generally. That a challenged decision granting subdivision approval fails to demonstrate feasibility of compliance with an approval condition requiring that a subdivision

street provide "no worse" access to an adjoining property than is currently provided to that adjoining property provides no basis for reversal or remand, where assuring "no worse" access is not required by any applicable approval standard. *Day v. City of Portland*, 25 Or LUBA 468 (1993).

33.4 Land Divisions – Generally. Where a local code allows approval of a rural planned development (RPD) "in conjunction with" a land division, and establishes comprehensive standards for RPDs, including standards for lot line adjustments in an approved RPD, the local government's interpretation of a code provision allowing revisions to an approved land division as giving it authority to approve lot line adjustments in an approved RPD which are not otherwise allowable under the RPD provisions, is clearly wrong. *Reusser v. Washington County*, 25 Or LUBA 252 (1993).

33.4 Land Divisions – Generally. Where a parcel was created by deed, at a time when the local government interpreted its partitioning regulations to be inapplicable to parcels created in that manner, the local government may subsequently determine that a permit application complies with a code requirement that a proposed use be on a "parcel," without reexamining the applicability of its partitioning regulations when the parcel was created. *McKay Creek Valley Assoc. v. Washington County*, 24 Or LUBA 187 (1992).

33.4 Land Divisions – Generally. Neither ORS 215.130 nor 215.215 authorizes the creation of new parcels for nonconforming uses. *DLCD v. Columbia County*, 24 Or LUBA 32 (1992).

33.4 Land Divisions – Generally. A local government is not required to allow use of existing roadways to provide access for newly created parcels, if those roadways do not also comply with the standards governing roadways providing access to newly created residential parcels. *Reeder v. Clackamas County*, 23 Or LUBA 583 (1992).

33.4 Land Divisions – Generally. That a recently constructed roadway stream crossing was built to create a pond to satisfy fire district requirements for stored water provides no basis for requiring that a county approve use of such a roadway to provide access to newly created parcels. *Reeder v. Clackamas County*, 23 Or LUBA 583 (1992).

33.4 Land Divisions – Generally. Where a local government elects to limit the length of cul-de-sac streets, it may also establish how the length of such streets is to be measured. However, where no particular method of measuring the length of cul-de-sac streets is specified in its land use regulations, the local government must determine length applying the regulations as they are written and applying the plain and ordinary meaning of the operative term "length." *Sully v. City of Ashland*, 23 Or LUBA 25 (1992).

33.4 Land Divisions – Generally. Under applicable city land use regulation definitions and general understanding the length of a cul-de-sac street is measured to the end of whatever turnaround is provided; not to the point at which the right-of-way widens to accommodate the turnaround. *Sully v. City of Ashland*, 23 Or LUBA 25 (1992).

33.4 Land Divisions – Generally. A subdivision ordinance standard requiring that cut and fill slopes not exceed one foot vertically to two feet horizontally "unless physical conditions demonstrate the propriety of other standards" allows two means of compliance. The local government may find either that the 2-to-1 slope limit will be met, or that physical conditions make a different slope standard proper. *Southwood Homeowners Assoc. v. City of Philomath*, 22 Or LUBA 742 (1992).

33.4 Land Divisions – Generally. Where a local government finds that a subdivision slope limitation will be satisfied, but the evidence in the record is that the required slope will be exceeded, the finding is not supported by substantial evidence in the record. *Southwood Homeowners Assoc. v. City of Philomath*, 22 Or LUBA 742 (1992).

33.4 Land Divisions – Generally. A zoning ordinance lot dimension requirement that lots in a particular zone be a certain width "at the front building line" is applicable to the creation of an undeveloped lot. *Ward v. City of Lake Oswego*, 21 Or LUBA 470 (1991).

33.4 Land Divisions – Generally. Where a code provision is specifically amended to provide that the amended code provision does not apply to "minor land divisions," LUBA will not apply that code provision to "minor land divisions" even though such divisions may also satisfy the unamended definitions of subdivision or partition, to which the amended code provision continues to apply. *Nicolai v. City of Portland*, 19 Or LUBA 142 (1990).

33.4 Land Divisions – Generally. Where an amended code provides discretionary criteria for approval of minor land divisions, it is error for the code to fail to require or provide for notice and hearing before the local government makes a final decision concerning a proposed minor land division. *Nicolai v. City of Portland*, 19 Or LUBA 142 (1990).