1   BEFORE THE LAND USE BOARD OF APPEALS

2   OF THE STATE OF OREGON

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5 ROBERT HARRELL, JR., and   )
6 HARRELL LAND AND LIVESTOCK, LTD.,   )
7   )
8   Petitioners,   )
9   ) LUBA Nos. 94-152 and 94-153
10   vs.   )
11   )   FINAL OPINION
12 BAKER COUNTY,   )   AND ORDER
13   )
14   Respondent,   )
15   )
16
17   Appeal from Baker County.
18
19   James H. Bean, Portland, filed the petition for review.
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21   No appearance by Baker County.
22
23   KELLINGTON, Referee; HOLSTUN, Chief Referee; SHERTON,
24 Referee, participated in the decision.
25
26   REVERSED   11/10/94
27
28   You are entitled to judicial review of this Order.
29 Judicial review is governed by the provisions of ORS
30 197.850.

1   Opinion by Kellington.

2   **NATURE OF THE DECISION**

3   Petitioners appeal two orders of the county court. The

4   first order approves a partition of a 63.58 acre parcel

5   zoned Exclusive Farm Use (EFU) into two parcels and a

6   conditional use permit for a nonfarm dwelling on one of the

7   parcels (Bootsma proposal). The second order approves a

8   partition of an adjacent 34 acre EFU zoned parcel into three

9   parcels and two conditional use permits for nonfarm

10   dwellings on those parcels (Eastland proposal).

11   **FACTS**

12   The subject land was originally owned by Bootsma in the

13   form of a 97.58 acre parent parcel. In 1992, the county

14   approved Bootsma's application to divide the parent parcel

15   into two parcels (subject parcels), consisting of 38.58

16   acres and 59 acres. In 1992, the county also approved two

17   conditional use permits for a nonfarm dwelling on each of

18   the subject parcels. In February, 1994, the county approved

19   a lot line adjustment for the subject parcels, adjusting

20   their sizes to 34 acres and 63.58 acres, respectively.[1] In

21   March, 1994, Bootsma sold the 34 acre parcel to Eastland.

22   In April, 1994, both Bootsma and Eastman submitted

23   applications to the county to divide their respective

24   parcels and for additional nonfarm dwelling approvals for

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[1]By definition, a lot line adjustment does not have the legal effect of dividing parcels. ORS 92.010(7)(b).

1   the proposed new parcels. The Bootsma proposal is to create

2   a 10 acre parcel and a 53.38 acre parcel, and to obtain

3   conditional use approval for an additional nonfarm dwelling.

4   The Eastland proposal is to create two 12 acre parcels and a

5   10 acre parcel, and to obtain conditional use approval for

6   two additional nonfarm dwellings. The planning commission

7   approved both proposals, and petitioners appealed to the

8   county court.   The county court affirmed the planning

9   commission decision. This appeal followed.

10   **ASSIGNMENTS OF ERROR**

11   Petitioners assign several errors to the challenged

12   decisions.   However, both decisions suffer from a single,

13   fatal defect.   Therefore, we only address one of

14   petitioners' assignments. ORS 215.263(7) provides:

15   "The governing body of a county shall not approve
16   any proposed division of a lot or parcel [zoned
17   EFU] described in * * * ORS 215.284(1) or (2)."[2]

18   ORS 215.284(2) addresses approval of nonfarm dwellings

19   on EFU zoned land. The parcels described in ORS 215.284(2)

20   are   parcels   created   before   January   1,   1993.

21   ORS 215.284(2)(c).   While somewhat awkward, read together,

22   ORS 215.263(7) and ORS 215.284(2)(c) prohibit the further

23   division of an EFU zoned parcel that was created before

24   January 1, 1993, on which a nonfarm dwelling has already

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[2]ORS 215.284(1) pertains to land located within the Willamette Valley.
The subject parcels are not located within the Willamette Valley.

1 been approved.   Here, the subject parcels were created

2 before January 1, 1993 and nonfarm dwellings on those

3 parcels have been approved by the county.   Therefore,

4 ORS 215.263(7) and 215.284(2)(c) prohibit further division

5 of the subject parcels.   Consequently, the challenged

6 decision, which purports to approve further divisions of the

7 subject parcels, is erroneous as a matter of law and must be

8 reversed.   OAR 661-10-071(1)(c).

9   The county's decisions are reversed.