

Enrolled
Senate Bill 408

Sponsored by Senators HANSELL, MANNING JR, Representative SMITH G (Presession filed.)

CHAPTER

AN ACT

Relating to how a county may approve a proposed division of land zoned for exclusive farm use for siting utilities; amending ORS 215.262 and 215.263.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 215.263 is amended to read:

215.263. (1) Any proposed division of land included within an exclusive farm use zone resulting in the creation of one or more parcels of land shall be reviewed and approved or disapproved by the governing body or its designee of the county in which the land is situated. The governing body of a county by ordinance shall require prior review and approval for divisions of land within exclusive farm use zones established within the county.

(2)(a) The governing body of a county or its designee may approve a proposed division of land to create parcels for farm use as defined in ORS 215.203 if it finds that:

(A) The proposed division of land is appropriate for the continuation of the existing commercial agricultural enterprise within the area;

(B) The parcels created by the proposed division are not smaller than the minimum size established under ORS 215.780; or

(C) A portion of a lot or parcel has been included within an urban growth boundary and redesignated for urban uses under the applicable acknowledged comprehensive plan and the portion of the lot or parcel that remains outside the urban growth boundary and zoned for exclusive farm use is smaller than the minimum lot or parcel size established under ORS 215.780, subject to paragraph (b) of this subsection.

(b) When a parcel for farm use is created in an exclusive farm use zone under paragraph (a) of this subsection, the partition must occur along the urban growth boundary and:

(A) If the parcel contains a dwelling, the parcel must be large enough to support continued residential use.

(B) If the parcel does not contain a dwelling, the parcel:

(i) Is not eligible for siting a dwelling, except as may be authorized under ORS 195.120;

(ii) May not be considered in approving or denying an application for siting any other dwelling; and

(iii) May not be considered in approving a redesignation or rezoning of forestlands under the acknowledged comprehensive plan and land use regulations, except for a redesignation or rezoning to allow a public park, open space or other natural resource use.

(3) The governing body of a county or its designee may approve a proposed division of land in an exclusive farm use zone for nonfarm uses, except dwellings, set out in ORS 215.213 (1)(c) or (2) or 215.283 (1)(c) or (2) if it finds that the parcel for the nonfarm use is not larger than the minimum

size necessary for the use. The governing body may establish other criteria as it considers necessary. **Land that is divided under this subsection pursuant to ORS 215.213 (1)(c) or 215.283 (1)(c) may not later be rezoned by the county for retail, commercial, industrial or other nonresource use, except as provided under the statewide land use planning goals or under ORS 197.732.**

(4) In western Oregon, as defined in ORS 321.257, but not in the Willamette Valley, as defined in ORS 215.010, the governing body of a county or its designee:

(a) May approve a division of land in an exclusive farm use zone to create up to two new parcels smaller than the minimum size established under ORS 215.780, each to contain a dwelling not provided in conjunction with farm use if:

(A) The nonfarm dwellings have been approved under ORS 215.213 (3) or 215.284 (2) or (3);

(B) The parcels for the nonfarm dwellings are divided from a lot or parcel that was lawfully created prior to July 1, 2001;

(C) The parcels for the nonfarm dwellings are divided from a lot or parcel that complies with the minimum size established under ORS 215.780;

(D) The remainder of the original lot or parcel that does not contain the nonfarm dwellings complies with the minimum size established under ORS 215.780; and

(E) The parcels for the nonfarm dwellings are generally unsuitable for the production of farm crops and livestock or merchantable tree species considering the terrain, adverse soil or land conditions, drainage or flooding, vegetation, location and size of the tract. A parcel may not be considered unsuitable based solely on size or location if the parcel can reasonably be put to farm or forest use in conjunction with other land.

(b) May approve a division of land in an exclusive farm use zone to divide a lot or parcel into two parcels, each to contain one dwelling not provided in conjunction with farm use if:

(A) The nonfarm dwellings have been approved under ORS 215.284 (2) or (3);

(B) The parcels for the nonfarm dwellings are divided from a lot or parcel that was lawfully created prior to July 1, 2001;

(C) The parcels for the nonfarm dwellings are divided from a lot or parcel that is equal to or smaller than the minimum size established under ORS 215.780 but equal to or larger than 40 acres;

(D) The parcels for the nonfarm dwellings are:

(i) Not capable of producing more than 50 cubic feet per acre per year of wood fiber; and

(ii) Composed of at least 90 percent Class VI through VIII soils;

(E) The parcels for the nonfarm dwellings do not have established water rights for irrigation; and

(F) The parcels for the nonfarm dwellings are generally unsuitable for the production of farm crops and livestock or merchantable tree species considering the terrain, adverse soil or land conditions, drainage or flooding, vegetation, location and size of the tract. A parcel may not be considered unsuitable based solely on size or location if the parcel can reasonably be put to farm or forest use in conjunction with other land.

(5) In eastern Oregon, as defined in ORS 321.805, the governing body of a county or its designee:

(a) May approve a division of land in an exclusive farm use zone to create up to two new parcels smaller than the minimum size established under ORS 215.780, each to contain a dwelling not provided in conjunction with farm use if:

(A) The nonfarm dwellings have been approved under ORS 215.284 (7);

(B) The parcels for the nonfarm dwellings are divided from a lot or parcel that was lawfully created prior to July 1, 2001;

(C) The parcels for the nonfarm dwellings are divided from a lot or parcel that complies with the minimum size established under ORS 215.780;

(D) The remainder of the original lot or parcel that does not contain the nonfarm dwellings complies with the minimum size established under ORS 215.780; and

(E) The parcels for the nonfarm dwellings are generally unsuitable for the production of farm crops and livestock or merchantable tree species considering the terrain, adverse soil or land con-

ditions, drainage or flooding, vegetation, location and size of the tract. A parcel may not be considered unsuitable based solely on size or location if the parcel can reasonably be put to farm or forest use in conjunction with other land.

(b) May approve a division of land in an exclusive farm use zone to divide a lot or parcel into two parcels, each to contain one dwelling not provided in conjunction with farm use if:

(A) The nonfarm dwellings have been approved under ORS 215.284 (7);

(B) The parcels for the nonfarm dwellings are divided from a lot or parcel that was lawfully created prior to July 1, 2001;

(C) The parcels for the nonfarm dwellings are divided from a lot or parcel that is equal to or smaller than the minimum size established under ORS 215.780 but equal to or larger than 40 acres;

(D) The parcels for the nonfarm dwellings are:

(i) Not capable of producing [*more than*] at least 20 cubic feet per acre per year of wood fiber; and

(ii) Either composed of at least 90 percent Class VII and VIII soils, or composed of at least 90 percent Class VI through VIII soils and are not capable of producing adequate herbaceous forage for grazing livestock. The Land Conservation and Development Commission, in cooperation with the State Department of Agriculture and other interested persons, may establish by rule objective criteria for identifying units of land that are not capable of producing adequate herbaceous forage for grazing livestock. In developing the criteria, the commission shall use the latest information from the United States Natural Resources Conservation Service and consider costs required to utilize grazing lands that differ in acreage and productivity level;

(E) The parcels for the nonfarm dwellings do not have established water rights for irrigation; and

(F) The parcels for the nonfarm dwellings are generally unsuitable for the production of farm crops and livestock or merchantable tree species considering the terrain, adverse soil or land conditions, drainage or flooding, vegetation, location and size of the tract. A parcel may not be considered unsuitable based solely on size or location if the parcel can reasonably be put to farm or forest use in conjunction with other land.

(6) This section does not apply to the creation or sale of cemetery lots, if a cemetery is within the boundaries designated for a farm use zone at the time the zone is established.

(7) This section does not apply to divisions of land resulting from lien foreclosures or divisions of land resulting from foreclosure of recorded contracts for the sale of real property.

(8) The governing body of a county may not approve any proposed division of a lot or parcel described in ORS 215.213 (1)(d) or (i), 215.283 (1)(d) or (2)(L) or 215.284 (1), or a proposed division that separates a processing facility from the farm operation specified in ORS 215.213 (1)(u) or 215.283 (1)(r).

(9) The governing body of a county may approve a proposed division of land in an exclusive farm use zone to create a parcel with an existing dwelling to be used:

(a) As a residential home as described in ORS 197.660 (2) only if the dwelling has been approved under ORS 215.213 (3) or 215.284 (1), (2), (3), (4) or (7); and

(b) For historic property that meets the requirements of ORS 215.213 (1)(n) and 215.283 (1)(L).

(10)(a) Notwithstanding ORS 215.780, the governing body of a county or its designee may approve a proposed division of land provided:

(A) The land division is for the purpose of allowing a provider of public parks or open space, or a not-for-profit land conservation organization, to purchase at least one of the resulting parcels; and

(B) A parcel created by the land division that contains a dwelling is large enough to support continued residential use of the parcel.

(b) A parcel created pursuant to this subsection that does not contain a dwelling:

(A) Is not eligible for siting a dwelling, except as may be authorized under ORS 195.120;

(B) May not be considered in approving or denying an application for siting any other dwelling;

(C) May not be considered in approving a redesignation or rezoning of forestlands except for a redesignation or rezoning to allow a public park, open space or other natural resource use; and

(D) May not be smaller than 25 acres unless the purpose of the land division is:

(i) To facilitate the creation of a wildlife or pedestrian corridor or the implementation of a wildlife habitat protection plan; or

(ii) To allow a transaction in which at least one party is a public park or open space provider, or a not-for-profit land conservation organization, that has cumulative ownership of at least 2,000 acres of open space or park property.

(11) The governing body of a county or its designee may approve a division of land smaller than the minimum lot or parcel size described in ORS 215.780 (1) and (2) in an exclusive farm use zone provided:

(a) The division is for the purpose of establishing a church, including cemeteries in conjunction with the church;

(b) The church has been approved under ORS 215.213 (1) or 215.283 (1);

(c) The newly created lot or parcel is not larger than five acres; and

(d) The remaining lot or parcel, not including the church, meets the minimum lot or parcel size described in ORS 215.780 (1) and (2) either by itself or after it is consolidated with another lot or parcel.

(12) Notwithstanding the minimum lot or parcel size described in ORS 215.780 (1) or (2), the governing body of a county or its designee may approve a proposed division of land in an exclusive farm use zone for the nonfarm uses set out in ORS 215.213 (1)(v) or 215.283 (1)(s) if it finds that the parcel for the nonfarm use is not larger than the minimum size necessary for the use. The governing body may establish other criteria as it considers necessary.

(13) The governing body of a county may not approve a division of land for nonfarm use under subsection (3), (4), (5), (9), (10), (11) or (12) of this section unless any additional tax imposed for the change in use has been paid.

(14) Parcels used or to be used for training or stabling facilities may not be considered appropriate to maintain the existing commercial agricultural enterprise in an area where other types of agriculture occur.

SECTION 2. ORS 215.262 is amended to read:

215.262. *[(1)]* The Legislative Assembly declares that the creation of small parcels for nonfarm dwellings in exclusive farm use zones introduces potential conflicts into commercial agricultural areas and allows a limited number of nonfarm dwellings in exclusive farm use zones. To protect the state's land base for commercial agriculture from being divided into multiple parcels for nonfarm dwellings while continuing to allow a limited number of nonfarm dwellings on less productive agricultural land not suitable for farm use, it is necessary to:

[(a)] (1) Limit the incremental division of lots or parcels larger than the minimum size established under ORS 215.780 into smaller lots or parcels for the purpose of creating new nonfarm dwellings; and

[(b)] (2) Allow a limited number of lots or parcels equal to or less than the minimum size established under ORS 215.780 to be partitioned into not more than two parcels unsuitable for farm use and eligible for siting nonfarm dwellings under ORS 215.284.

[(2) The amendments to ORS 215.263 by section 3, chapter 704, Oregon Laws 2001, address the partition of land within an exclusive farm use zone to create parcels smaller than the minimum size established under ORS 215.780 for the purpose of siting dwellings not provided in conjunction with farm use in eastern Oregon, as defined in ORS 321.805, and in western Oregon, as defined in ORS 321.257.]

Passed by Senate March 14, 2019

Repassed by Senate May 29, 2019

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Lori L. Brocker, Secretary of Senate

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Peter Courtney, President of Senate

Passed by House May 22, 2019

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Tina Kotek, Speaker of House

Received by Governor:

.....M,....., 2019

Approved:

.....M,....., 2019

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Kate Brown, Governor

Filed in Office of Secretary of State:

.....M,....., 2019

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Bev Clarno, Secretary of State