

LAND MANAGEMENT DIVISION



LAWFULLY ESTABLISHED UNITS OF LAND

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This handout outlines zoning and land use laws concerning lawfully established units of land. This handout is for informational purposes only and is not to be considered a substitute for the language of state or local regulations. The information in this handout is derived from Lane Code Chapter 13, Oregon Revised Statutes (ORS) Chapters 92 and 215, and the policies of the Lane County Land Management Division.

WHAT IS A LAWFULLY ESTABLISHED UNIT OF LAND?

Lane Code (LC) 13.030(3) provides the following definitions:

(n) Lawfully Established Unit of Land. A lawfully established unit of land means:

(i) A lot or parcel created by filing a final plat for subdivision or partition; or

(ii) Another unit of land created:

(aa) In compliance with all applicable planning, zoning and subdivision or partition ordinances and regulations; or

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

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

(o) Legal Lot. A lawfully established unit of land that has been verified and noticed by Lane County through a legal lot verification pursuant to LC 13.140.

Under present State law and County regulations, subdivisions and partitions create either lots or parcels, respectively. Thus, a lot in a subdivision or a parcel in a partition is a lawfully established unit of land

Additionally, Lane County's Land Division Code recognizes lawfully established unit of land created by means other than a land division provided the unit of land was created in compliance with, or prior to, applicable land division and land use laws and regulations. Units of land falling into this category are required to go through a county review process known as a Legal Lot Verification to determine their lawful status.

WHY IS IT IMPORTANT?

A lawfully established unit of land may be important to land owners desiring to build on their property as well as individuals looking to buy or sell land. The reason for this is that lawfully established units of land provide the basis for many Type I and Type II land use applications that permit development on land. In other words, the land must generally be a recognized lawfully established unit of land before a permit for development can be issued.

It is **highly recommended** that you make sure that the unit of land you are buying or planning to develop was lawfully established.

HOW DO YOU IDENTIFY A LAWFULLY ESTABLISHED UNIT OF LAND?

The legal lot verification process identifies lawfully established units of land. The criteria used by staff to determine if a unit of land was created lawfully is contained in Lane County Code 13.030.

THE LEGAL LOT PROCESS

There are three potential review processes depending on how and when a unit of land was created.

No Application is Required:

- If the unit of land was created by a final plat for subdivision or partition and is in the same configuration, or;
- If the property was created by the filing or recording of an approved minor or major partition map between 1949-1990 and is in the same configuration, or;
- If the property has already been verified as a legal lot by the County, is a noticed final land use decision, and is in the same configuration.

A Type I Review Application is Required:

- If the subject property was created prior to April 7, 1949, the effective date of the County's earliest Subdivision Ordinance, and the subject property has not changed configuration since that time.

Type II Review Application is Required:

- If the property does not qualify for any of the above listed options, a Type II review process is required pursuant to LC 13.130.

State and local laws regulate how a unit of land must be created. Since laws change frequently, we must know how, when and why a unit of land was created. With complete and accurate information, Lane County can then review what pertinent laws were in effect on the unit of land's date of creation. This review requires staff to research every deed listed on the County Assessor's Property Description Card, review the applicant's maps and statement, then prepare a staff report and legal notice of the decision.

After the notice is mailed, the decision will become final at close of business on the 12th day unless appealed. The determination may be appealed to the Lane County Hearings Official in accordance with Lane Code Chapter 14.

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WHAT IS NOT A LAWFUL UNIT OF LAND Version 10/2020

1) A tax lot is not necessarily a lawfully established unit of land. A tax lot is a unit of land used by the County Assessor to set a value for property taxation. Tax lot creation or modification often uses methods that do not meet Legal Lot standards. Also included in this category are individual tax accounts. A tax account is used for taxing purposes and do not necessarily constitute a lawfully established unit of land.

2) A unit of land conveyed by deed or contract is not necessarily a lawfully established unit of land. Units of land created by this method define ownership and title, but do not necessarily mean it was lawfully created under State and Local laws at the time.

3) A unit of land created by a land division without final county approval is not a lawfully established unit of land. Units of land created by a partition or subdivision require preliminary approval followed by final approval by Lane County.

4) A Legal Lot Verification prior to 2010 does not finally verify a lawfully established unit of land until it has been legally noticed. Prior to 2010, research and legally required notice were two separate steps in the legal lot verification process. An application for research resulted in a Preliminary Legal Lot determination. A Preliminary Legal Lot only becomes a Final Legal Lot after legal notice is provided and an appeal period passes. After 2010, all legal lot verifications have been noticed. **Please note that due to changes in state law and recent court decisions, final approval of the preliminary legal lot verification cannot be guaranteed. While most preliminary legal lots will be recognized as final legal lots once they are reviewed and noticed by the county, there are some limited circumstances where this is not the possible.**

BOUNDARY AND OWNERSHIP OF A LAWFULLY ESTABLISHED UNIT OF LAND

Through the Legal Lot process, Lane County ensures that your property was created lawfully for development purposes. The Legal Lot process does not make claims as to ownership, title, or boundary locations

LAWFULLY ESTABLISHED UNITS OF LAND

Lawfully established units of land are most likely if:

1. The unit of land was created by an approved partition or subdivision;
2. The unit of land was created by deed or land sales contract signed prior to any applicable zoning, partitioning or subdivision ordinances;
3. The unit of land was created by deed or land sales contract in compliance with applicable zoning requirements at a time prior to applicable partitioning or subdivision ordinances;
4. The unit of land was created by deed or land sales contract between May 2, 1962 and March 26, 1975, and:
 - a. Was located in the urbanizing area as shown on the map entitled "Lane County Urbanizing Area" contained in the Revised Subdivision Ordinance enacted on May 2, 1962, and
 - b. Was a division of land for agricultural purposes, where each resulting lot or parcel is 5 acres or larger in size, and

- c. Has a width of not less than 300 feet for the entire length between the front lot line and rear lot line, and
- d. Has frontage of not less than 300 feet on a street, provided that such street has a right of way width of not less than 50 feet and not less than such width as may be called for in the Master Road Plan.

5. The unit of land is recognized as lawful through a court decision or Land Use Board of Appeals opinion.

***Lawful status of a unit of land may also be possible if:**

6. The unit of land was created as a result of deeds recorded dedicating land to a public road prior to 1990;
7. A unit of land determined to be a legal lot through a prior County approval of a building permit;
8. The unit of land was created by a circuit court decision between Oct.3, 1973 and Oct. 4, 1977;
9. The unit of land was created by the claim of intervening state or federal ownership of navigable streams, meandered lakes, tidewaters;
10. The unit of land is the remainder of a parcel divided under a method listed above;

***These circumstances do not guarantee you have a lawfully established unit of land, as there could be other complex factors that could cause issues.**

OTHER CONSIDERATIONS

- Words such as "and" or "also" in legal descriptions, deeds or other instruments conveying real property, do not operate to establish individual legal lots unless the properties are noncontiguous.
- Reconfigured lots or parcels must follow applicable Property Line Adjustment laws to be considered a lawfully established unit of land (See Property Line Adjustment Handout). A Property Line Adjustment does not create additional lawful units of land.
- The exchange of property between owners of abutting properties does not necessarily create a separate lawfully established unit of land.