Lane County Planning Commission Briefing Memo

March 14, 2017 (Date of Memo)
March 21, 2017 (Date of Work Session)

TO:	**Lane County Planning Commission**
DEPARTMENT:	Public Works / Land Management Division
PRESENTED BY:	Lindsey Eichner, Senior Planner
RE:	Lane Code Chapter 13 Update and Modernization, Land Divisions (509-PA16-05453) (Continued meeting from August 16, 2016)

I. PROPOSED MOTION(S):

No motions are necessary. This is a report and discussion item only.

II. ISSUE:

Review of changes that have been made to the draft language of Lane Code Chapter 13 since the Lane County Planning Commission's (LCPC) last review on August 16, 2016.

The purpose of this work session is to update the LCPC on draft Chapter 13 revisions and provide an opportunity for additional input.

III. DISCUSSION:

A. Background

On July 5, 2016, the LCPC held a public hearing regarding the proposed Lane Code Chapter 13 update. The LCPC closed the public hearing and left the record open for two weeks to allow for the submittal of additional information. The record closed on July 19, 2016.

On August 16, 2016, the LCPC held deliberations on the proposed code changes. No major policy changes were identified at that time but the LCPC indicated their preference that the draft Chapter 13 and Chapter 14 revisions be evaluated together. Staff was asked to return to the Planning Commission at a later date with proposed revisions to both Chapter 13 and Chapter 14. The Planning Commission indicated that the public hearing and record should be reopened at a later date but at such time testimony should be limited to non-substantive housekeeping revisions not involving the fundamental policy issues, which had already been considered by the LCPC.

In February of this year, the Land Use Board of Appeals (LUBA) issued an Opinion that directly affects the property line adjustment language contained in staff's original draft of Chapter 13.

B. **Overview of Proposed Code Revisions**

Since August 16, 2016, staff has made a number of relatively minor and policy-neutral changes to the current draft of Chapter 13, which is included as Attachment 1 to this memo and is presented in track change format.

The primary changes made by staff are in response to the above mentioned LUBA Opinion; Bowerman v. Lane County, which is included as Attachment 2 to this memo. The LUBA opinion impacts both the existing and proposed property line adjustment language in two fundamental ways:

1) LUBA determined that a property line adjustment must be between existing properties. This opinion invalidates the County's current practice of allowing the serial movement of multiple property lines under a single Director level application.

2) The decision will require that staff must make findings to the setbacks and siting standards of the base zone, when the criteria requires a surveyor to certify that the setbacks are conforming.

The Land Management Division has issued an advisory memo outlining the impacts of the decision on current practices. This advisory memo is included as Attachment 3. It should be noted that the LUBA Opinion has been appealed to the Oregon Court of Appeals. Staff is monitoring this appeal closely and will modify the code language according.

IV. ACTION:

No action is requested for this work session.

A. Follow Up

A work session and public hearing is scheduled to be held with the Planning Commission on April 4, 2017. Between now and the next work session/public hearing staff will work to prepare draft findings, make changes to the draft code based on initial LCPC input, send public notice of the upcoming public hearing and circulate a public hearing draft of the proposed code and findings for public comment.

V. ATTACHMENTS

1. Lane Code Chapter 13 Proposed Concept Draft, dated August 8, 2016
2. 2016-008 Bowerman v. Lane County (Egge), dated January 26, 2017
3. Lane County Property Line Adjustment advisory memo, dated February 10, 2017

Lane Code Chapter 13 – Land Divisions and Property Line Adjustments

Sections:

13.010. Purpose

(1) The purpose of this Chapter is to establish standards for property line adjustments and the division of land by partition or subdivision for areas of Lane County outside of the Urban Growth Boundaries of Eugene and Springfield or outside of the incorporated limits of all other small cities pursuant to ORS Chapters 92, 197, and 215.

(2) These regulations are necessary to:

(a) Provide uniform procedures and standards for the division of land;

(b) Coordinate proposals with development plans for highways, utilities, and other public facilities;

(c) Provide for the protection, conservation and proper use of land, water, and other natural resources;

(d) Implement the policies and intent of the Rural Comprehensive Plan;

(e) Ensure adequate lot sizes for homesites and other development;

(f) Encourage safe and convenient access for vehicles, pedestrians, and bicyclists;

(g) Ensure adequate sanitation and water supply services;

(h) Protect the public from pollution, flood, slides, fire, and other hazards to life and property;

(i) Provide for the accurate and timely recording at Lane County Deeds and Records all newly created property boundaries, street, roads, right-of-ways and easements; and

(j) Protect the public health, safety, and general welfare as defined in ORS Chapters 197 and 215.

13.020. General Provisions:

(1) All Subdivision and Partition proposals must conform to state regulations in Oregon Revised Statute (ORS) Chapter 92, Subdivisions, and Partitions, and must conform to the policies of the Lane County Surveyor's Office.

(2) No new lot or parcel created through a Subdivision or Partition can be conveyed without the prior Subdivision or Partition Plan and Final Plat approval, by the Director.

(3) No Subdivision or Partition plat can be filed at Lane County Deeds and Records without the signature of the Director and all of the signatures required by law.

(4) All Subdivision or Series Partition proposals must demonstrate that lots or parcels have adequate utilities, such as an adequate potable water supply, ability to install a septic system, and access to electrical systems.

(5) All subdivision lots created or reconfigured must have adequate vehicle access and parking, as required by zoning and LC 15.137 et seq.

13.030. Definitions

(1) The purpose of this section 13.030 is to define terms that are used in this chapter.

(2) **When a Term Is Not Defined.** Terms not defined in this section will have their ordinary accepted meanings within the context in which they are used. Webster's Third New International Dictionary of the English Language, Unabridged, Copyright 1981, Principal Copyright 1961, will be considered a standard reference for defining the meanings of terms not defined in this section or elsewhere in Lane Code.

(3) **Conflicting Definitions**. Where a term defined in section 13.030 is defined in another section of Lane Code or by other regulations or statutes referenced by this chapter, the term in this section will control.

(a) **Abut**: To share a common boundary with another unit of land.

(b) **Access**: Subject to adopted policies and standards, the means by which a lot, parcel, area or tract directly obtains safe, adequate usable, and legal ingress and egress.

(c) **Area.** The total horizontal area within the boundary lines of a parcel, lot, or unpartitioned or unsubdivided tract of land, exclusive of County or local access i.e., public roads.

(d) **Board.** The Lane County Board of Commissioners.

(e) **Building Site.** That portion of the lot, parcel or unpartitioned or unsubdivided tract of land upon which the building and appurtenances are existing or proposed, including adequate areas for sewage disposal, light and air clearances, proper drainage, appropriate easements, and if applicable, other items required by the Lane Code.

(f) **Cluster Subdivision.** A subdivision for which the applicable zoning district allows relaxed lot area, coverage and setback requirements, and alternative types of dwellings as specified in LC Chapters 10 and 16. Consistency with the cluster subdivision Policy #23 set forth under Goal 2, Land Use Planning of the Lane County General Plan Policies is also required by LC Chapter 16.

(g) **Contiguous.** Having at least one common boundary line greater than eight feet in length.

(h) **Community Water System.** A Community Water System is a public water system that has 15 or more connections used by year-round residents, or that regularly serves 25 or more year-round residents.

(i) **Dangerous Areas.** Dangerous areas can include floodplain and floodway (LC 10.271, 16.244), coastal overlay combining zones (LC 10.240-270, 16.237-243), unstable surface or subsurface conditions, areas identified as dangerous land slide areas, land subject to erosion, groundwater seepage conditions, tsunami inundation, and other geological conditions (LC 10.025-30, 16.005).

(j) **Department.** The Lane County Department of Public Works.

(k) **Director.** . The Planning Director of Lane County or the Planning Director's designated representative.

(l) **Improved Spring.** A spring that has been improved with a spring box, screened overflow which discharges to daylight, an outlet pipe provided with a shutoff valve, a bottom drain, an access to manhole with a tightly fitting cover, and a curb around the manhole.

(m) **Improvement Agreement.** An agreement that, under prescribed circumstances, may be used in lieu of required improvements of a performance agreement. It is a written agreement that is executed between the County and a developer, in a form improved by the Board, in which the developer agrees to sign at a time any and all petitions, consents, etc., and all other documents necessary to improve an abutting road or other required improvements to County standards and to waive all rights or remonstrance's against such improvements, in exchange for which the County agrees that the execution of the improvement agreement will be deemed to be in compliance with the improvement requirements of the Code.

(n) **Lawfully Established Unit of Land.**

(i) A lot or parcel created pursuant to ORS 92.010 to 92.190; or

(ii) Another unit of land:

(aa) Created in compliance with all applicable planning, zoning and subdivision

Comment [LC1]: Consistent with ORS 92.010 definition, with the addition of (b)(iii) & (d).

Comment [LC2]: Includes Validation of a unit of land; ORS 92.176

or partition ordinances and regulations; or

(bb) Created by deed or land sales contract, if there were no applicable planning, zoning or subdivision or partition ordinances or regulations; or

(cc) That received final legal lot verification approval from the County pursuant LC 13.140.

(iii) 'Lawfully established unit of land' does not mean a unit of land created solely to establish a separate tax account.

(iv) A lot or parcel lawfully created in compliance with ORS 92 remains a discrete lot or parcel, unless the lot or parcel lines are vacated or the lot or parcel is further divided, as provided by law.

(o) **Legal Lot**. A lawfully established unit of land verified by Lane County through a legal lot verification or validation of a unit of land process.

(p) **Legal Lot Verification.** A determination that a unit of land was created in conformance with the Lane Code and other applicable law.

(q) **Lot.** A unit of land that is created by a subdivision of land.

Comment [LC3]: ORS 92.010

(r) **Minor Shift.** A minor shift of a property line that does not result in any of the following:

Comment [LE4]: Staff received suggestions raning from 50% to ¼ acre. 25% modification seems the most reasonable when trying to differentiate between a minor shift and a reconfiguration.

(i) Modification of acreage of the smaller lot or parcel by more than 25%; and

(ii) Rearrangement of property lines exceeding what is necessary to alleviate a non-conforming setback or correct a discrepancy;

(iii) Change in the number of lots or parcels in a plat; and

(iv) Relocation of access for a lot or parcel.

(s) **Panhandle.** A narrow extension of a tract, 60 feet or less in width, which is used as access to the main portion of the tract.

(t) **Parcel.**

Comment [LC5]: ORS 92 defines a parcel as : A single unit of land that is created by a partition of land. This definition is from ORS 215.010, and is used to be consistent throughout all of the land use code chapters.

(i) Includes a unit of land created:

(aa) By partitioning land as defined in LC 13.030; or

(bb) In compliance with all applicable planning, zoning and partitioning ordinances and regulations; or

(cc) By deed or land sales contract if there are no applicable planning, zoning or partitioning ordinances or regulations.

(ii) It does not include a unit of land created solely to establish a separate tax account.

(u) **Partition**. Either an act of partitioning land or an area or tract of land partitioned.

Comment [LC6]: ORS 92.010

(v) **Partition Plat.** Includes a final map and other writing containing all the descriptions, locations, specifications, provisions, and information concerning a partition.

Comment [LC7]: ORS 92.010

(w) **Partitioning Land.** Dividing land to create not more than three parcels of land within a calendar year but does not include:

Comment [LC8]: ORS 92.010 definition, with a couple strike-outs.

(i) Dividing land as a result of a lien foreclosure, foreclosure of a recorded contract for the sale of real property or the creation of cemetery lots;

(ii) Adjusting a property line as property line adjustment is defined in LC 13.030;

(iii) Dividing land as a result of the recording of a subdivision or condominium plat;

(iv) Selling or granting by a person to a public agency or public body of property for state highway, County road, City Street or other right-of-way purposes, if the road or right-of-way complies with the Lane County Rural Comprehensive plan and ORS 215.213(2)(p) to (r). However, any property sold or granted for state highway, county road, city street or other right of way purposes continue to be considered a single unit of land until the property is further subdivided or partitioned; or

Comment [LC9]: These are basically Property Line Adjustments not land divisions, based on the uses allowed per ORS 215.213(2)(p) to (r).

(v) Selling or granting by a public agency or public body of excess property resulting from the acquisition of land by the state, a political subdivision or special district for highways, county roads, city streets or other right of way purposes when the sale or grant is part of a property line adjustment incorporating the excess right of way into adjacent property.

(x) **Performance Agreement.** A written agreement executed by a subdivider or partitioner in a form approved by the Director and accompanied by a security also approved by the Director. The security must be of sufficient amount to ensure the faithful performance and completion of all required improvements in a specified period of time.

(y) **Plat.** A final diagram and other documents relating to a subdivision, replat, or partition.

Comment [LC10]: ORS 92.010

(z) **Preliminary Plan.** A preliminary map or diagram related to a subdivision, partition, or replat.

(aa) **Property Line.** "Property line" means the division line between two units of land.

Comment [LC11]: ORS 92.010

(bb) **Property Line Adjustment.** Relocation or elimination of all or a portion of the common property line between abutting properties that does not create an additional lot or parcel.

Comment [LC12]: ORS 92.010

(cc) **Public Water System.** A public water system is a water system that serves four or more connections or ten or more people for 60 or more days out of the calendar year.

(dd) **Replat.** The act of platting the lots, parcels, and easements in a recorded

subdivision or partition plat to achieve a reconfiguration of the existing subdivision or partition plat or to increase or decrease the number of lots or parcels in the subdivision or partition.

(ee) **Road.** The term road, street, or highway will be considered synonymous and will include the entire area and all lawful improvements between the right-of-way lines of any public or private way that is created to provide ingress or egress to land. "Road" includes those listed in the definition in LC 15.010(35).

(ff) **Sensitive Areas.** Sensitive areas include but are not limited to wetlands, riparian setback areas (LC 16.253), endangered species habitat, and wildlife habitat areas listed in LM 11.400.

(gg) **Series Partition**. Series Partition means a series of partitions of land located within this state resulting in the creation of four or more parcels over a period of more than one calendar year.

(hh) **Sewage Facility**. The sewer pipes, drains, treatment and disposal works, and other facilities useful or necessary in the collection, treatment, or disposal of sewage, industrial waste, garbage, or other wastes.

(i) Sewage Facility, Community. A sewage facility, whether publicly or privately owned, which serves more than one parcel or lot.

(ii) Sewage Facility, Individual. A privately owned sewage facility which serves a single parcel or lot for the purpose of disposal of domestic waste products.

(iii) Sewage Facility, Public. A sewage facility, whether publicly or privately owned, which serves users for the purpose of disposal of sewage and which facility is provided, or is available, for public use.

(ii) **Street.** The term is synonymous with "road."

(jj) **Subdivide Land.** To divide an area or tract of land into four or more lots within a calendar year.

(kk) **Subdivision.** Either an act of subdividing land or an area or a tract of land subdivided as defined in this section.

(ll) **Subdivision Plat.** A final map or other writings containing all the descriptions, locations, specifications, dedications, provisions, and information concerning a subdivision.

(mm) **Tract**. One or more contiguous lots or parcels under the same ownership.

Comment [LC13]: ORS 92.010

Comment [LC14]: Changing to be consistent with LC Chp 15, but chose not to bring over the entire definition, as it is very long and not relevent to Chp 13 without referencing Chp 15.

Do we need a definition of "Right-of-Way" in Chp 13? No.

Comment [LE15]: ORS 92.305(10)

Comment [LC16]: ORS 92.010

Comment [LC17]: ORS 92.010

Comment [LC18]: ORS 92.010

Comment [LC19]: Updated to ORS 215.010 Definition, suggest we do the same in Chp 16 as well.

13.040. Partition and Subdivision Procedure

(1) **Subdivision and Partition Approval is a Two-Step Process**. Applications for subdivision or partition approval will be processed first by means of a preliminary plan application and secondly a final plat application:

(a) **Step One: Preliminary Plan.** The preliminary plan must be approved before the final plat can be submitted for review. Preliminary plans will be processed using a Type II procedure pursuant to LC 14.030(1)(b).

(i) Preliminary Partition plans are subject to LC 13.050 and 13.060.

(ii) Preliminary Subdivision plans and Preliminary Series Partition plans are subject to LC 13.070 and 13.080.

(b) **Step Two: Final Plat.** Compliance with all conditions of approval of the preliminary plan must be demonstrated prior to final plat approval. Review of conditions of approval will be processed using a Type I procedure pursuant to LC 14.030(1)(a) and subject to the submittal requirements of LC 13.090 and criteria of LC 13.100.

(i) **Technical Review of the Final Plat.**

(aa) Upon receipt of the final plat and related documents as described in this Chapter, the Director must review the final plat map and documents to determine that the plat conforms with the approved preliminary plan, including any special conditions of approval, and that the final plat complies with provisions of this Chapter and any applicable laws.

(bb) The County Surveyor must review the plat for compliance with ORS 92 requirements for accuracy, completeness, and all prescribed Surveyor's office policies. The County Surveyor will collect separate fees as provided by Lane Manual. The County Surveyor may perform a field inspection to verify that the plat reflects on the ground conditions, and may enter the property for this purpose. If it is determined that there is not full conformity, the County Surveyor must advise the developer of the changes or additions that must be made, and afford the developer an opportunity to make such changes or additions.

(cc) When the Director and County Surveyor determine that full conformity has been achieved, both must sign the plat map. The County Surveyor's office will then file the approved plat map and any other necessary documents at Lane County Deeds and Records. The Director will notify the applicant in writing within three days of the filing of the plat and associated documents.

(2) **Approval Period.** Preliminary plan approval will be effective for a period of four years from the date of final approval. The Director may approve a phased subdivision with an overall time frame of more than four years between preliminary and final plat approvals pursuant to LC 14.090(5).

(3) **Extensions.** An extension of the time period to complete the conditions of approval is allowed provided:

(a) All requests for extensions comply with LC 14.090(6).

(b) Preliminary plan timeline extensions cannot be approved cumulatively for a period greater than seven years from date of original final approval.

(c) A denial of a request for an extension will not preclude an application for preliminary partition plan or preliminary subdivision plan approval set forth in LC Chapter 13.

(4) Jurisdictional Overlap.

(a) **Preliminary Plan Applications Involving Jurisdictional Overlap**. Whenever a lot or parcel to be divided lies within multiple jurisdictional boundaries the following provisions apply:

(i) An urban growth boundary (UGB) or city limits boundary does not necessarily constitute a property line.

(ii) A land division along a city limit, UGB boundary, or County boundary can be approved if all lots or parcels with in Lane County's jurisdiction meets County standards, provided both the city or adjoining county and Lane County approve the land division.

13.050. Preliminary Partition Plan Submittal Requirements

(1) Submittal Requirements:

(a) **Applicability:** An application for preliminary plan approval must be filed with the Department as a Type II permit, pursuant to LC 14.030(1)(b). The application must be submitted on a form provided by the Director and address all approval criteria.

(b) The following information is required to be included on the preliminary plan or by separate attachment:

(i) General Information:

(aa) Assessor's map and tax lot number of the subject property.

(bb) The date the preliminary plan was prepared.

(cc) Drawing scale and north arrow.

(dd) "Preliminary Partition Plan" must be contained within the title.

(ee) Zoning of the subject property, including any overlay zones.

(ff) A title block including the names and addresses of the owners of the subject property and, as applicable, the name of the applicant, engineer, surveyor, agent, and the date of the survey.

(gg) Map of the subject property or properties being divided, in its current configuration.

(hh) Evidence that the subject property is a legal lot or multiple legal lots.

(ii) **Existing Conditions.** Except where the Director deems certain information is not relevant, applications for preliminary plan approval must contain all of the following information on existing conditions:

(aa) Existing streets or roads (public or private), including location, names, right-of-way and pavement widths on and abutting the subject property, location of any existing access point(s), and any driveways within 100 feet of the existing access point(s).

(bb) City limits and Urban Growth Boundary lines.

(cc) Location, width, and purpose of all existing recorded easements on and abutting the site.

(dd) The location and present use of all structures on the site and indication of which, if any structures are to remain after platting.

(ee) Location and identity of all utilities on and adjacent to the site.

(ff) Location of all existing subsurface sewage facilities, including drain fields and associated easements on the site.

(gg) Location of any existing well or other domestic water source on the site, including water lines.

(hh) All known dangerous areas, sensitive areas, and natural features such as drainage ways, rock outcroppings, aquifer recharge areas, wetlands, marshes, beaches, dunes and tidal flats, or floodplain.

(iii) **Proposed Development.** Except where the Director deems certain information is not relevant, applications for preliminary plan approval must contain all of the following information:

(aa) Approximate dimensions, area calculation (e.g., in square feet or acres), and identification numbers for all proposed parcels and tracts.

(bb) Location, names, right-of-way dimensions, and approximate radius of street curves. All streets that are being held for private use and all reservations and restrictions relating to such private tracts must be identified.

(cc) Location, width, and purpose of all proposed easements.

(dd) Proposed deed restrictions, if any, in outline form.

(ee) The approximate location and identity of other utilities, including the locations of proposed well(s) or other domestic water source, proposed subsurface sewage facilities, proposed electrical lines, underground or above ground, as applicable.

Comment [LE20]: Not required if no utilities are proposed.

(ff) Evidence of compliance with the applicable base zoning.

(A) For all land divisions in the Exclusive Farm Use Zone, submit a statement or proof describing how the proposed land division complies with ORS 92.044(2).

(B) For all land divisions within an adopted urban growth boundary or within the Eugene-Springfield Metropolitan Area General Plan boundary, provide evidence that the proposal complies with the applicable comprehensive plan and any applicable refinement plans.

(iv) Any of the following information may be required by the Director to supplement a proposed preliminary plan:

(aa) For parcels within an adopted urban growth boundary, show ground elevations by contour lines at one-foot, two-foot, and five-foot vertical intervals on a copy of the preliminary plan. Such ground elevations must be related to some established benchmark or other datum approved by the County Surveyor. The Director may waive this standard for partitions

when grades, on average, are less than 10%. Ground elevations will comply with the following intervals dependent on slope:

(A) One-foot contour intervals for ground slopes up at 5%;

(B) Two-foot contour intervals for ground slopes between 5% and 10%;

(C) Five-foot contour intervals for ground slopes exceeding 10%.

Comment [LC21]: From current LC 13.100(3)(f), only for land within UGB's

(bb) Where the plan includes natural features subject to the conditions or requirements contained in Lane Code, materials must be provided to demonstrate that those conditions and/or requirements can be met.

(c) Five (5) paper copies of a preliminary plan map for the proposed partition, two copies of all supporting documents, and one electronic copy. The preliminary plan must be drawn to a scale divisible by ten of not less than one inch equals 20 feet and not more than one inch equals 400 feet. In addition, submit a reduced-sized, legible copy of the preliminary plan on an 11-inch by 17-inch sheet or smaller.

13.060. Preliminary Partition Plan Review Criteria

(1) Review Criteria:

(a) **Legal Lot.** The subject property or tract must be a lawfully established unit of land pursuant to LC 13.140.

(b) **Conformity with the Zoning.** All partitions must conform to all of the applicable zoning requirements in Lane Code.

(i) If the subject property is located within an adopted urban growth boundary or the Eugene Springfield Metropolitan General Area Plan, the land division must comply with the applicable comprehensive plan and any applicable refinement plans.

(c) **Access.**

(i) A partition or replat must provide for the continuation of existing major and secondary roads in adjoining land divisions, or for their proper projection when adjoining property is not yet divided. Such roads must meet the minimum requirements for roads set forth in Lane Code Chapter 15, unless an exception is approved per LC 15.900.

(ii) Parcels must have verifiable access by way of a road, either a County or City maintained public road, local access road, or a private easement in accordance with the following standards:

(aa) Each proposed parcel must abut a public road or private easement for at least 30 feet for access; or, if access is taken through another jurisdiction, at a minimum, the portion of the access must conform to that jurisdiction's standards.

Comment [LE22]: Another suggestion: "Across property that is located in another road authority's jurisdiction."

(bb) There is a legal right appurtenant to the parcels to use the road or easement for ingress and egress. A legal right to use an easement may be evidenced by:

(A) An express grant or reservation of an easement in a document recorded with the County Recorder;

(B) A decree or judgement issued by a court of competent jurisdiction;

(C) An order from the Board establishing a statutory way of necessity or gateway road; or

(D) An express easement set forth in an approved and recorded subdivision or partition.

(cc) The road or private easement complies with LC 15.135.

(d) Dangerous and Sensitive Areas.

(i) Each proposed parcel is configured in such a way that the presence of dangerous and sensitive areas will not preclude or pose a hazard to future development of each parcel.

(ii) The Director must consider the recommendation of the County Engineer, municipal officials within Urban Growth Boundaries, and other professional technical sources when determining the presence of dangerous and sensitive area conditions and mitigation measures.

(iii) Areas of floodplain, water areas, and wetlands will be retained in their natural state to the extent practicable to help preserve water quality and protect water retention, overflow, and natural functions.

(iv) The Director may require a statement identifying the presence of significant dangerous and/or sensitive areas on the subject property to be recorded in a Notice document at Lane County Deeds and Records when the final plat is recorded.

(aa) Optional: If physical conditions change on a specific parcel, the owner can request from the Director to approve the modification or removal of the Notice document. The owner must make a Type I application, pursuant to LC 14.030(1)(a), and provide the Director evidence before the Director is able to approve the modification or removal of the Notice document.

(e) Grading, Excavation and Clearing. Grading and clearing by mechanical equipment for road and/or development purposes may be restricted or regulated either at the time of tentative plan approval or final approval if there is a finding that such grading or clearing presents a threat of pollution, contamination, silting of water bodies or water supplies, erosion and slide damage, or alteration of natural drainage

patterns in the area. In all cases, excessive grading, excavation, and clearing must be avoided when detrimental to soil stability and erosion control.

(f) **Utility Easements**. Easements for utilities must be dedicated whenever necessary. Such easements must be clearly labeled for their intended purpose.

(g) **Drainage Easement.** If the subject property is traversed by an existing or planned watercourse, drainage way, channel, or stream, a drainage easement conforming substantially to the lines of such watercourse must be provided. The easement must be of an adequate width for the purpose of carrying water and providing no less than five feet from the edge of each side of the watercourse for vector control or maintenance vehicles.

(h) **Sewage Facilities.** All parcels are required to comply with one of the following options:

(i) If the subject property contains an existing septic system, the applicant is required to complete and submit to the Director an Existing Septic System Certification form, provided by the Director.

(ii) Public or Community Sewage Facilities:

(aa) If connection to an existing public or community sewage facility is proposed, the applicant must submit evidence that the service agency is mutually bound and able to serve the development.

(bb) When a new public or community sewage facility is proposed for the division, a master plan for the sewage collection and disposal system must be submitted to Lane County and the State Department of Environmental Quality for approval.

(iii) Individual Sewage Facilities:

(aa) If the proposed parcels will not be connected to a public or community sewage facility, the applicant may demonstrate that each parcel provides sufficient area and suitable soil to accommodate an individual sewage facility at time of final plat; or

(A) If this requirement cannot be satisfied, but there is an area on a contiguous lot or parcel that can accommodate an individual sewage facility, the applicant can propose to record an easement for an off-site facility. If the off-site facility is proposed on a lot or parcel in a different ownership, written documentation must be provided acknowledging the agreement. or

(B) If proof of access to a sewage disposal system is not verified for each parcel during the land division process, the following language is required to be recorded in a Notice document at Lane County Deeds and Records when the final plat is recorded:

(i-i) "An approved subsurface sewage disposal site evaluation has not been determined as part of Partition Plat ^filing number^ and will be required prior to submittal of a septic system installation permit on ^parcel^."

(ii-ii) Optional: If conditions change on a specific parcel, the owner can request from the Director to approve the modification or removal of the Notice document. The owner must make a Type I application, pursuant to LC 14.030(1)(a), and provide the Director evidence of compliance with (ii) or (iii)(aa) above in this subsection before the Director is able to approval the modification or removal of the Notice document.

(i) Water Supply. Each proposed parcel must comply with following standards:

(i) Acceptable water sources:

(aa) A new or existing well or improved spring;

(bb) A new or existing shared well or improved spring that currently serves three or less connections or fewer than 10 people for 60 or more days per year;

(cc) An existing public water system; or

(dd) A new public water system approved by Lane County Environmental Health.

(ii) Prior to final plat approval, areas designated by the Board as having problems in the quantity or quality of available water as adopted into Lane Manual Chapter 13.010 must also comply with the following requirements for all vacant proposed parcels that are less than 20 acres in size:

(aa) If the subject property is designated as quantity limited, as listed in Lane Manual 13.010(2), prior to final plat approval, the applicant must submit proof demonstrating it can sustain the proposed development with sufficient water. The Director can require an aquifer study prepared by a registered geologist or licensed engineer.

(bb) If the subject property is located in a quality limited area, as listed in Lane Manual 13.010(1), provide bacteriology/chemical tests that show compliance with standards set by the Oregon Health Authority Drinking Water Services Program and Lane County for the mapped contaminant prior to final plat approval. At minimum, a test must be conducted on every third well.

(A) If contaminants are found in the water, as a condition of preliminary approval, recording of a Notice document stating the presence of contaminant(s) on affected parcel(s) may be

required. The notice is to be recorded at Lane County Deeds and Records when the final plat is recorded.

(B) Optional: If conditions change on a specific parcel, the owner can request from the Director to approve the modification or removal of the Notice document. The owner must make a Type I application, pursuant to LC 14.030(1)(a), and provide the Director evidence of adequate potable water in conformance with (i) thru (v) above in this subsection before the Director is able to remove the Notice document.

(iii) Water Availability:

(aa) Public or Community Water System. If connection to an existing public or community water system is proposed, the applicant must submit evidence that the service agency is mutually bound and able to serve the development prior to final plat.

(bb) Individual Water Systems. When parcels are to be served by individual or shared water systems, they must comply with either (A) or (B) below.

(A) When parcels will be served by individual or shared water systems, sufficient evidence may be submitted to show that each parcel will have an adequate supply of water prior to final plat approval. Adequate supply of water for parcels created by a land division must comply with the following standards:

(i-i) For an individual well, the well must produce on average five gallons per minute during a five-hour pump test; or

(ii-ii) For a well that produces less than five gallons per minute, but at least one gallon per minute, the plans must provide for a storage tank according to Lane Manual 9.160(1)(b); or

(iii-iii) Submit a report prepared by a licensed engineer or hydrologist certifying that the individual or shared water system can adequately supply the potential development of the land division; or

(B) If an adequate supply of water is not verified during the partition process pursuant to (aa) or (bb)(A) above, the following language is required to be recorded in a Notice document at Lane County Deeds and Records when the final plat is recorded:

(i-i) "Water availability was not verified as part of Partition Plat ^filing number^ and proof of an adequate supply

of water may be required to be verified at time of building permit as determined by the Building Official on ^parcel^(s)."

(ii-ii) Optional: If conditions change on a specific parcel, the owner can request from the Director to approve the modification or removal of the Notice document. The owner must make a Type I application, pursuant to LC 14.030(1)(a), and provide the Director evidence of adequate potable water in conformance with (i) thru (v) above in this subsection before the Director is able to remove the Notice document.

(iv) **Water Quality.** To demonstrate that the available water is potable for any individual or shared water system, prior to final plat approval the owner may submit a bacteriology/chemical test conducted by a certified water testing lab showing compliance with standards set by the Oregon Health Authority Drinking Water Services Program and Lane County for the following contaminants:

(aa) Total Coliform and Fecal Coliform/E. Coli

(bb) Nitrates/nitrites

(j) **Additional Criteria for Partitions in the Exclusive Farm Use Zone**.

(i) While taking into consideration the location and surrounding area of the proposed partition, each parcel must comply with ORS 92.044(1)(b).

(k) **Conditions of Approval**. The Director has the right to attach such conditions as are necessary to carry out provisions of Lane Code, and other applicable ordinances and regulations.

Comment [LC23]: Lane manual 9.163

Comment [LE24]: ORS 92.044; this has been a requirement in the statute since 1983 but Lane Code has never addressed this section.

13.070. Preliminary Subdivision and Series Partition Plan Submittal Requirements

(1) Submittal Requirements:

(a) **Applicability:** An application for Preliminary Subdivision or Series Partition plan approval must be filed with the Department as a Type II permit, pursuant to LC 14.030(1)(b). The application must be submitted on a form provided by the Director, addressing all approval criteria.

(b) The following information is required to be included on the preliminary plan or by separate attachment:

(i) General Information:

(aa) Assessor's map and tax lot number of the subject property.

(bb) Date the preliminary plan was prepared.

(cc) Drawing scale and north arrow.

(dd) "Preliminary Partition Plan" or "Preliminary Subdivision Plan" must be contained within the title.

(ee) Zoning of the subject property, including any overlay zones.

(ff) A title block including the names and addresses of the owners of the subject property and, as applicable, the name of the applicant, engineer, surveyor, agent, and the date of the survey.

(gg) Map of the subject property or properties being divided, in its current configuration.

(hh) Evidence that the subject property is a legal lot or multiple legal lots.

(ii) **Existing Conditions.** Except where the Director deems certain information is not relevant, applications for preliminary plan approval must contain all of the following information on existing conditions:

(aa) Existing streets or roads (public or private), including location, names, right-of-way and pavement widths on and abutting the subject property, location of any existing access point(s), and any driveways within 100 feet of the existing access point(s).

(bb) City limits and Urban Growth Boundary lines.

(cc) Location, width, and purpose of all existing recorded easements on and abutting the site.

(dd) The location and present use of all structures on the site and indication of which, if any structures are to remain after platting.

(ee) Location and identity of all utilities on and adjacent to the site.

(ff) Location of all existing subsurface sewage facilities, including drain fields and associated easements on the site.

(gg) Location of any existing well or other domestic water source on the site, including water lines.

(hh) All known dangerous areas, sensitive areas, and natural features such as drainage ways, rock outcroppings, aquifer recharge areas, wetlands, marshes, beaches, dunes and tidal flats, or floodplain.

(iii) **Proposed Development.** Except where the Director deems certain information is not relevant, applications for preliminary plan approval must contain all of the following information:

(aa) Approximate dimensions, area calculation (e.g., in square feet or acres), and identification numbers for all proposed lots, parcels and tracts;

(bb) Location, names, right-of-way dimensions, approximate radius of street curves, and approximate finished street center line grades. All streets and tracts that are being held for private use and all reservations and restrictions relating to such private tracts must be identified;

(cc) Location, width, and purpose of all proposed easements;

(dd) Proposed deed restrictions, if any, in outline form.

(ee) Approximate location and identity of utilities, including the locations of proposed well(s) or other domestic water source, proposed subsurface sewage facilities, proposed electrical lines, underground or above ground, as applicable;

(ff) Evidence of compliance with the applicable base zoning;

(A) For all land divisions in the Exclusive Farm Use Zone, submit a statement or proof describing how the proposed land division will comply with ORS 92.044(1)(b).

(B) For all land divisions with an adopted urban growth boundary or within the Eugene-Springfield Metropolitan Area General Plan boundary, provide evidence that the proposal complies with the applicable comprehensive plan and any applicable refinement plans

(gg) Proposed uses of the property, including all areas proposed to be dedicated as public right-of-way or reserved as open space for the purpose of surface water management, recreation, or other use;

(hh) For properties subject to coastal combining zones, provide a copy of an approved preliminary investigation or hazards checklist based on the preliminary plan map and an approved site investigation report, if required by the preliminary investigation or hazards checklist;

(ii) For properties regulated by any other overlay or combining zones than those listed in (hh) above, provide documentation that the land division conforms with the overlay zone.

(jj) Evidence that each proposed lot or parcel can be served by local utility companies or districts.

(iv) Any of the following information may be required by the Director to supplement a proposed preliminary plan:

(aa) For lots or parcels within an adopted Urban Growth Boundary, show ground elevations by contour lines at one-foot, two-foot, and five-foot vertical intervals on a copy of the preliminary plan. Such ground elevations must be related to some established benchmark or other datum approved by the County Surveyor. The Director may waive this standard for partitions when grades, on average, are less than 10%. Ground elevations will comply with the following intervals dependent on slope:

(A) One-foot contour intervals for ground slopes up at 5%;

(B) Two-foot contour intervals for ground slopes between 5% and 10%;

(C) Five-foot contour intervals for ground slopes exceeding 10%.

Comment [LC25]: From current LC 13.100(3)(f), only for land within UGB's

(bb) The location and elevation of the closest benchmark(s) within or adjacent to the site (i.e., for surveying purposes);

(cc) Where the plan includes natural features subject to the conditions or requirements contained in Lane Code, materials may be required to be provided to demonstrate that those conditions and/or requirements can be met.

(dd) Profiles of proposed or existing drainage ways, wetlands, or Class 1 streams.

(ee) If lot areas are proposed to be graded, a plan showing the nature of cuts and fills, and information on the character of the soil.

(ff) On slopes exceeding an average grade of 10%, as shown on a submitted topographic survey, the preliminary location of development on lots (e.g., building envelopes), demonstrating that future development can meet minimum required setbacks and applicable engineering design standards;

(gg) If the preliminary plan occupies only part of a tract owned or controlled by a developer, a sketch of preliminary street layout in the undivided portion.

(hh) The Director may require additional information such as hydraulic analyses, hydrologic analyses, or geotechnical reports that demonstrate development can safely occur on the proposed lots or parcels.

(ii) Approximate center line profiles of streets, including extensions for a reasonable distance beyond the limits of the proposed Subdivision or Series Partition, showing the proposed finished grades and the nature and extent of construction.

(d) Five (5) paper copies of a preliminary plan map for the proposed partition or subdivision, two copies of all supporting documents, and one electronic copy. The preliminary plan must be drawn to a scale divisible by ten of not less than one inch equals 20 feet and not more than one inch equals 400 feet. In addition, submit a reduced-sized, legible copy of the preliminary plan on an 11-inch by 17-inch sheet or smaller.

(e) **Cluster Subdivision Specific Submittal Requirements:**

(i) In addition to LC 13.080(1)(q), applications for Cluster Subdivisions must include two copies of a written statement addressing Rural Comprehensive Plan Goal 2 policy 23 and OAR 660-004-0040(7)(e).

Comment [LC26]: Proposing to elminiate almost all of this section, because we've never processed one of these before. We cannot completely eliminate it, due to an entire section in LC Chp 16 that references cluster subdivisions.

13.080. Preliminary Subdivision and Series Partition Plan Review Criteria

Comment [LE27]: ORS 92.305 to 92.495

(1) **Review Criteria:**

(a) **Legal Lot.** The subject property or tract must be a lawfully established unit of land pursuant to LC 13.140.

(b) **Conformity with the Zoning.** All divisions must conform to all of the applicable zoning requirements in Lane Code.

(i) If the subject property is located within an adopted urban growth boundary or within the Eugene Springfield Metropolitan Area General Plan boundary, the land division must comply with the applicable comprehensive plan and any applicable refinement plans.

(c) **Access.**

(i) A subdivision, partition, or replat must provide for the continuation of existing major and secondary roads within adjoining plats, or for their proper projection when adjoining property is not yet divided. Such roads must meet the minimum requirements for roads set forth in Lane Code Chapter 15, unless an exception is approved per LC 15.900.

(ii) Lots or parcels must have verifiable access by way of a road, either a County or City maintained public road, local access road, or a private easement in accordance with the following standards:

(aa) Each proposed lot or parcel must abut a public road or private easement for at least 30 feet for access; or

(bb) If access is taken through another jurisdiction, at a minimum, the portion of the access must conform to that jurisdiction's standards;

(cc) There is a legal right appurtenant to the lots or parcels to use the road for ingress and egress. A legal right to use an easement may be evidenced by:

(A) An express grant or reservation of an easement in a document recorded with the County Recorder;

(B) A decree or judgement issued by a court of competent jurisdiction;

(C) An order from the Board establishing a statutory way of necessity or gateway road; or

(D) An express easement set forth in an approved and recorded subdivision or partition;

(dd) The public road or private easement complies with LC 15.135.

(iii) The road provides actual physical access to each of the lots or parcels.

(iv) County Roads, City Roads, Local Access-Public Roads, and Private Access Easements used to access the lots or parcels must be designed and developed in accordance to Lane Code Chapter 15 requirements or City standards within said jurisdiction.

(v) For the portion of a panhandle tract used to access to the main portion of the tract, the County may require such road improvements and design as necessary to provide safe and adequate access to the main portion of the tract.

(d) **Redevelopment Plan.** When an entire tract under the applicant's control or ownership is not subdivided or partitioned to the fullest extent allowed by current zoning, the applicant must submit a future plan demonstrating how division and development of the remainder of the tract, including major road connections and intended land uses will be consistent with Lane Code and any applicable adopted refinement plans.

(e) **Control Strip.** The County can require that a strip of land contiguous to a road be dedicated or deeded to the public for the purpose of controlling access to or the use of a lot or parcel for any of the following reasons:

(i) To protect the future extension of the road pattern, in length or width;

(ii) To prevent access to land unsuitable for development;

(iii) To prevent or limit access to roads classified as arterials and collectors.

(f) **Dangerous and Sensitive Areas**.

(i) Each proposed lot or parcel is configured in a way that dangerous and sensitive areas located on the subject property will not preclude or pose a hazard to future development of each lot or parcel.

(ii) The Director must consider the recommendation of the County Engineer, municipal officials within Urban Growth Boundaries, and other professional technical sources when determining the presence of dangerous and sensitive area conditions and mitigation measures.

(iii) Areas of floodplain, water areas, and wetlands will be retained in their natural state to the extent practicable to help preserve water quality and protect water retention, overflow, and natural functions.

(iv) If the Director determines it necessary due to the presence or significance of dangerous and/or sensitive areas on the subject property, the Director can require the applicant to show future development sites for each lot or parcel.

(v) The Director can impose conditions or modifications necessary to mitigate potential hazards or otherwise provide for compliance with adopted Comprehensive Plan policies and Lane Code provisions. The Director may require a Notice or Restriction document be recorded at Lane County Deeds and Records when the final plat is recorded.

(aa) Optional: If physical conditions change on a specific parcel, the owner can request from the Director to approve the modification or removal of the Notice or Restriction document. The owner must make a Type I application, pursuant to LC 14.030(1)(a), and provide the Director evidence before the Director is able to approve the modification or removal of the Notice document.

(g) **Grading, Excavation and Clearing.** Grading and clearing by mechanical equipment for road and/or development purposes may be restricted or regulated either at the time of tentative plan approval or final approval if there is a finding that such grading or clearing presents a threat of pollution, contamination, silting of water bodies or water supplies, erosion and slide damage, or alteration of natural drainage patterns in the area. In all cases, excessive grading, excavation, and clearing must be avoided when detrimental to soil stability and erosion control.

(h) **Compliance with State and Federal Permits**. Evidence that any required State and Federal permit, as applicable, have been obtained or can reasonably be obtained prior to development that requires those permits;

(i) **Utility Easements**. Easements for utilities must be dedicated whenever necessary. Such easements must be clearly labeled for their intended purpose.

(j) **Drainage Easement.** If the subject property is traversed by an existing or planned watercourse, drainage way, channel, or stream, a drainage easement conforming substantially to the lines of such watercourse must be provided. The easement must be of an adequate width for the purpose of carrying water and providing no less than five feet from the edge of each side of the watercourse for vector control or maintenance vehicles.

(k) **Land for Public Purposes and Dedications**.

(i) If the County has an interest in acquiring any portion, besides dedicated roads, of any proposed Subdivision or Series Partition for public purpose, or

if the County has been advised of such interest by a school district or other public agency, and there is written notification to the developer from the County that steps will be taken to acquire the land, then the Director may require that those portions of the Subdivision or Series Partition be reserved, for a period not to exceed 90 days, for public acquisition at a cost not to exceed the value of the land.

(ii) When necessary to enhance public convenience, safety, or as may be designated on an adopted master bike plan or Transportation System Plan, the Director may require that pedestrian or bicycle ways be improved and dedicated to the public. Such pedestrian and bicycle ways may be in addition to any standard sidewalk requirements of LC Chapter 15, Roads. Pedestrian and bicycle ways shall be not less than six feet in width and be paved with asphaltic concrete or portland cement concrete.

Comment [LC28]: Current LC languauge with a couple suggested edits.

(iii) The Director may require as a condition of approval the dedication to the public rights-of-way for public purposes. All dedications must appear on the final plat, and be approved by the County prior to recording.

(l) **Lots and Parcels.** Except for lots or parcels to be dedicated for parks, recreation, open space, or resource land, the lot or parcel arrangement must be such that there will be no foreseeable difficulties, for reasons of topography, setbacks, floodplain, expansive soils, soil bearing capacity, erosion potential, or other conditions, in securing building permit to build on all lots or parcels in compliance with Lane Code in providing driveway access to buildings on such lots from an approved road. No division will be approved where the design or related facilities clearly constitute the creation of a hazardous circumstance or lack of provision for the public safety.

(m) **Sewage Facilities.** All lots or parcels must be served by sewage disposal facilities that comply with the requirements of the Oregon Department of Environmental Quality requirements.

(i) If the subject property contains an existing septic system, the applicant must complete an Existing Septic System Certification form, provided by the Director.

(ii) Public or Community Sewage Facilities:

(aa) If connection to an existing public or community sewage facilities is proposed, the applicant must submit evidence that the service agency is mutually bound and able to serve the development.

(bb) When a new public or community sewage system is proposed for the division, a master plan for the sewage collection and disposal facility must be submitted to Lane County and the State Department of Environmental Quality for approval.

(iii) Individual Sewage Facilities:

(aa) If the proposed lots or parcels will not be connected to a public or community sewage facility, the applicant must demonstrate that each

lot or parcel provides sufficient area and suitable soil to accommodate a sewage facility prior to final plat approval.

(A) If this requirement cannot be satisfied, but there is an area on a contiguous lot or parcel that can accommodate an individual sewage facility, the applicant can propose to record an easement for an off-site facility. If the off-site facility is proposed on a lot or parcel in a different ownership, written documentation must be provided acknowledging the agreement.

(bb) An applicant for a preliminary series partition or subdivision must obtain a site suitability evaluation from the County Sanitarian prior to approval of the final plat for each proposed lot or parcel, except for lots or parcels compliant with (m)(i).

(n) **Water Supply.** Each proposed lot or parcel must be served by an adequate water supply of potable water by complying with the following standards:

(i) Acceptable water sources:

(aa) A new or existing well or improved spring;

(bb) A new or existing shared well or improved spring that currently serves three or less connections or fewer than 10 people for 60 or more days per year;

(cc) An existing public water system;

(dd) A new public water system approved by Lane County Environmental Health.

(ii) Areas designated by the Board as having problems in the quantity or quality of available water as adopted into Lane Manual Chapter 13.010 must also comply with the following requirements for all vacant proposed lots or parcels less than 20 acres prior to final plat approval:

Comment [LC29]: *need to edit citation in LM 13.010*

(aa) If the subject property is designated as quantity limited, as listed in Lane Manual 13.010(2), the applicant must submit proof demonstrating it can sustain the proposed development with sufficient potable water. The Director can require an aquifer study prepared by a registered geologist or licensed engineer.

(bb) If the property is designated a quality limited, as listed in Lane Manual 13.010(1), the applicant must submit bacteriology/chemical tests that show compliance with standards set by the Oregon State Health Division and Lane County for the specific mapped contaminant. The owner can dispute the designation by submitting a geological report performed by a registered geologist or other licensed professional. At minimum, a condition of preliminary approval must require a test be conducted on every third well.

(A) If contaminants that require filtration are found in the water, as a condition of preliminary approval, a Notice document providing notice of the contaminant may be required to be recorded at Lane County Deeds and Records when the final plat is recorded.

(B) Optional: If conditions change on a specific parcel, the owner can request from the Director to approve the modification or removal of the Notice document. The owner must make a Type I application, pursuant to LC 14.030, and provide the Director evidence of adequate potable water in conformance with (i) thru (v) above in this subsection before the Director is able to remove the Notice document.

(iii) Public or Community Water System:

(aa) If connection to an existing public or community water system is proposed, the applicant must submit evidence that the service agency is mutually bound and able to serve the development.

(bb) The County can require that new community water system be developed to serve lots or parcels when none exist and individual water systems are not feasible due to the density of the lots or parcels or the possibility of problems concerning the long-term availability of adequate quantities of suitable water.

(iv) When lots or parcels are to be served by individual or shared water systems, sufficient evidence must be submitted prior to final plat submittal to show that each of the proposed lots or parcels will have an adequate supply of potable water. Adequate supply of potable water for a land division must comply with the following standards:

(aa) For an individual well, the well must produce on average five gallons per minute during a five-hour pump test; or

(bb) For a well that produces less than five gallons per minute, but at least one gallon per minute, the plans must provide for a storage tank according to Lane Manual 9.160(1)(b); or

(cc) Submit a report prepared by a licensed engineer or hydrologist certifying that the individual or shared water system can adequately supply the potential development of the land division.

(v) To prove up potable water for any individual or shared water system, prior to final plat approval the owner must submit a bacteriology/chemical test conducted by a certified water testing lab, for every third well, showing compliance with standards set by the Oregon Health Authority Drinking Water Services Program and Lane County for the following contaminants:

Comment [LC30]: Lane manual 9.163

(aa) Total Coliform and Fecal Coliform/E. Coli

(bb) Nitrates/nitrites

(o) **Additional Criteria for Subdivisions in the Exclusive Farm Use Zone**.

Comment [LE31]: ORS 92.044

(i) While taking into consideration the location and surrounding are of the proposed land division, each lot or parcel must comply with ORS 92.044(1)(b).

(p) **Conditions of Approval**. The Director has the right to attach such conditions as are necessary to carry out provisions of Lane Code, and other applicable ordinances and regulations. The Director may require an Improvement Agreement or Performance Agreement from the Developer as a condition of approval, as necessary.

(q) **Additional Cluster Subdivision Requirements.** These requirements are for Preliminary Cluster Subdivision Plans and are in addition to LC 13.080(1)(a)-(p) above:~~.~~

(i) Compliance with RCP Goal 2 Policy 23, and

~~(i)~~(ii) Compliance with OAR 660-004-0040(7)(e).

13.090. Final Plat Submittal Requirements

(1) **Submittal Requirements.** The applicant must submit a complete final plat application packet within four years of the approval of the preliminary plan unless an extension is granted as provided by Lane Code 13.040(3).

(a) The application for final plat approval must be submitted in conformance with LC 14.030(3) Application Requirements.

(b) Supporting documentation showing compliance with all of the conditions of approval of the preliminary partition or subdivision approval.

(c) The format of the plat must conform with ORS 92 and the Lane County Surveyor's Office policies.

13.100. Final Plat Criteria

(1) **Approval Process and Criteria**. By means of a Type I Review, the Director will review and approve or deny the final plat application based on the following criteria:

(a) The final plat is consistent in design (e.g., number, area, dimensions of lots, easements, tracts, right-of-way) with the approved preliminary plan and, if applicable, any modifications as approved pursuant to LC 13.110;

(b) All conditions of approval have been satisfied; and

(c) The plat complies with ORS 92 and the Lane County Surveyor's Office policies.

(2) Unless a contrary intent is clearly stated, all underlying legal lots are vacated or eliminated once the plat is recorded.

(3) Final plats will be considered approved by the Director when the Director's signature and dates thereof have been written on the face of the plat and when the plat has been recorded.

(4) Approval or denial of a final plat must be in writing to the applicant.

Comment [LC32]: Type 1 permit requirements are very similar, if not the same, as we require now for administrative permits.

13.110. Revisions to Preliminary Approval Plans

(1) Revisions to a preliminarily approved land division may be considered minor when the revision involve a limited number of changes to the original application and they do not alter any findings addressing the original established approval criteria, development standards, or conditions of approval. If the preliminary plan is expired, this section does not apply. Minor revisions to a preliminary approval for a land division may be made through a Type I process in compliance with the following criteria:

(a) Does not increase the number of lots or parcels created by the subdivision or partition; and

(b) Includes only minor shifting of the proposed lot or parcel lines and proposed public or private streets, except that shifting of pedestrian ways, utility easements, parks or other public open spaces, septic system drainfield locations, and well locations may be permitted;

(c) Does not reduce or enlarge the exterior boundaries on the approved subdivided or partitioned area.

(2) All other revisions must be processed as a new Type II application for a request for modification of conditions and will be subject to the applicable standards in effect at the time the new application is submitted.

13.120. Replatting and Vacation of Lot or Parcel Lines

(1) Any plat or portion thereof may be replatted or vacated upon receiving an application signed by all of the owners appearing on the deed, or vacated plat pursuant to subsection (5) or (6).

(2) The same procedure and standards that apply to the creation of a plat (preliminary plan followed by final plat) apply to a replat. If the replat consists of only a minor shift in lot or parcel lines, land use approval may be obtained through a Property Line Adjustment application.

(3) Limitations on replatting include, but are not limited to, the following:

(a) A replat only applies to a recorded plat;

(b) A replat cannot vacate any public street or road; and

(c) A replat of a portion of a recorded plat will not act to vacate any recorded covenants or restrictions.

(4) A replat application may be denied if it abridges or destroys any public right in any of its public uses, improvements, streets, or alleys; or if it fails to meet any applicable County standards.

(5) **Vacation of lot lines: Type II review process**. One or more interior lot lines in a recorded plat may be vacated either by private petition or by public resolution as prescribed in ORS 368. A lot line vacation under this provision is a quasi-judicial action subject to an established fee, petition/application, notice, and review by the Director.

Comment [LC33]: This section is similar to major and minor amendments in our current code, only we made this section only applicable to preliminary plans and not recorded plats.

Comment [LC34]: This means that findings do not need to be changed.

Comment [LC35]: Change from current LC 'amendment, minor' language.

Comment [LC36]: See definition of 'minor shift' in 13.030.

Comment [LC37]: See LC 13.130(5).

Comment [LC38]: This references the County Roads Chapter of ORS.

(6) Vacation of lot lines: Owner Consent. Notwithstanding the above provision, and as authorized in ORS 368, one or more interior lines in an approved subdivision or partition may be vacated upon written consent from 100 percent of those who own the private property proposed to be vacated; or in cases involving public property, written consent must be obtained from 100 percent of property owners abutting the public property proposed to be vacated.

(a) An administrative action fee will be required at time of submittal. Property owner consent must be obtained by the applicant and submitted to the Director on forms provided by the Director. Those owners whose consent signature is required will be identified by the Director. Property owner consent signatures will be verified by sending a copy of the signed consent form to each identified property owner.

(b) The line vacation must be approved if the following criteria are met:

(i) Upon verification of the required consent signatures, and

(ii) After the Director file a written report finding that the action:

(aa) Complies with applicable land use regulations;

(bb) Facilitates development of the private property subject to the vacation; and,

(cc) Any vacation of public property is in the public interest.

13.130. Property Line Adjustments

(1) General.

(a) As used in this section (LC 13.130) the term parcel means a lawfully established lot or parcel.

(b) No person may relocate all or a portion of a property line without review and approval of a property line adjustment application or as otherwise provided by LC Chapter 13.

(c) Tax lot boundaries do not necessarily represent property boundaries. Tax lot boundaries are established by the Lane County Assessment and Taxation Department for purposes of assessment and taxation. Tax lots may or may not coincide with legal property boundaries. Only boundaries of lawfully established units of land can be adjusted through the provisions of this chapter.

(d) An adjustment is not required to comply with zoning regulations if a Court of Competent Jurisdiction issues an order mandating ownership be transferred, but must comply with the procedures in this section.

(e) The elimination of a property line outside of a recorded plat is exempt from review by the Director, but the recordation of an elimination deed is required pursuant to ORS 92. The elimination of a property line must not create a non-conforming use.

Comment [LE39]: New provision, policy change from current code.
No review is required, but there is a requirement to file an elimination deed.
*Comments received that are opposed to eliminations being outright permitted, but no explaination of why.

(f) A property line adjustment of a common property line between two abutting F-1 zoned properties where each parcel is vacant and larger than 200 acres before and after the

property line adjustment is exempt from review by the Director, but must still comply with ORS 92 provisions.

(2) Submittal Standards.

(a) In addition to the submittal requirements identified in Lane Code 14.030(3), an application for a property line adjustment must include a preliminary map for the proposed property line adjustment. The map must be drawn to an engineer's scale, drawn on 8 ½" x 11" or 11" x 17" size paper and include the following:

(i) Existing and proposed property line dimensions and size in square feet or acres of the two parcels that are subject of the application.

(ii) Identification, size, and dimensions of the area(s) proposed to be adjusted from one property to the other.

(iii) North arrow and scale.

(iv) Roads abutting and located within the subject properties, including names and road right-of-way or easement widths, and labeled as either public or private.

(v) Location and dimensions of existing and proposed driveways, as well as adjacent driveways within 100 feet.

(vi) Location of wells or name of water district and location of water meter(s).

(vii) Location of on-site wastewater treatment systems or name of sanitary sewer district.

(viii) Easements, shown with dimensions, type, labeled as existing or proposed, and specifically noting to whom they benefit.

(ix) Existing structures and the distance from each structure to the existing and proposed property lines.

(aa) Setbacks for all structures within 40 feet of the property line (100 feet if property is zoned F1, F2, or EFU) being moved must be verified on a site plan prepared and stamped by an Oregon registered professional land surveyor. If no structures exist, the surveyor can submit a stamped letter so stating.

Comment [LE40]: Added languauge in response to Bowerman LUBA decision. Staff are required to write findings to the property siting standards.

(b) Evidence that the subject properties are lawfully established units of land. If the property was not included in a previous partition, previous subdivision, or prior final legal lot verification, then ~~the~~ a legal lot verification or notice of preliminary legal lot verification will be required pursuant to LC 13.140.

(c) A preliminary title report for each property, to determine ownership and any recorded deed restrictions.

(3) General Criteria. A Property Line Adjustment requires a Type I review, pursuant to LC 14.030(1)(a) except where explicit in the code that it requires a Type II review pursuant to LC 14.030(1)(b). ~~An application for a serial property line adjustment can be made under one Type II~~

~~application, pursuant to LC~~ 14.030(1)(b)~~.~~ An application for multiple property line adjustments can be made under one Type II application, pursuant to LC 14.030(1)(b), so long as those adjustments adjust property lines between existing properties. All property line adjustments are subject to the following standards and criteria, unless previously stated in this section:

(a) The Property Line Adjustment cannot:

(i) Create an additional parcel.

(ii) Violate any applicable conditions of previous land use approvals or recorded deed restrictions.

~~**(ii)** Increase the degree of non-conformity for any structure or septic system that is non-conforming at the time of application.~~

(b) Both parcels are lawfully established units of land, pursuant to the definition in LC 13.030.

(c) A property line adjustment must comply with ORS Chapter 92 and Lane County Surveyor's office policies.

(d) A parcel in an F-1, F-2, or EFU Zone must also comply with subsection (4) of this section.

(e) A property line adjustment is subject to the minimum parcel size standards of the applicable zoning district, except in the following circumstances:

(i) One or both of the abutting properties are smaller than the minimum parcel size for the applicable zone before the property line adjustment and, after the adjustment, one is as large or larger than the minimum parcel size for the applicable zone; or

(ii) Both abutting properties are smaller than the minimum parcel size for the applicable zone before and after the property line adjustment.

(f) A property line adjustment is subject to the property line setbacks of the applicable zoning district, except in the following circumstance:

(i) Where the setbacks from existing structures and improvements are already nonconforming they can remain nonconforming.

(ii) The property line adjustment cannot make setbacks nonconforming or more nonconforming without a setback variance approval or an increase in a nonconforming use approval.

~~**(f)**~~**(g)** A property line adjustment involving a parcel authorized by a Measure 49 waiver, cannot increase parcels larger than:

(i) Two acres if on high value farmland, high value forestland, or within a ground water restricted area; or

(ii) Five acres if not on high value farm or forest land; unless

Comment [LC41]: This covers conditions of approval for a new/accessory use to stay on the same lot or parcel as the main use regardless of zone.

Comment [LE42]: Covered below under (f)

Comment [LE43]: ORS 92.192

Comment [LE44]: Added current code language back in, current LC 13.450(5)(b)(i) & (ii).

Comment [LE45]: Previously an oversight – new property lines need to conform with zoning setbacks.

Comment [LE46]: May want to remove this languauge, because most of the time this isn't a viable option. I just didn't want to make it completely impossible in the case they did get approval to have a nonconforming setback. Will need to add in citations too.

Comment [LC47]: ORS 92.192(4)(d)

Comment [LE48]: This languauge is straight from a M49 Final Homesite Authorization from DLCD.

(iii) The property increasing in size is the remainder parcel and is already larger than the two or five acre maximum parcel size.

~~(g)~~(h) Split-zoned properties:

(i) A property line adjustment that would result in property(ies) being split between resource and a non-resource zone may be allowed if the resource-zoned property that is adjusted to include non-resource -zoned land cannot be eligible for non-resource use on the resource-zoned portion of the property without land use approval. Deed restrictions, pursuant to subsection (6)(b)(iv) of this section, will ensure compliance.

(ii) The deed restriction form will be provided by staff for the signature by the property owner, who will be responsible for fees for document preparation and recording.

~~(h)~~(i) If parcels subject to the property line adjustment application span multiple jurisdictions, all jurisdictions must review and approve the property line adjustment. The applicant must address approval criteria related to property line adjustments for each jurisdiction.

(4) F-1, F-2, and EFU Zone Criteria. In addition to the standards and criteria in subsection (3) of this section, a property line adjustment in the F-1, F-2, and EFU Zones is subject to the following standards and criteria:

(a) A property line adjustment cannot be used to reconfigure a parcel:

(i) To separate a temporary hardship dwelling, relative farm help dwelling, home occupation or processing facility from the parcel on which the primary residential or other primary use exists.

(ii) In a manner prohibited by ORS 92.192(4)(a) – (c).

(b) If the proposed property line results in a setback from a non-farm structure to be within 500 feet of land zoned F1 or within 100 feet of land zoned F2 or EFU, a Type II review is required, pursuant to LC 14.030(1)(b), in order to address siting standards and setbacks that apply to the subject properties.

(5) Property Line Adjustments within a Plat.

(a) Property line adjustments within a plat must comply with the replatting requirements of LC 13.120. The proposal can be processed as a property line adjustment if the proposal is only a minor shift in property lines.

(b) If a property line adjustment within a plat qualifies as a property line adjustment rather than a replat, it must comply with LC 13.130 (1) through (6).

(6) Final Approval.

(a) Within two years of the preliminary approval, the applicant must comply with the requirements of this section to complete the property line adjustment. The Director may, upon written request prior to the expiration date, grant written extensions of the approval period pursuant to LC 14.090(6).

Comment [LE49]: Current practice and state law that a non-resource use cannot be on resource zoned land without land use approval. The deed restriction would say something to that effect, that a non-resource use can only be allowed if the owner obtains land use approval.

Example: If you have a split zoned parcel RR5 & EFU, you cannot have any residential use (dwelling, shop/garage, septic system, etc.) in the EFU zoned portion without land use approval.

Comment [LE50]: (a) (ii) and (iii) will be reviewed in the future, if a request for a dwelling to be constructed on one of these parcels is requested. Unless an application is being made concurrently, these two criteria will not cause a request for a Properyt Line Adjustment to be denied.

Comment [LC51]: OAR 660-033-100(8)

Comment [LE52]: This section was edited because (ii) and (iii) are not criteria staff could use to deny an property line adjustment application. This criteria fits better within the approval criteria of specific dwelling options within the F-2 and EFU zones.

Comment [LE53]: This languauge is in response to the Bowerman LUBA Decision.

Comment [LC54]: Allowed per ORS 92.190(3) See definition section

(b) To obtain final approval, the applicant must comply with the following:

(i) All property line adjustments must comply with ORS 92 and be memorialized by a declaration of property line adjustment (property in same ownership) or property line adjustment deed.

(ii) For property line adjustments resulting in one or more parcels smaller than ten acres, submit a survey conforming to the standards of the County Surveyor to the County Surveyor's office in accordance with ORS 92; or

(iii) When a survey is not required by ORS 92, the owner must include the approved site plan as an exhibit to the property line adjustment deed. The site plan must clearly show and label the old property line with dash marks and the new property line as a solid line. The map must also contain the following language: "This map is not a survey and the property lines are approximate," unless the statement is untrue and it is a survey.

(iv) Submit a copy of all necessary recorded documents to the Director prior to the expiration of the application.

13.140. Legal Lot Verification

(1) Criteria for Legal Lots. Units of land that comply with one or more of the following provisions will be considered lawfully established:

(a) Lots or Parcels created by filing a final plat for subdivision or partition for which land division approval was granted by Lane County and whose configuration has not changed are considered lawfully created;

(b) Parcels created by the filing or recording of an approved minor partition map between 1949-1990 with the County and whose configuration has not changed are considered lawfully created;

(c) Lots created by the filing of a minor subdivision approved by the Lane County Planning Commission in the urbanizable area between April 2, 1962 and March 26, 1975.

(d) Parcels created in compliance with all applicable planning, zoning, and partitioning ordinances and regulations;

(e) Parcels created by deed, lease or land sales contract if there were no applicable planning, zoning or partitioning ordinances or regulations;

(f) Parcels created by deed, lease or land sales contact in compliance with applicable zoning requirements prior to applicable partitioning or subdivision ordinances;

(g) Parcels created as a result of a dedication of a public road prior to 1990;

(h) Parcels created by a division of land resulting from a lien foreclosure, foreclosure of a recorded contract for the sale of real property or the creation of cemetery lots;

(i) Parcels created by the claim of intervening state or federal ownership of navigable streams, meandered lakes, or tidewaters;

(j) Parcels created by the sale or grant of federal lands by the federal government;

(k) Parcels created as the remainder of a parcel divided under a method listed above;

(l) Parcels created by a circuit court decision between October 3, 1973 and October 4, 1977;

(m) A parcel created by a surveyed tract prior to April 8, 1949.

(n) Other proof that a parcel was lawfully created.

(2) Legal Lot Verification Process:

(a) A Legal Lot Verification does not need to be formally reviewed if the lot or parcel is consistent with (a) or (b) in section (1) above, and in the same configuration or ~~have~~ has been reconfigured by an approved property line adjustment application.

Comment [LC55]: Does this include the early 1900's subdivision plats too? A: Yes, they have always required some sort of signature from a Lane County Employee (Usually the County Judge back then).

Comment [LC56]: From 1962-1972 these were only filed at the Surveyor's Office.

Comment [LC57]: Comments received: concerns about remainder parcels being called a legal lot. This is specifically calling out remainders of lawful land divisions, not all remainders. Current LC policy to recognize these remainders as legal lots.

Comment [LC58]: This calls out the unrecorded subdivisions.

Comment [LE59]: This may need to be edited due to the recent LUBA decision, Bowerman V. Lane County.

(b) A Legal Lot Verification can be reviewed as a Type I permit, subject to LC 14.030(1)(a), only if the lot or parcel complies with the following clear and objective criteria:

(i) The subject property was created prior to the applicable adoption date of the earliest Land Division Ordinance, based on the portion of Lane County where it is located, as referenced below and illustrated on LC 13.140 Map 1:

(ab) Metro area, May 2, 1962; or

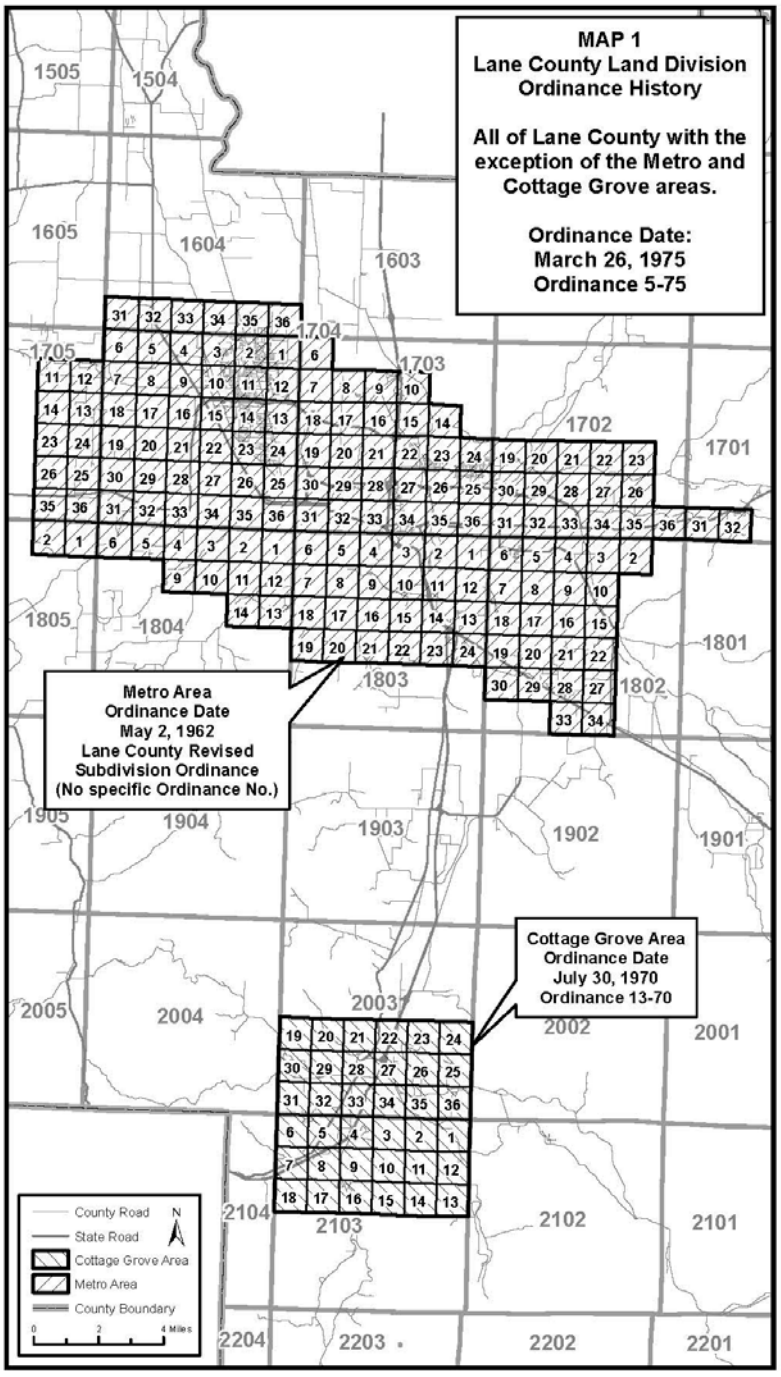
(bb) Cottage Grove area, July 3, 1970; or

(cb) Remainder of Lane County area, March 26, 1975; and

(ii) Subject property has not changed configuration since the applicable date referenced on Map 1.

(c) All other legal lot verifications must be reviewed as a Type II permit pursuant to LC 14.030(1)(b).

(3) A preliminary legal lot verification issued prior to January 8, 2010, is recognized as a final legal lot only after a notice of decision is mailed out with an opportunity for appeal pursuant to LC 14.030(1)(b).


MAP 1
Lane County Land Division
Ordinance History
All of Lane County with the exception of the Metro and Cottage Grove areas.
Ordinance Date:
March 26, 1975
Ordinance 5-75
Metro Area
Ordinance Date
May 2, 1962
Lane County Revised
Subdivision Ordinance
(No specific Ordinance No.)
Cottage Grove Area
Ordinance Date
July 30, 1970
Ordinance 13-70
County Road
State Road
Cottage Grove Area
Metro Area
County Boundary
0 2 4 Miles
N
1505
1504
1605
1604
1603
1705
1704
1703
1702
1701
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1803
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1902
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2005
2004
2003
2002
2001
2104
2103
2102
2101
2204
2203
2202
2201

13.150. Validation of a Unit of Land

(1) An application to validate a unit of land that was created by a sale that did not comply with the applicable criteria for creation of a unit of land may be submitted and reviewed as a Type II permit, pursuant to LC 14.030(1)(b) if the unit of land:

(a) Is not a lawfully established unit of land; and

(b) Could have complied with the applicable criteria for the creation of a lawfully established unit of land in effect when the unit of land was sold.

(2) Notwithstanding LC 13.~~130~~150(1)(b), an application to validate a unit of land under this section may be submitted and reviewed if the county approved a permit, as defined in ORS 215.402, for the construction or placement of a dwelling or other building on the unit of land after the sale. If the permit was approved for a dwelling, the county must also determine that the dwelling qualifies for replacement under the following criteria:

(a) Has intact exterior walls and roof structure;

(b) Has indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system;

(c) Has interior wiring for interior lights;and

(d) Has a heating system.

(3) An application for a permit as defined in ORS 215.402 or a permit under the applicable state or local building code for the continued use of a dwelling or other building on a unit of land that was not lawfully established may be submitted and reviewed if:

(a) The dwelling or other building was lawfully established prior to January 1, 2007; and

(b) The permit does not change or intensify the use of the dwelling or other building.

(4) An application to validate a unit of land under LC 13.~~130~~ 150 is an application for a permit, as defined in ORS 215.402. An application under LC 13.~~130~~ 150 is not subject to the minimum lot or parcel sizes established by Lane Code Chapters 10 or 16.

(5) A unit of land only becomes a lawfully established parcel when the county validates the unit of land under LC 13.~~130~~ 150 if the owner of the unit of land records a partition plat within 90 days of validation.

(6) An application to validate a unit of land may not be approved if the unit of land was unlawfully created on or after January 1, 2007.

(7) Development or improvement of a parcel created under LC 13.~~130~~150(5) must comply with the applicable laws in effect when a complete application for the development or improvement is submitted as described in ORS 215.427(3)(a).

Comment [LE60]: Added in ORS 215.755(1)(a) to (e) criteria into code.

Current policy also recognizes dwellings that no longer meet this criteria, but where the owner/applicant can prove that the dwelling did comply with the criteria within 1 year of the date the application is received. (non-conforming use, 1 year replacement window) Do we want to somehow codify this?

13.160. Variance

(1) Variances to the requirements of this chapter must be processed as a Type II permit pursuant to LC 14.030(1)(b).

(2) **Criteria for Approval of Variances**. A variance to the requirements of LC Chapter 13 may be approved if the Director finds:

(a) Exceptional or extraordinary circumstances apply to the property which do not apply generally to other properties in the same zone or vicinity which result from lot size or shape, topography or other circumstances over which the property owner, since the enactment of this chapter, has had no control.

(b) The variance is necessary for the preservation of a property right of the applicant which is the same as that enjoyed by other property owners in the same zoning district in the area.

(c) The variance will conform to the purposes of this chapter and will not be materially detrimental to property in the same zone or vicinity in which the property is located, or otherwise will not conflict or reasonably be expected to conflict with the Comprehensive Plan.

(d) The variance requested is the minimum variance which would alleviate the difficulty.

(e) The need for a variance is not the result of a self-created hardship.

(3) Applications for variances must be submitted at the same time an application for land division or property line adjustment is submitted.

Comment [LC61]: Suggesting to keep the same in order to be consistent with Chp 16. If we end up changing that language in the future, keep in mind we should also update this language.

13.170. Appeal

(1) **Procedure for Appeals.** The procedure for and appeal of a Type II decision made pursuant to LC 14.030(1)(b) will be as specified for an appeal to the Hearings Official in LC 14.080.

Type I decisions are not land use decision as defined by ORS 197.015 and therefore are not subject to appeal.

Comment [LC62]: No Change from LC

13.180. Enforcement

(1) In addition to, and not in lieu of any other enforcement mechanism authorized by Lane Code, when the Director determines that a person has failed to comply with any provision of LC Chapter 13, the Director may impose upon a responsible person an administrative civil penalty as provided by LC 5.017.

(2) In addition to penalties provided for by LC 13.180(1) above, the Director may revoke or suspend approval for violations of LC Chapter 13 pursuant to LC 14.090(7).

(3) Whenever the Director determines that property has been partitioned or subdivided in a manner contrary to any of the provisions of this chapter, the Director may prepare a report describing the nature thereof, the legal description of the property and the name of the property owner. Upon review of the report, and concurrence by the Office of Legal Counsel, the Director will record the report, with a statement that no building permits will be issued for

Comment [LC63]: No major change from LC

the described property, in Lane County Deeds and Records. The Director must promptly forward a copy of the recorded report to the owner(s) of record of the subject property. At such time as the failure to comply ceases to exist or is changed, the Director must record an appropriate statement setting forth the current status of the property insofar as its relationship to the provisions of this chapter is concerned. Nothing in this section can be deemed to require such recording as a condition precedent to the enforceability of any other provisions of this chapter.

(4) The enactment or amendment of this chapter cannot invalidate any prior existing or future prosecutions for violations, or failures to comply, committed under previous applicable Sections of LC Chapter 13 then in effect.

BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

MCKENZIE BOWERMAN,
BOWERMAN FAMILY LLC,
Petitioner,

vs.

LANE COUNTY,
Respondent,

and

VERNE EGGE,
Intervenor-Respondent.

LUBA No. 2016-008

FINAL OPINION
AND ORDER

Appeal from Lane County.

Sean T. Malone, Eugene, filed a petition for review and argued on behalf of petitioner.

No appearance by Lane County.

Bill Kloos, Eugene, filed a response brief and argued on behalf of intervenor-respondent. With him on the brief was the Law Office of Bill Kloos, PC.

HOLSTUN, Board Chair; BASSHAM, Board Member; RYAN, Board Member, participated in the decision.

RYAN, Board Member, concurring.

REMANDED 01/26/2017

You are entitled to judicial review of this Order. Judicial review is governed by the provisions of ORS 197.850.

Opinion by Holstun.

NATURE OF THE DECISION

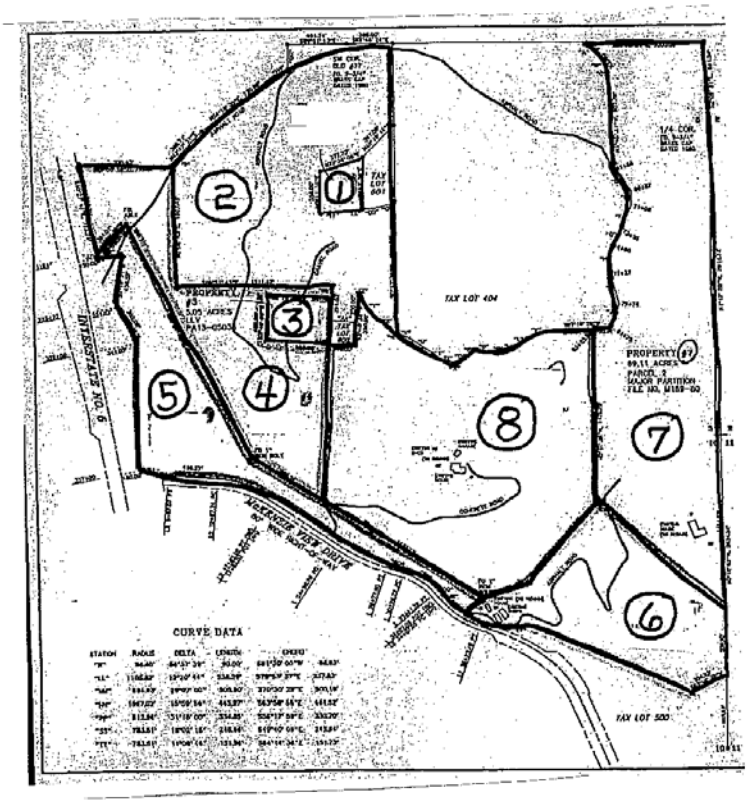
Petitioners appeal a county planning director's decision that approves nine property line adjustments.

FACTS

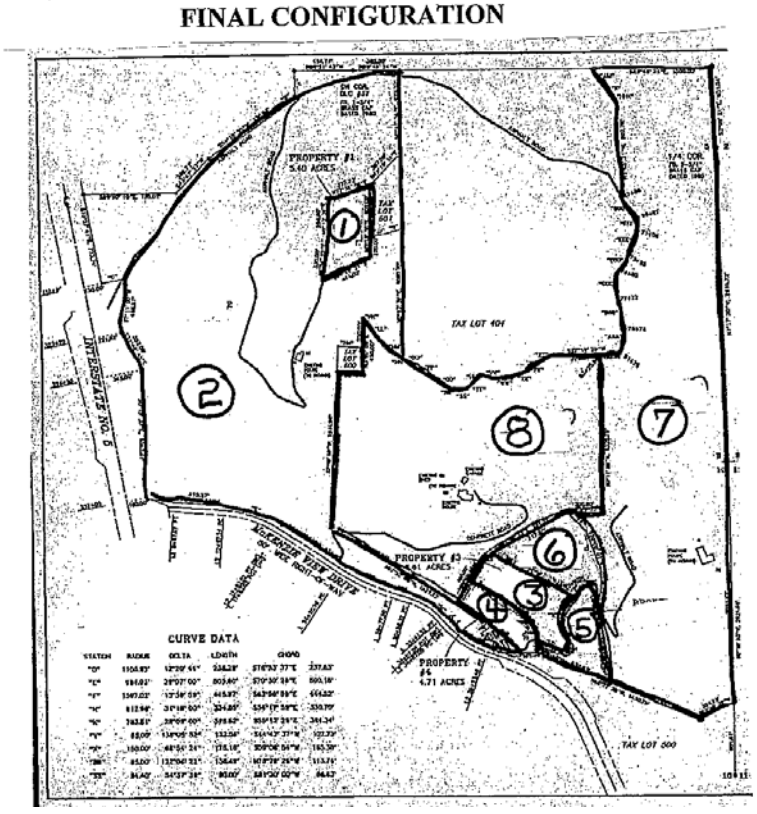
Intervenor-respondent filed two motions to dismiss this appeal. Both of those motions were denied. *Bowerman v. Lane County*, ___ Or LUBA ___ (LUBA No. 2016-008, October 24, 2016, Order); *Bowerman v. Lane County*, 73 Or LUBA 399-404 (2016). We repeat below our discussion of the key facts from those orders.

In this appeal, petitioners seek review of a county planning director's decision approving nine property line adjustments. Those property line adjustments were approved by a single decision, on April 28, 2015, without a public hearing or written notice of the decision to anyone other than the applicant. The applicant is the intervenor-respondent (intervenor) in this appeal. Those property line adjustments significantly reconfigure eight properties zoned Impacted Forest Lands, a forest zone adopted to implement Goal 4 (Forest Lands). We include drawings from the record with hand drawn line enhancement to illustrate the beginning and ending configurations on the next page.

STARTING CONFIGURATION



FINAL CONFIGURATION



1

The April 28, 2015 property line adjustment (PLA) decision is made up of a four-page application for property line adjustment review, with attached exhibits. Record 73-175. Those exhibits include maps that show the before and after configurations for one property line adjustment deed that was recorded in 2013, without the required prior land use approval. The exhibits also include drawings, draft deeds and property descriptions for eight more proposed PLAs. The four-page application was approved by a county planner on April 28, 2015. Record 76. Eight deeds were recorded on June 2, 2015, to complete the PLAs.[1] Record 1-72.

A little over two months later, on August 19, 2015, the planning director approved forest template dwellings for three of those eight reconfigured properties: property 3 (6.61 acres), property 5 (5.43 acres), and property 6 (7.86 acres). Those August 19, 2015 forest template dwelling approvals were subject to appeal locally, but apparently were not appealed.[2] Petitioners' notice of

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[1] ORS 92.190(3) provides:

> "The governing body of a city or county may use procedures other than replatting procedures in ORS 92.180 and 92.185 to adjust property lines as described in ORS 92.010 (12), as long as those procedures include the recording, with the county clerk, of conveyances conforming to the approved property line adjustment as surveyed in accordance with ORS 92.060 (7)."

[2] Because they were not appealed locally, they became final on September 2, 2015.

intent to appeal the April 28, 2015 property line adjustment decision was filed with LUBA on January 16, 2016, several months after the forest template dwelling approvals.

JURISDICTION

As noted we have already denied two of intervenor's motions to dismiss that advanced a number of legal theories.

A. Intervenor's First Motion to Dismiss

Intervenor's first motion to dismiss argued the appeal of the property line adjustment decision was untimely filed. Although this appeal was filed on January 16, 2016, many months after the April 28, 2015 property line adjustments were approved, and long after the normal 21-day appeal deadline set by ORS 197.830(9) expired, petitioner responded the deadline for filing the appeal is governed by ORS 197.830(3), not ORS 197.830(9), because the county did not hold a hearing on the PLA.[3] Petitioners contended this appeal is

---

[3] ORS 197.830(3) provides in part:

> "(3) If a local government makes a land use decision without providing a hearing, * * * a person adversely affected by the decision may appeal the decision to the board under this section:
>
> > "(a) Within 21 days of actual notice where notice is required; or
> >
> > "(b) Within 21 days of the date a person knew or should have known of the decision where no notice is required."

subject to ORS 197.830(3)(a), and the appeal was filed within 21 days of the date petitioners received "actual notice," since they were never given actual notice of the PLA decision before they filed their notice of intent to appeal the PLA decision to LUBA on January 16, 2016.

In his first motion to dismiss, intervenor argued the notices of hearing for the forest template dwellings, which were mailed to petitioner on August 21, 2015, were adequate to give petitioner actual notice of the April 28, 2015 property line adjustment decision. Because petitioners' notice of intent to appeal was not filed until more than 5 months after those August 21, 2015 notices, intervenor argued the notice of intent to appeal in this case was not timely filed.

We rejected intervenor's actual notice argument in our May 17, 2016 Order, concluding that the limited references in two of those forest template dwelling decisions to the earlier PLA decision were not sufficient to constitute "actual notice" of the PLA decision, within the meaning of ORS 197.830(3)(a). 73 Or LUBA at 403.

Intervenor advanced a second jurisdictional challenge in his first motion to dismiss, but deferred it to his brief on the merits. We address that jurisdictional challenge below, under Subsection C.

B. Intervenor's Second Motion to Dismiss

While this appeal was pending, intervenor refiled his application for property line adjustments. That application sought a second county approval of

the same property line adjustments that are the subject of this appeal. On July 8, 2016, the planning director approved the property line adjustments for a second time. However, unlike the first property line adjustment decision, the county mailed written notice of the second property line adjustment decision and provided an opportunity for a local appeal. Petitioners filed a local appeal of that second property line adjustment decision to the county hearings officer. While that local appeal was pending, intervenor filed a motion to dismiss this appeal, arguing that the local appeal of the second property line adjustment decision rendered this appeal moot.

We denied that motion to dismiss for several reasons. One of those reasons was that the planning director's decision reapproved the same decision that is the subject of this appeal. We concluded that under our decision in *Standard Insurance Co. v. Washington County*, 17 Or LUBA 647, 660, *rev'd and rem'd on other grounds*, 97 Or App 687, 776 P2d 1315 (1989), the hearings officer does not have jurisdiction to entertain petitioner's local challenge of that decision while the first property line adjustment decision is before LUBA in this appeal, and for that reason this appeal is not moot. *Bowerman v. Lane County*, ___ Or LUBA ___ (LUBA No. 2016-008, October 24, 2016, Order, slip op at 14-15.[4]

[4] At oral argument, the parties advised LUBA that after LUBA issued its October 24, 2016 Order denying intervenor's second motion to dismiss, the county hearings officer concluded the county lacked jurisdiction to approve the second property line adjustment application while this appeal was pending.

C. Intervenor's Deferred Jurisdictional Challenge

A jurisdictional challenge that was first included in intervenor's first motion to dismiss was deferred to its brief on the merits. In that jurisdictional challenge intervenor contended the April 28, 2015 property line adjustment decision is a ministerial decision of the type that is statutorily excepted from the ORS 197.015(10)(a) definition of "land use decision."

LUBA's jurisdiction is generally limited to land use decisions. ORS 197.825(1). Intervenor argues the challenged PLA decision qualifies as a decision "[t]hat is made under land use standards that do not require interpretation or the exercise of policy or legal judgment[.]" ORS 197.015(10)(b)(A). Such decisions are an exception to the ORS 197.015(10)(a) definition of "land use decision."

As will become clearer in our discussion of the first and third assignments of error below, the challenged property line adjustment decision required that the county exercise considerable interpretation and legal judgment. For that reason, we reject intervenor's final jurisdictional challenge.

FIRST ASSIGNMENT OF ERROR

Lane Code (LC) 13.450 sets out the county's procedural requirements and approval standards for property line adjustments.[5] LC 13.450(1) requires

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[5] We set out relevant text of LC 13.450 below:

"**13.450 Property Line Adjustments**.

"(1) No person shall relocate or eliminate all or a portion of a common property line without review and approval of a property line adjustment application or as otherwise provided by this chapter.

"(2) The Planning Director shall review one or more property line adjustments when the following standards are met:

"(a) An application is submitted on a form provided by the County ; and

"(b) Owner(s) of all properties involved in the property line adjustment consent in writing to the proposed adjustment and agree to record a conveyance or conveyances conforming to the approved property line adjustment; and

"(c) The property line adjustment relocates or eliminates all or a portion of a common property line between abutting properties that does not create an additional unit of land; and

"(d) The property line adjustment complies with the surveying and monumenting requirements of ORS Chapter 92.

"* * * * *

"(4) An applicant must obtain ministerial approval or may use the Planning Director review with public notice procedures if the property line adjustment is for:

"* * * * *

"(c) The adjustment of a common property line between properties where a surveyor certifies that any property reduced in size by the adjustment is not reduced below the minimum lot or parcel size for the applicable zone, and where the setbacks from existing

county approval for property line adjustments. LC 13.450(4) sets out three circumstances where ministerial approval of property line adjustments, *i.e.*, without a prior hearing or notice and an opportunity for a local appeal hearing, is required. LC 13.450(5) provides that in all other circumstances, property line adjustments must be approved by the planning director with a prior hearing or with notice and an opportunity for an appeal hearing. LC 14.050; 14.100; 14.500.

The county planning director apparently relied on LC 13.450(4)(c) to approve the disputed property line adjustments without notice of the director's decision or an opportunity for a local appeal. Petitioners argue that the authority for ministerial approval set out at LC 13.450(4)(c) does not apply in this case, and that the planning director erred by approving the property line adjustments without providing notice and an opportunity for a local appeal.

LC 13.450(4)(c) requires that the county approve property line adjustments ministerially if two requirements are met:

> structures and improvements do not become nonconforming or more nonconforming with the setback requirements.
>
> "(5) All other property line adjustment applications are subject to Planning Director review with public notice, pursuant to LC 14.050 and 14.100.
>
> "* * * * *."

1. "[A] surveyor certifies that any property reduced in size by the adjustment is not reduced below the minimum lot or parcel size for the applicable zone[,]

2. "[T]he setbacks from existing structures and improvements do not become nonconforming or more nonconforming with the setback requirements." *See* n 5.

The record includes a surveyor certificate, which certifies as follows:

"I, Ted Baker, a registered professional land surveyor in the state of Oregon, do certify that any property reduced in size by the adjustment is not reduced below the minimum lot or parcel size for the applicable zone.

"I also certify that the setbacks from existing structures and improvements do not become nonconforming or more nonconforming with the setback requirements of the zoning.

"Ted Baker, PLS 2488" Record 176.

Initially, both petitioner and intervenor misread LC 13.450(4)(c) to require that the surveyor certificate address both minimum lot size and setbacks. LC 13.450(4)(c) only requires that the surveyor certify that the "property reduced in size by the adjustment is not reduced below the minimum lot or parcel size for the applicable zone." Although the surveyor certificate for this property line adjustment decision does not even identify what the minimum lot or parcel size in the F-2 zone is, the surveyor certificate certifies none of the parcels "reduced in size by the adjustment[s]" are "reduced below the minimum lot or parcel size for the applicable zone."[6] The surveyor certificate goes

[6] The F-2 zone does not appear to have a numerical minimum lot or parcel size. LC 10.104-40 does impose a highly discretionary minimum area

further and certifies—without identifying what the F-2 zoning district setbacks are—that none of the property line adjustments result in setbacks from existing structures and improvements becoming nonconforming or more nonconforming.

As already noted, petitioners apparently misread LC 13.450(4)(c) to require that the surveyor's certificate certify that "the setbacks from existing structures and improvements do not become nonconforming or more nonconforming with the setback requirements." But petitioners contend the county may not rely on the surveyor certificate and the county itself must determine if the property line adjustments result in nonconforming, or more nonconforming, setbacks. Petitioners contend that for at least one of the properties, the property line adjustments result in nonconforming setbacks. Petition for Review 22-23.

We do not understand intervenor to dispute that the property line adjustments result in at least some nonconforming setbacks. Rather, intervenor, like petitioner, interprets LC 13.450(4)(c) to require that the surveyor certify both that minimum lot size and set back requirements are met. Intervenor argues the that county was not obligated or authorized under LC 13.450(4)(c) to independently determine whether setbacks are rendered nonconforming by the property line adjustments, but instead the county can only determine if the

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requirement for land divisions. Because petitioners raise no issue concerning minimum lot or parcel size we do not consider the question further.

applicant has filed a surveyor's certification that setbacks have not become nonconforming or more nonconforming.

Because both parties misread LC 13.450(4)(c) in this regard, we reject intervenor's argument that the planning director was not obligated to determine whether the property line adjustments result in nonconforming setbacks, although we do so for a different reason than petitioners. Because there is no dispute that the property line adjustment resulted in nonconforming setbacks, we agree with petitioner that the county should not have applied LC 13.450(4)(c) to approve the disputed property line adjustments ministerially. Under LC 13.450(5), *see* n 5, the planning director should have provided a prior hearing on the proposed property line adjustments, or provided notice of his decision approving the property line adjustments and provided an opportunity for a local appeal. The planning director erred by failing to do so.

Finally, as noted earlier, one jurisdictional question in this case turns in part on whether the PLA was rendered under standards that require interpretation or the exercise of legal judgment. Petitioner argues that the planning director was required to exercise legal judgment in determining whether to approve the disputed property line adjustments ministerially. We agree with petitioners that in determining whether the proposed property line adjustments result in nonconforming or more nonconforming setbacks, the planning director was required to apply language in LC 16.211(8)(a) that

requires interpretation or the exercise of policy or legal judgment.[7] As noted earlier, this means the exception to LUBA's jurisdiction set out at ORS 197.015(10)(b)(A) does not apply to the challenged decision.

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[7] One need not read very far through LC 16.211(8)(a) to see that significant legal judgment is required to determine what the required setbacks are in the F-2 zone. LC 16.211(8) provides, in part:

> "(a) Setbacks. Residences, dwellings or manufactured dwellings and structures shall be sited as follows:
>
> "(i) Near dwellings or manufactured dwellings on other tracts, near existing roads, on the most level part of the tract, on the least suitable portion of the tract for forest use and at least 30 feet away from any ravine, ridge or slope greater than 40 percent;
>
> "(ii) With *minimal intrusion* into forest areas undeveloped by nonforest uses; and
>
> "(iii) *Where possible, when considering LC 16.211(8)(a)(i) and (ii) above and the dimensions and topography of the tract*, at least 500 feet from the adjoining lines of property zoned F-1 and 100 feet from the adjoining lines of property zoned F-2 or EFU; and
>
> "(iv) Except for property located between the Eugene-Springfield Metropolitan Area General Plan Boundary and the Eugene and Springfield Urban Growth Boundaries, where setbacks are provided for in LC 16.253(6), the riparian setback area shall be the area between a line 100 feet above and parallel to the ordinary high water of a Class I stream designated for riparian vegetation protection in the Rural Comprehensive Plan. No structure other than a fence shall be located closer than 100 feet from ordinary high water of a Class I stream designated for riparian

The first assignment of error is sustained.

SECOND ASSIGNMENT OF ERROR

Petitioners argue that LC 13.450(4)(c) authorizes the planning director to ministerially approve "[t]he adjustment of a common property line between properties * * *." *See* n 5. Petitioners argue the reference to "a common property line" means an application can only propose a single property line adjustment. Because the application in this case proposed nine property line adjustments, petitioners contend the ministerial approval required by LC 13.450(4)(c) is not appropriate and that this is a second reason the application should have been processed under LC 13.450(5) with a prior hearing or notice and an opportunity for a local appeal hearing. To bolster this argument,

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> vegetation protection by the Rural Comprehensive Plan. A modification to the riparian setback standard for a structure may be allowed provided the requirements of LC 16.253(3) or LC 16.253(6), as applicable, are met; and
>
> "(v) Structures other than a fence or sign shall not be located closer than:
>
> "(aa) 20 feet from the right-of-way of a state road, County road or a local access public road specified in Lane Code LC Chapter 15; and
>
> "(bb) 30 feet from all property lines other than those described in LC 16.211(8)(a)(v)(aa) above; and
>
> "(cc) The minimum distance necessary to comply with LC 16.211(8)(a) above and LC 16.211(8)(b) through (d) below." (Emphases added.)

petitioners note that unlike LC 13.450(4)(c), which refers to "[t]he adjustment of a common property line between properties," LC 13.450(2) refers to "one or more property line adjustments." *See* n 5. Petitioners contend this shows the county knows how to distinguish between cases when a single property line adjustment is authorized and when multiple property line adjustments are authorized.

There are at least three flaws in petitioners' argument under the second assignment of error. The most significant is that LC 13.450(2), which petitioners concedes envision more than one property line adjustment, applies to all property line adjustments, whether approved ministerially or with public involvement under LC 13.450(5). The second flaw is that LC 13.450(5) refers to multiple property line adjustment *applications* and says nothing about how many property line adjustments may be proposed in *a single application*, which is the circumstance we have in this appeal. *See* n 5. The third flaw is that the lengthy remaining text of LC 13.450(5) which is not quoted in n 5 is littered with singular references like the one that petitioners rely on in LC 13.450(4)(c).

In sum, we disagree with petitioner that LC 13.450 precludes an application for more than one property line adjustment in a single application.[8]

The second assignment of error is denied.

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[8] We address the more nuanced question of what it means to adjust one or more common property lines between common properties in the next assignment of error.

THIRD ASSIGNMENT OF ERROR

The maps included in our discussion of the facts shows the starting and final configurations of the eight properties. We refer to those maps to describe the relevant facts for this assignment of error. In a nutshell, petitioner argues that some of the nine property line adjustments that were approved on April 28, 2015 did not adjust common property lines between *existing* properties. Rather, petitioner argues, some of those property line adjustments approved additional property line adjustments between properties that were reconfigured by one or more of the earlier property line adjustments. But those reconfigured properties did not yet exist in the configuration that had been approved in earlier property line adjustments, because the deeds required to complete those property line adjustments had not yet been recorded. For simplicity we refer to this circumstance as simply "further adjustment of adjusted properties." As noted earlier, all the deeds with the exception of the 2013 deed that was recorded without prior property line adjustment approval were recorded together on June 2, 2015. We understand petitioners to argue that in order to approve a property line adjustment and then approve an additional property line adjustment for one of those adjusted properties, the deed to complete the first property line adjustment must first be executed and recorded.[9]

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[9] ORS 92.190(3) requires that county procedures for property line adjustments must "include the recording, with the county clerk, of conveyances conforming to the approved property line adjustment as surveyed in accordance with ORS 92.060 (7)."

The property line adjustment between what are labeled properties #6 and #8 was the first property line adjustment. That property line adjustment is the one that was recorded in 2013 without prior county approval. That property line adjustment enlarged property 6 slightly. If the starting and final configurations are compared, it can be seen that the property line adjustments, effectively made property #6 into a nest, into which properties #3, #4 and #5 were relocated and properties #4 and #5 were significantly reduced in size. The table below illustrates those changes.

Property	Beginning Area	Final Area	Starting location	Final location
#3	5.05 Ac	6.61 Ac	Middle of Property	SE Corner
#4	43.74 Ac	4.71 Ac	West Side of Property	SE Corner
#5	34.53 Ac	5.43 Ac	West Side of Property	SE Corner
#6	37.72 Ac	7.86 Ac	SE Corner of Property	SE Corner

ORS 92.010 defines the concept of "partitioning land" to exclude "property line adjustment[s]" and also defines "property line," and "[p]roperty line adjustment." We set out those definitions below:

> "(9) 'Partitioning land' means dividing land to create not more than three parcels of land within a calendar year, but does not include:
>
> "* * * * *
>
> "(b) Adjusting a property line as property line adjustment is defined in this section[.]
>
> "* * * * *
>
> "(11) 'Property line' means the division line between two units of land."

> "(12) 'Property line adjustment' means a relocation or elimination of all or a portion of the common property line between abutting properties that does not create an additional lot or parcel."

LUBA has struggled over the years to determine the meaning and scope of the above statutory language, in various contexts. The relevant statutes have been revised at times in response to some of our decisions. We discuss below some of those decisions and some of the statutory changes. We turn first to our decision in Warf v. Coos County, 43 Or LUBA 460 (2003), which bears directly on the issue presented in this appeal.

A. Warf v. Coos County

In *Warf*, LUBA reversed a county decision that approved a single application to reconfigure three properties via two property line adjustments, as shown in the below figures:

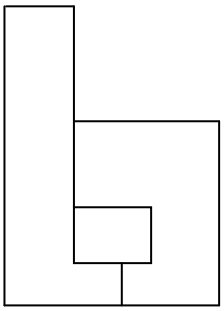

Fig 1: Starting Configuration

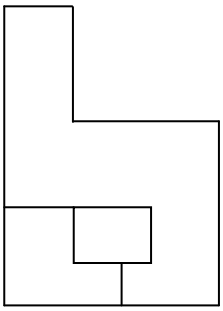

Fig. 2: Configuration after First Adjustment

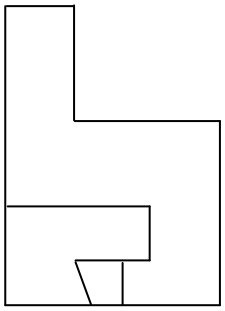

Fig. 3: Configuration after Second Adjustment

In rejecting the county's single decision that approved three property line adjustments, LUBA set out the then existing relevant statutes at ORS 92.010 (2001):

> "(7) 'Partition land' means to divide land into two or three parcels of land within a calendar year, but does not include:
>
> " * * * * *
>
> "(b) An adjustment of a property line by the relocation of a common boundary where an additional unit of land is not created and where the *existing unit of land* reduced in size by the adjustment complies with any applicable zoning ordinances[.]"
>
> "(11) 'Property line adjustment' means the relocation of a common property line between *two* abutting properties." (Emphases added.)

LUBA agreed with petitioners that the nominal property line adjustments in *Warf* were not consistent with the ORS 92.010(11) definition of that term. LUBA determined that that statute permitted only the relocation of *one* property line, and it had to be a *common* property line between *two* abutting properties. *Warf*, 43 Or LUBA at 466. Further, LUBA noted that "existing unit of land" language in the 2001 version of ORS 92.010(7)(b) supports a conclusion that "[p]roperty line adjustments may not be approved for proposed or hypothetical lots or parcels that do not yet separately exist as lots or parcels"

in their adjusted configuration. *Id.*[10] LUBA concluded "there is no limit that anyone has called to our attention on the number of property line adjustments that can be approved, provided that one common property line is adjusted at a time and provided that the adjusted property line separates *existing parcels* rather than possible or hypothetical parcels." *Id.* at 468 (emphasis in original). LUBA further noted:

> "If intervenors wish to proceed by way of serial property line adjustments they must seek separate approvals for each of the needed property line adjustments and implement each step before proceeding to seek approval for additional property line adjustments that may be needed to achieve their desired reconfiguration of their parcels." *Id.* at 471.

As indicated by the above figures, LUBA concluded that further adjustment of adjusted properties in a single decision was not permitted.

B. 2005 Statutory Amendment

In 2005, the legislature passed HB 2755 (2005), which among other things, amended definitions at ORS 92.010 (7) and (11). The legislative history indicates that the Oregon Association of County Engineers and Surveyors supported the language for the revisions to ORS 92, but there is no explanation as to why specifically ORS 92.010 (7) or (11) were amended in relevant exhibits, minutes or recordings of committee hearings on the proposed HB 2755. At one point in a public hearing on the bill, HB 2755 was referred to as a

[10] This is the phenomenon that we are referring to in this opinion as further adjustment of adjusted properties in a single decision.

housekeeping bill. *House Committee on Land Use*, March 23, 2005, Tape 44 A. A review of the entire bill makes it quite clear that the amendments were mostly changes in phraseology, rather than substantive amendments, save sections regarding easements and public roads. The relevant change to ORS 92.010 was as follows:

> "([*11*] **12**) 'Property line adjustment' means the relocation **or elimination** of a common property line between [*two*] abutting properties." (Bracketed italics indicating deleted language; boldface and underlining indicating new language.)

In 2009, LUBA revisited *Warf* after the 2005 amendments, noting that ORS chapter 92 did not preclude approval of more than one property line adjustment in a single decision, so long as the adjusted property lines are common property lines between abutting, existing properties. *Kipfer v. Jackson County*, 58 Or LUBA 436, 445 (2009). LUBA generally agreed with the hearings office in that case who concluded:

> "The 2005 ORS amendments deleted the reference to two abutting properties so that it then defined 'property line adjustment' to mean 'the relocation of or elimination of a common property line.' Of importance here is the fact that ORS 92.010([11]) no longer required that the adjustment occur between two abutting properties. The new language authorizes a common property line to be adjusted among any number of properties." *Id.* at 444-445.

It is important to note that *Kipfer* involved multiple property line adjustments that occurred between existing abutting properties, and the lines that were

relocated existed prior to being adjusted.[11] *Kipfer* did not concern a decision which approved multiple property line adjustments where a later property line adjustment adjusted a common property line between properties that had been reconfigured by earlier property line adjustments (further adjustment to an adjusted property).

C. 2008 Amendments

In 2008, ORS 92.010 was again amended by HB 3629. Oregon Laws 2008, ch 12 (Spec Sess). The impetus for this bill was *Phillips v. Polk County*, 53 Or LUBA 194, *aff'd*, 213 Or App 498, 162 P3d 338 (2007), *rev den*, 344 Or 43 (2008). That decision reversed Polk County's approval of two property line adjustments and a farm dwelling. As significant here, LUBA held in *Phillips* that any property that is affected by a property line adjustment must comply with minimum parcel size requirements after the adjustment, even if one or both of the adjusted properties were less than the minimum parcel size applicable in the zone in which the land was situated.[12]

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[11] By "existing" properties and "existing" property lines we mean the deed required to bring the property line into existence and to bring the property into existence in its adjusted configuration had been recorded.

[12] In reaching that conclusion, LUBA relied on the language in the then applicable version of ORS 92.010(7)(b) that provided a property line adjustment did not constitute a partition of land provided "the existing unit of land reduced in size by the adjustment complies with any applicable zoning ordinance[.]" 53 Or LUBA at 201.

The 2008 statutory change statutorily overruled *Phillips* by permitting property line adjustments for pre-existing undersized properties, even if one or both of the adjusted properties did not comply with minimum lot or parcel sizes before or after the property line adjustment, in certain circumstances. Recordings from relevant 2008 committee meetings demonstrate that similar bill language had been submitted in 2007, but was introduced too late to be considered and adopted. Real estate and land use practitioners pushed for a revised version of the bill in 2008, which was unanimously supported. *House Committee On Agriculture and Natural Resources*, February 5, 2008; *Senate Committee on Environment and Natural Resources*, February 13, 2008. The committee meetings also demonstrate the purpose of the bill was clearly to alter the result under the *Phillips* case and to also prevent improper abuses of the property line adjustment process.

The 2008 legislation modified these relevant definitions:

> "([*8*] **9**) '[*Partition*] **Partitioning** land' means [*to divide*] **dividing** land to create not more than three parcels of land within a calendar year, but does not include:
>
> "(a) [*A division of land resulting from*] **Dividing land as a result of a** lien foreclosure * * *;
>
> "[(b) *An adjustment of a property line by the relocation of a common boundary where an additional unit of land is not created and where the existing unit of land reduced in size by the adjustment complies with any applicable zoning ordinance*;]

> "(b) **Adjusting a property line as property line adjustment as defined in this section**;
>
> "* * * * *."
>
> "(12) 'Property Line Adjustment' means [*the*] **a** relocation or elimination of **all or** a **portion of the** common property line between abutting properties **that does not create an additional lot or parcel**." (Bracketed italics indicating deleted language; bold and underlining indicating new language.)

HB 3629 (2008) also included language now codified at ORS 92.192, which was modified in 2015, to establish complicated minimum lot size requirements for property line adjustments affecting substandard sized properties in different circumstances. HB 3629 (2008) also amended the definition of "partition" at ORS 92.010(8). The prior ORS 92.010(8)(b) definition of "partition" excluded property line adjustments, which were in part described as instances "where the existing unit of land reduced in size by the adjustment complies with any applicable zoning ordinance." In 2008, that language was removed from the ORS 92.010(8)(b) definition of "partition." As noted earlier, LUBA in *Warf* had relied in part on that language to conclude that a single decision may not adjust property lines between properties and then grant further property line adjustments for those adjusted properties before the deeds that completed the initial property line adjustments have been recorded to bring those adjusted properties into existence. The question for us in this appeal is whether that 2008 statutory change necessitates a different result here from LUBA's conclusion in *Warf* that a property line adjustment can only be approved for an

adjustment of a common property line between *existing* properties and cannot be approved for hypothetical properties that do not yet exist as adjusted properties because the deed needed to bring the hypothetical property into existence had not yet been recorded on the date that the further property line adjustment was approved.

D. Further Adjustment of Adjusted Properties

To repeat, in *Warf*, LUBA relied in part on the "existing unit of land reduced in size by the adjustment complies with any applicable zoning ordinance" language in ORS 92.010(7)(b) to conclude that property line adjustments may only adjust a common property line between existing properties, and that a single property line adjustment decision may not approve an adjustment of a common property line between existing properties and then approve an additional property line adjustment between one or both of those adjusted properties and another property before the deed that completed the initial property line adjustment is recorded. While it is possible that our holding in *Warf* was the target of the 2008 legislative amendments, there is absolutely no suggestion in the legislative history that it was. To the contrary, all indications in the legislative history are that the deletion of the "existing unit of land reduced in size by the adjustment complies with any applicable zoning ordinance" was directed at the "complies with any applicable zoning ordinance" language which was relied on by LUBA in *Phillips* to conclude property line adjustments involving a substandard property that did not bring

the property into compliance with the applicable zoning ordinance violated that language. Again, the purpose of that 2008 legislation was to set out the circumstances and limitations that applied to property line adjustments between properties that do not comply with minimum lot or parcel size requirements. That 2008 legislation was not adopted to address *Warf*. The "existing unit of land" language was simply a collateral casualty.

There is additional statutory language that supports the above conclusion. As noted earlier, ORS 92.190 requires that conveyances be recorded to complete property line adjustments:

> "(3) The governing body of a city or county may use procedures other than replatting procedures in ORS 92.180 and 92.185 to adjust property lines as described in ORS 92.010 (12), as long as those procedures include the recording, with the county clerk, of conveyances conforming to the approved property line adjustment as surveyed in accordance with ORS 92.060 (7).
>
> "(4) A property line adjustment deed shall contain the names of the parties, the description of the adjusted line, references to original recorded documents and signatures of all parties with proper acknowledgment."

ORS 92.190(3) requires that a deed be recorded to complete a property line adjustment. ORS 92.190(4) requires that a property line adjustment deed must include a reference to the original recorded deed for the properties for which a property line adjustment deed is being recorded. That statutory requirement is problematic where a single decision approves multiple property line adjustments, including further adjustment of adjusted properties, because it

would be difficult or impossible to refer to the "original recorded documents and signature of all parties" because on the date the property line adjustments were approved those documents would not yet have been recorded.

We conclude that under existing statutes multiple property line adjustments may be approved in a single decision, so long as those property line adjustments adjust common property lines between existing properties. But "further adjustment of adjusted properties" is not permissible under existing statutes in a single decision. To approve a property line adjustment and then approve another property line adjustment for one or both of the adjusted properties, the statutorily required conveyance to complete the first property line adjustment must first be recorded. The existing ORS 92.010(12) definition of property line adjustment ("a relocation or elimination of all or a portion of the common property line between abutting properties that does not create an additional lot or parcel") admittedly does not expressly state that common property lines may only be adjusted between existing properties, but neither does it say property line adjustments may be approved for common property lines between hypothetical properties that may exist in the future if a deed is recorded in the future to bring the properties into existence.

In this case the first two property line adjustments between property #6 and property #8 and property #1 and property #2 were adjustments of common property lines between existing properties. But beginning with the third property line adjustment the decision approved further adjustments of adjusted

(hypothetical) properties.[13] We agree with petitioners that under existing statutes it was error for the county to do so.

Finally, if it is not obvious, the same result that intervenor attempted to achieve in a single decision appears to be permissible under the statutes in more than one decision if deeds are recorded and additional applications are submitted after those deeds are recorded to avoid a single decision that approves further adjustment of adjusted properties. If the legislature believes property owners should be allowed to achieve that result in a single property line adjustment decision, the statutes can be amended to allow such property line adjustments. However, as they are currently worded, we conclude they do not permit, in a single property line adjustment decision, further adjustment of adjusted properties or further adjustment of adjusted property line.

The third assignment of error is sustained.

FOURTH ASSIGNMENT OF ERROR

As we have explained earlier one of the property line adjustments approved by the challenged decision is between properties #6 and #8. Petitioners contend it is not clear whether the county intended to approve that 2013 property line adjustment and, if it did not, then at least some of the approved property line adjustments are "premised on an un-reviewed and unlawful 2013 property line adjustments." Petition for Review 34.

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[13] In fact, beginning with the eighth property line adjustment, the decision also approves further adjustments of adjusted property lines.

For the reasons set out in intervenor's brief, it is sufficiently clear that the county intended to and in fact did approve nine property line adjustments, including the 2013 property line adjustment were the deed was recorded prematurely.

The fourth assignment of error is denied.

FIFTH ASSIGNMENT OF ERROR

Petitioners' fifth assignment of error is not easy to understand. To the extent we understand it, it does not appear to request any relief that will not already be required by our decision to sustain the first assignment of error.

The fifth assignment of error is denied.

The county's decision is remanded.

Ryan, Board Member, concurring.

I write separately because I disagree with the majority's resolution of the third assignment of error. As the majority opinion explains, the county's unitary decision approved eight property line adjustments (nine including the 2013 property line adjustment), and some of the approved property line adjustments were between properties that had been reconfigured by one or more of the earlier property line adjustments also approved in the decision. Stated differently, at the time of the county's decision, some of the property lines did not yet exist in the location that had been approved in earlier property line adjustments, because the deeds required to complete those property line adjustments had not been recorded. The majority terms this "further adjustment

of adjusted properties." However, there appears to be no factual dispute that after the county's decision, the deeds were recorded in the order necessary to adjust each property line before adjusting an additional property line. The majority concludes that county approval of "further adjustment of adjusted properties" is not allowed in a single decision under existing statutes. In my view, the express language of the relevant statutes simply does not support the majority's conclusion.

The text of the relevant provisions of ORS 92.010 that the majority relies on is set out again here:

> "(11) 'Property line' means the division line between two units of land.
>
> "(12) 'Property line adjustment' means a relocation or elimination of all or a portion of the common property line between abutting properties that does not create an additional lot or parcel."

The phrase "units of land" used in the definition of "property line" is not defined. The word "properties" used in the definition of "property line adjustment" is also not defined. The majority concludes that ORS 92.010(12) mandates that a single property line adjustment decision may not approve an adjustment of a common property line between existing properties and then approve an additional property line adjustment between one or both of those adjusted properties and another property before the deed that completed the initial property line adjustment is recorded. In essence, the majority favors the holding in *Warf v. Coos County*, and this decision extends that holding even

after statutory changes that eliminated the language that was the basis for that holding.

As the majority details, multiple statutory changes after LUBA's 2003 decision in *Warf* have resulted in elimination of the "existing unit of land reduced in size by the adjustment complies with any applicable zoning ordinance" language in ORS 92.010(7)(b) that LUBA relied on in *Warf* to reach its conclusion. As correct as *Warf* may have been in light of the applicable statutory language in 2003, *Warf* has no real relevance to the issue presented in this appeal, because of the statutory changes. In my view, the majority's interpretation of ORS 92.010(11) and (12) effectively inserts the word "existing" into those statutory provisions: in ORS 92.010(11) before the phrase "units of land," and in ORS 92.010(12) before the word "properties," and that contravenes ORS 174.010.[14]

The majority also cites as support ORS 92.190(4), which specifies the information that must be included in property line adjustment deeds. The majority reasons:

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[14] ORS 174.010 provides:

> "In the construction of a statute, the office of the judge is simply to ascertain and declare what is, in terms or in substance, contained therein, not to insert what has been omitted, or to omit what has been inserted; and where there are several provisions or particulars such construction is, if possible, to be adopted as will give effect to all."

> "That statutory requirement is problematic where a single decision approves multiple property line adjustments, including further adjustment of adjusted properties, because it would be difficult or impossible to refer to the 'original recorded documents and signature of all parties' because on the date the property line adjustments were approved those documents would not yet have been recorded." Slip op 28.

However, ORS 92.190(4) is not an approval standard for a property line adjustment at all, but rather specifies the information that must be included in property line adjustment deeds. Nothing in ORS 92.190(4) supports the conclusion that a county may not approve both multiple property line adjustments and further adjustments of adjusted properties in a single decision. A condition of approval could easily address the statutory requirement that specifies the information required to be contained in a property line adjustment deed by requiring each deed to comply with the statute.

For the reasons set forth above, ORS 92.010(11) or (12) do not prohibit the county from approving multiple property line adjustments in a single decision or approving further adjustment of adjusted properties in that single decision. I would deny the third assignment of error.

Date: February 10, 2017

To: Interested Parties
From: Keir Miller, Lane County Planning Supervisor
RE: **Effective Immediately - Change in Lane County Property Line Adjustment Review Procedures**

You are receiving this notice because the Land Use Board of Appeals (LUBA) has issued a Final Opinion that will result in changes to the way Lane County processes Property Line Adjustment (PLA) applications.

Background
On April 28, 2015, Lane County issued a single approval for a Ministerial property line adjustment involving nine serial property line adjustments in the F-2 zone, without notice. A timely appeal was filed with LUBA and LUBA issued a Final Opinion on January 26, 2017 (2016-008 Bowerman v. Lane County (Egge))[1]. That decision is linked, below:

http://www.oregon.gov/LUBA/docs/Opinions/2017/01-17/16008.pdf

Changes in Procedures
The LUBA Final Opinion necessitates two major changes to how Lane County will process PLA applications.

1) Regarding Ministerial PLA applications, LUBA stated that due the construction of the code language in LC 13.450(4)(c), staff cannot accept a Surveyor's statement that setbacks are conforming or the nonconformity of a parcel is not increased. Staff must make findings that the PLA complies with zoning setbacks and siting standards (First Assignment of Error, page 9). To further clarify our understanding of the decision:
    a. Most zones have clear and objective setbacks and no siting standards are involved however, the LUBA decision appears to compel staff to prepare findings related to setbacks. This new requirement will prevent staff from issuing over-the-counter approvals of Ministerial PLA applications for the time being.
    b. Additionally, Ministerial PLA applications between lands zoned F1, F2, or EFU involve siting standards that are discretionary in nature. Because of this PLAs within these zones will now require a Director-level PLA application. Exceptions to a Director PLA include:
        i. Ministerial PLA's in the F1, F2, or EFU zone if the application is made pursuant to LC 13.450(4)(a) or (b). (both properties are vacant)
        ii. Ministerial PLA's in the F1, F2, or EFU zone if the application is made pursuant to LC 13.450(4)(c) and the PLA results in setbacks from non-farm structures to be over 500 feet from land zoned F1 or over 100 feet from land zoned F2 or EFU.

        Note: PLA's that result in setbacks less than what is listed above may be allowed, but require staff to write discretionary findings and require a Director PLA application.

[1]This decision is still in the appeal period and may be appealed to the Court of Appeals. However, the act of filing an appeal does not invalidate a LUBA Final Order.

2) LUBA also ruled that it is unlawful to approve serial PLA's in one application. In January 2016, Lane County issued a change in policy preventing the approval of serial PLA's from occurring in one Ministerial PLA application. For the last year these types of have applications have instead been reviewed through a single Director-level PLA application. This practice will cease immediately and apply to pending applications as well.

   a. The Final Opinion states (Third Assignment of Error, page 29, line 4-11):

      'We conclude that under existing statutes multiple property line adjustment may be approved in a single decision, so long as those property line adjustments adjust common property lines between existing properties. But "**further adjustment of adjusted properties" is not permissible under existing statutes in a single decision**. To approve a property line adjustment and then approve another property line adjustment for one or both of the adjusted properties, the statutorily required conveyance to complete the first property line adjustment must first be recorded.' [**emphasis added**]

Please be advised that there may be circumstances where Lane County can process multiple property line movements in one Director PLA application and still comply with the statement above. The Applicant will need to justify why it is not a serial PLA, but an adjustment between existing properties in their application.

New Application forms and handouts related to these revised processes will be posted to the Lane County Land Use and Planning website (linked below) by end of day on Wednesday, February 8, 2017.

http://lanecounty.org/government/county_departments/public_works/land_management_division/land_use_planning___zoning/

If you have additional questions regarding these revised processes, please feel free to contact me.

Sincerely,

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Cc LMD Planning Staff