House Bill 3246

Sponsored by Representative NOBLE

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure as introduced.

Allows partition of land zoned for exclusive farm use that contains dwelling. Specifies conditions on partition.

A BILL FOR AN ACT


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.

(b) 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

NOTE: Matter in boldfaced type in an amended section is new; matter [italic and bracketed] is existing law to be omitted.

New sections are in boldfaced type.

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to allow a public park, open space or other natural resource use.

(c) A parcel 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.

(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 215.213 (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 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 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 (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 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 facility for the processing of farm products, as defined in ORS 215.255, from the
farm operation.

(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 ap-
proved 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 ap-
prove 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) Notwithstanding ORS 215.780, the county may approve a proposed division of land
zoned for exclusive farm use that contains an existing dwelling, if:
(a) The resulting parcel that contains a dwelling:
(A) Is large enough to support continued residential use of the parcel but not larger than
five acres; and
(B) May not be expanded in size by a property line adjustment under ORS 92.192; and
(b) The resulting parcel that does not contain a dwelling:
(A) Is used for a farm use both before and after the partition; and
(B) Is subject to a restrictive covenant executed by the landowner and recorded in the
deed records of the county that is irrevocable, unless the parcel is later included within an
urban growth boundary or authorized by a change in law as indicated by a release executed
by the county planning director and recorded in the deed records of the county, and that
prohibits the use of the property:
(i) For siting a dwelling; or
(ii) In consideration of an application on lands zoned for exclusive farm use for the siting
of a dwelling or the redesignation or rezoning of the lands except to allow a public park, open
space or other natural resource use.
(a) May not be used for any purpose, including the siting of a dwelling, in an area
 where other types of agriculture occur.

SECTION 2. ORS 197.665 is amended to read:
197.665. (1) Residential homes shall be a permitted use in:
(a) Any residential zone, including a residential zone which allows a single-family dwelling; and
(b) Any commercial zone which allows a single-family dwelling.
(2) A city or county may not impose any zoning requirement on the establishment and mainte-
nance of a residential home in a zone described in subsection (1) of this section that is more re-
strictive than a zoning requirement imposed on a single-family dwelling in the same zone.
(3) A city or county may:
(a) Allow a residential home in an existing dwelling in any area zoned for farm use, including
an exclusive farm use zone established under ORS 215.203;
(b) Impose zoning requirements on the establishment of a residential home in areas described in
paragraph (a) of this subsection, provided that these requirements are no more restrictive than those
imposed on other nonfarm single-family dwellings in the same zone; and
(c) Allow a division of land for a residential home in an exclusive farm use zone only as de-
scribed in ORS 215.263 (9) or (13).

SECTION 3. ORS 215.265 is amended to read:
215.265. In approving a land division under ORS 215.263 (2)(a)(C), (10) or (13) [or (12)] of this section unless any additional
tax imposed for the change in use has been paid.

SECTION 4. ORS 329A.440 is amended to read:
[5]
329A.440. (1) A registered or certified family child care home shall be considered a residential use of property for zoning purposes. The registered or certified family child care home shall be a permitted use in all areas zoned for residential or commercial purposes, including areas zoned for single-family dwellings. A city or county may not enact or enforce zoning ordinances prohibiting the use of a residential dwelling, located in an area zoned for residential or commercial use, as a registered or certified family child care home.

(2) A city or county may impose zoning conditions on the establishment and maintenance of a registered or certified family child care home in an area zoned for residential or commercial use if the conditions are no more restrictive than conditions imposed on other residential dwellings in the same zone.

(3) A county may:

(a) Allow a registered or certified family child care home in an existing dwelling in any area zoned for farm use, including an exclusive farm use zone established under ORS 215.203;

(b) Impose reasonable conditions on the establishment of a registered or certified family child care home in an area zoned for farm use; and

(c) Allow a division of land for a registered or certified family child care home in an exclusive farm use zone only as provided in ORS 215.263 (9) or (13).

(4) This section applies only to a registered or certified family child care home where child care is offered in the home of the provider to not more than 16 children, including children of the provider, regardless of full-time or part-time status.