36.8 Nonconforming Uses – Regulation. The scope of a nonconforming use is confined to the uses that occur on the subject property; off-site activities, i.e., those that occur on other properties, such as leaving the property to purchase supplies or inputs for the nonconforming use, play no role in verifying the existence, nature, etc. of the nonconforming use on the subject property and are not subject to analysis or regulation as part of the nonconforming use. *Morgan v. Jackson County*, 80 Or LUBA 59 (2019).

36.8 Nonconforming Uses – Regulation. In verifying a nonconforming auto yard use, a local government errs in failing to describe the nature and extent of the auto yard use in a way that imposes an upper limit on the number of vehicles stored on-site, consistent with the upper number present at or approximate to the relevant date. Limiting the physical extent of the auto yard use to that which is visible in an aerial photograph from the relevant year and limiting annual sales of vehicles to the approximate number sold in the relevant year are not sufficient to prevent unauthorized expansion or alteration of the nonconforming use where the operator could stockpile more vehicles on-site, for example, by parking them at tighter intervals or stacking them, than were present in the relevant year. *Morgan v. Jackson County*, 80 Or LUBA 59 (2019).

36.8 Nonconforming Uses – Regulation. Even if a structure qualifies as a nonconforming structure with regard to a general 20-foot setback required in the applicable zoning district, that does not obviate a 30-foot setback requirement for schools, where the use of the structure is to be converted for the first time to a school. *Kaimanu v. Washington County*, 70 Or LUBA 217 (2014).

36.8 Nonconforming Uses – Regulation. Even if a structure qualifies as a nonconforming structure with regard to a general 20-foot setback required in the applicable zoning district, that does not obviate a land use code off-street parking requirement for schools, where the use of the structure is to be converted for the first time to a school. *Kaimanu v. Washington County*, 70 Or LUBA 217 (2014).

36.8 Nonconforming Uses – Regulation. Where LUBA concludes that applicable local nonconforming use law might not regulate a change from one conforming use to another conforming use in a nonconforming structure, but no party challenges a hearings officer's conclusion that local nonconforming use law does regulate such a change of use, LUBA will consider petitioner's challenge to the adequacy of the hearings officer's findings that an existing structure qualifies as a nonconforming use and that the proposal may be approved as an alteration of a nonconforming use. However, LUBA will not preclude the hearings officer from considering on remand whether the nonconforming use regulations apply in that circumstance. *Kaimanu v. Washington County*, 70 Or LUBA 217 (2014).

36.8 Nonconforming Uses – Regulation. A city correctly interprets its development code to permit a change of use, without requiring that the nonconforming development on the site be brought into conformance with current development code standards, where the land use code expressly distinguishes between nonconforming uses and nonconforming development and the permit applicant proposed no change in the nonconforming development, only a change from one permitted use to another permitted use. *Nielsen v. City of Gresham*, 66 Or LUBA 24 (2012).

36.8 Nonconforming Uses – Regulation. Where a local government decision appears to authorize a nonconforming use and additional dwelling without notice or findings to support those approvals, LUBA will remand the decision. *DLCD v. Curry County*, 33 Or LUBA 728 (1997).

36.8 Nonconforming Uses – Regulation. When a local government determines a use is a nonconforming use, it must establish the parameters of the nonconforming use. Any changes in the nonconforming use after it became nonconforming, are governed by the code provisions controlling changes of nonconforming uses, not by former code performance standards applicable to the use before it became nonconforming. *Spathas v. City of Portland*, 28 Or LUBA 351 (1994).

36.8 Nonconforming Uses – Regulation. 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).

36.8 Nonconforming Uses – Regulation. 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).

36.8 Nonconforming Uses – Regulation. Where a local government correctly determines that a parking lot is a nonconforming use, and was not automatically made an approved conditional use under applicable code provisions, it commits no error in failing to apply plan and code provisions that would apply to expansion of the parking lot if it were correctly viewed as a conditional use. *Glisan Street Assoc., Ltd. v. City of Portland*, 25 Or LUBA 116 (1993).

36.8 Nonconforming Uses – Regulation. The statutory provisions set out at ORS 215.130 governing regulation of nonconforming uses apply to counties, not to cities. *Hood River Sand v. City of Mosier*, 24 Or LUBA 381 (1993).

36.8 Nonconforming Uses – Regulation. Where a challenged ordinance requires discontinuation of a use after expiration of a five-year amortization period, but also allows a property owner to apply for hardship relief if such property owner can substantiate that an investment made exclusively in the nonconforming use cannot be adequately amortized within the five-year period specified by such ordinance, property owners have no basis to contend their property has been taken until they have applied for and been denied the hardship relief. *Cope v. City of Cannon Beach*, 23 Or LUBA 233 (1992).