

# House Bill 3307

Sponsored by Representative CLEM

## 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**.

Places additional limits on siting of dwellings and division of land in resource zones for dwellings not provided in conjunction with resource use.

## A BILL FOR AN ACT

1  
2 Relating to dwellings not provided in conjunction with resource use on resource land; creating new  
3 provisions; and amending ORS 215.263 and 215.284.

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

5 **SECTION 1.** ORS 215.263 is amended to read:

6 215.263. (1) Any proposed division of land included within an exclusive farm use zone resulting  
7 in the creation of one or more parcels of land shall be reviewed and approved or disapproved by the  
8 governing body or its designee of the county in which the land is situated. The governing body of  
9 a county by ordinance shall require such prior review and approval for such divisions of land within  
10 exclusive farm use zones established within the county.

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

13 (a) That the proposed division of land is appropriate for the continuation of the existing com-  
14 mercial agricultural enterprise within the area; or

15 (b) The parcels created by the proposed division are not smaller than the minimum size estab-  
16 lished under ORS 215.780.

17 (3) The governing body of a county or its designee may approve a proposed division of land in  
18 an exclusive farm use zone for nonfarm uses, except dwellings, set out in ORS 215.213 (2) or 215.283  
19 (2) if it finds that the parcel for the nonfarm use is not larger than the minimum size necessary for  
20 the use **or five acres, whichever is smaller**. The governing body may establish other criteria as  
21 it considers necessary.

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

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

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

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

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

**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.

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

3 **(E) The parcels for the nonfarm dwellings have frontage on a public road and each access  
4 driveway to each dwelling is not more than 500 feet in length;**

5 **(F) The parcels for the nonfarm dwellings are situated at a corner of the lot or parcel  
6 from which the parcel is divided, or are adjacent to nonresource lots or parcels and nonfarm  
7 dwellings that are on-site or off-site;**

8 **(G) The parcels for the nonfarm dwellings are located and configured so as to minimize  
9 the length of the shared boundary with adjacent resource land;**

10 **(H) The parcels for the nonfarm dwellings are, as a condition of approval, made to be  
11 physically separated from adjacent resource land by a road, waterway, hill, setback, berm  
12 or other natural or man-made feature; and**

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

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

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

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

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

25 (D) The parcels for the nonfarm dwellings are:

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

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

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

30 **(F) The parcels for the nonfarm dwellings have frontage on a public road and each access  
31 driveway to each dwelling is not more than 500 feet in length;**

32 **(G) The parcels for the nonfarm dwellings are situated at a corner of the lot or parcel  
33 from which the parcel is divided, or are adjacent to nonresource lots or parcels and nonfarm  
34 dwellings that are on-site or off-site;**

35 **(H) The parcels for the nonfarm dwellings are located and configured so as to minimize  
36 the length of the shared boundary with adjacent resource land;**

37 **(I) The parcels for the nonfarm dwellings are, as a condition of approval, made to be  
38 physically separated from adjacent resource land by a road, waterway, hill, setback, berm  
39 or other natural or man-made feature; and**

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

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

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

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

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

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

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

11 **(E) The parcels for the nonfarm dwellings have frontage on a public road and each access**  
 12 **driveway to each dwelling is not more than 500 feet in length;**

13 **(F) The parcels for the nonfarm dwellings are situated at a corner of the lot or parcel**  
 14 **from which the parcel is divided, or are adjacent to nonresource lots or parcels and nonfarm**  
 15 **dwellings that are on-site or off-site;**

16 **(G) The parcels for the nonfarm dwellings are located and configured so as to minimize**  
 17 **the length of the shared boundary with adjacent resource land;**

18 **(H) The parcels for the nonfarm dwellings are, as a condition of approval, made to be**  
 19 **physically separated from adjacent resource land by a road, waterway, hill, setback, berm**  
 20 **or other natural or man-made feature; and**

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

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

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

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

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

33 (D) The parcels for the nonfarm dwellings are:

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

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

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

45 **(F) The parcels for the nonfarm dwellings have frontage on a public road and each access**

1 **driveway to each dwelling is not more than 500 feet in length;**

2 **(G) The parcels for the nonfarm dwellings are situated at a corner of the lot or parcel**  
 3 **from which the parcel is divided, or are adjacent to nonresource lots or parcels and nonfarm**  
 4 **dwellings that are on-site or off-site;**

5 **(H) The parcels for the nonfarm dwellings are located and configured so as to minimize**  
 6 **the length of the shared boundary with adjacent resource land;**

7 **(I) The parcels for the nonfarm dwellings are, as a condition of approval, made to be**  
 8 **physically separated from adjacent resource land by a road, waterway, hill, setback, berm**  
 9 **or other natural or man-made feature; and**

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

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

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

19 (8) The governing body of a county may not approve any proposed division of a lot or parcel  
 20 described in ORS 215.213 (1)(e) or (k), 215.283 (1)(e) or (2)(L) or 215.284 (1), or a proposed division  
 21 that separates a processing facility from the farm operation specified in ORS 215.213 (1)(x) or 215.283  
 22 (1)(u).

23 (9) The governing body of a county may approve a proposed division of land in an exclusive farm  
 24 use zone to create a parcel **not to exceed five acres** with an existing dwelling to be used:

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

27 (b) For historic property that meets the requirements of ORS 215.213 (1)(q) and 215.283 (1)(o).

28 (10)(a) Notwithstanding ORS 215.780, the governing body of a county or its designee may ap-  
 29 prove a proposed division of land provided:

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

33 (B) A parcel created by the land division that contains a dwelling is large enough to support  
 34 continued residential use of the parcel **but not larger than five acres.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 **SECTION 2.** ORS 215.284 is amended to read:

18 215.284. (1) In the Willamette Valley, a single-family residential dwelling not provided in con-  
19 junction with farm use may be established, subject to approval of the governing body or its designee,  
20 in any area zoned for exclusive farm use upon a finding that:

21 (a) The dwelling or activities associated with the dwelling will not force a significant change in  
22 or significantly increase the cost of accepted farming or forest practices on nearby lands devoted  
23 to farm or forest use;

24 (b) The dwelling will be sited on a lot or parcel that is predominantly composed of Class [IV]  
25 V through Class VIII soils that would not, when irrigated, be classified as prime, unique, Class I or  
26 Class II soils;

27 (c) The dwelling will be sited on a lot or parcel created before January 1, 1993;

28 (d) The dwelling will not materially alter the stability of the overall land use pattern of the area;  
29 and

30 (e) The dwelling complies with such other conditions as the governing body or its designee  
31 considers necessary.

32 (2) In counties not described in subsection (1) of this section, a single-family residential dwelling  
33 not provided in conjunction with farm use may be established, subject to approval of the governing  
34 body or its designee, in any area zoned for exclusive farm use upon a finding that:

35 (a) The dwelling or activities associated with the dwelling will not force a significant change in  
36 or significantly increase the cost of accepted farming or forest practices on nearby lands devoted  
37 to farm or forest use;

38 (b) The dwelling is situated upon a lot or parcel [*or portion of a lot or parcel*] that is generally  
39 unsuitable land for the production of farm crops and livestock or merchantable tree species, con-  
40 sidering the terrain, adverse soil or land conditions, drainage and flooding, vegetation, location and  
41 size of the tract. A lot or parcel or portion of a lot or parcel may not be considered unsuitable  
42 solely because of size or location if it can reasonably be put to farm or forest use in conjunction  
43 with other land;

44 (c) The dwelling will be sited on a lot or parcel created before January 1, 1993;

45 (d) The dwelling will not materially alter the stability of the overall land use pattern of the area;

1       **(e) The dwelling will not be sited on a lot or parcel:**

2       **(A) Designated as prime grazing land, as determined by rule of the Land Conservation**  
 3 **and Development Commission, in consultation with the State Department of Agriculture; or**

4       **(B) Capable of producing 800 pounds or more per acre of beneficial plant species, as de-**  
 5 **termined by rule of the commission, in consultation with the State Department of Agricul-**  
 6 **ture; and**

7       [(e)] (f) The dwelling complies with such other conditions as the governing body or its designee  
 8 considers necessary.

9       (3) In counties in western Oregon, as defined in ORS 321.257, not described in subsection (4) of  
 10 this section, a single-family residential dwelling not provided in conjunction with farm use may be  
 11 established, subject to approval of the governing body or its designee, in any area zoned for exclu-  
 12 sive farm use upon a finding that:

13       (a) The dwelling or activities associated with the dwelling will not force a significant change in  
 14 or significantly increase the cost of accepted farming or forest practices on nearby lands devoted  
 15 to farm or forest use;

16       (b) The dwelling is situated upon a lot or parcel [*or portion of a lot or parcel*] that is generally  
 17 unsuitable land for the production of farm crops and livestock or merchantable tree species, con-  
 18 sidering the terrain, adverse soil or land conditions, drainage and flooding, vegetation, location and  
 19 size of the tract. A lot or parcel or portion of a lot or parcel may not be considered unsuitable  
 20 solely because of size or location if it can reasonably be put to farm or forest use in conjunction  
 21 with other land;

22       (c) The dwelling will be sited on a lot or parcel created after January 1, 1993, as allowed under  
 23 ORS 215.263 (4);

24       (d) The dwelling will not materially alter the stability of the overall land use pattern of the area;

25       **(e) The dwelling will not be sited on a lot or parcel:**

26       **(A) Designated as prime grazing land, as determined by rule of the Land Conservation**  
 27 **and Development Commission, in consultation with the State Department of Agriculture; or**

28       **(B) Capable of producing 800 pounds or more per acre of beneficial plant species, as de-**  
 29 **termined by rule of the commission, in consultation with the State Department of Agricul-**  
 30 **ture; and**

31       [(e)] (f) The dwelling complies with such other conditions as the governing body or its designee  
 32 considers necessary.

33       (4)(a) In the Willamette Valley, a lot or parcel allowed under paragraph (b) of this subsection  
 34 for a single-family residential dwelling not provided in conjunction with farm use may be established,  
 35 subject to approval of the governing body or its designee, in any area zoned for exclusive farm use  
 36 upon a finding that the originating lot or parcel is equal to or larger than the applicable minimum  
 37 lot or parcel size and:

38       (A) Is not stocked to the requirements under ORS 527.610 to 527.770;

39       (B) Is composed of at least 95 percent Class VI through Class VIII soils; and

40       (C) Is composed of at least 95 percent soils not capable or producing 50 cubic feet per acre per  
 41 year of wood fiber.

42       (b) Any parcel to be created for a dwelling from the originating lot or parcel described in par-  
 43 agraph (a) of this subsection will not be smaller than 20 acres.

44       (c) The dwelling or activities associated with the dwelling allowed under this subsection will  
 45 not force a significant change in or significantly increase the cost of accepted farming or forest

1 practices on nearby lands devoted to farm or forest use.

2 (d) The dwelling allowed under this subsection will not materially alter the stability of the  
3 overall land use pattern of the area.

4 (e) The dwelling allowed under this subsection complies with such other conditions as the gov-  
5 erning body or its designee considers necessary.

6 (5) [No] Final approval of a nonfarm use under this section [shall] **may not** be given unless any  
7 additional taxes imposed upon the change in use have been paid.

8 (6) If a single-family dwelling is established on a lot or parcel as set forth in ORS 215.705 to  
9 215.750, [no] **an** additional dwelling may **not** later be sited under subsection (1), (2), (3), (4) or (7)  
10 of this section.

11 (7) In counties in eastern Oregon, as defined in ORS 321.805, a single-family residential dwelling  
12 not provided in conjunction with farm use may be established, subject to the approval of the county  
13 governing body or its designee, in any area zoned for exclusive farm use upon a finding that:

14 (a) The dwelling or activities associated with the dwelling will not force a significant change in  
15 or significantly increase the cost of accepted farming or forest practices on nearby lands devoted  
16 to farm or forest use;

17 (b) The dwelling will be sited on a lot or parcel created after January 1, 1993, as allowed under  
18 ORS 215.263 (5);

19 (c) The dwelling will not materially alter the stability of the overall land use pattern of the area;  
20 and

21 (d) The dwelling complies with such other conditions as the governing body or its designee  
22 considers necessary.

23 **(8) For purposes of subsections (2)(b) and (3)(b) of this section, historic employment of**  
24 **a lot or parcel for farm use creates a presumption that the lot or parcel remains suitable for**  
25 **farm use.**

26 **SECTION 3. The amendments to ORS 215.263 and 215.284 by sections 1 and 2 of this 2009**  
27 **Act are not a legal basis for a claim for just compensation under ORS 195.305.**

28