

# Senate Bill 458

Sponsored by Senator GEORGE

## 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**.

Establishes policy, criteria, procedures and other factors for identifying secondary land. Provides procedures that local governments must follow after identification of secondary land.  
Establishes uses allowed in area zoned for secondary land use.  
Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to secondary lands; creating new provisions; amending ORS 197.015, 197.298, 197.505,  
3 215.304 and 215.780; and declaring an emergency.

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

## POLICY

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8 **SECTION 1. The purposes of sections 1 to 5 of this 2009 Act are to:**

9 (1) **Declare that the policy of the State of Oregon is to protect the state's farmlands and**  
10 **forestlands and other natural resources from the detrimental effects of land uses and activ-**  
11 **ities not related to resource use;**

12 (2) **Provide greater protection for Oregon's commercial resource lands than has been**  
13 **provided before the effective date of this 2009 Act, while permitting a broader range of uses**  
14 **on secondary lands; and**

15 (3) **Provide clear procedures to identify Oregon's secondary lands.**  
16

## DESIGNATION OF SECONDARY LAND

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19 **SECTION 2. (1) Each county of this state may prepare a report and a map that identifies**  
20 **secondary land and the uses allowed on secondary land. The report need not contain detailed**  
21 **findings of fact but must set forth in summary the conclusions reached as to the designation**  
22 **of secondary land and the determination of uses allowed on secondary land.**

23 (2) **On review under ORS 197.610 to 197.625 and this section, the Director of the Depart-**  
24 **ment of Land Conservation and Development shall accept a county designation of secondary**  
25 **land if the county identifies land that meets the requirements of this section.**

26 (3) **Secondary land is land:**

27 (a) **Outside an urban growth boundary;**

28 (b) **That is not commercial farmland or commercial forestland as described in this sec-**  
29 **tion; and**

30 (c) **For which an exception has not been adopted pursuant to ORS 197.732.**

**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       **(4) Commercial farmland is land:**

2       **(a) In tracts that are predominantly composed of soils that are classified prime, unique,**  
3 **Class I or Class II;**

4       **(b) That:**

5       **(A) In 2004, 2005 or 2006 was employed in farm use as defined in ORS 215.203, except ORS**  
6 **215.203 (2)(b)(E), for the production of crops for market or research purposes, other than for**  
7 **nonirrigated pasture or for growing nonirrigated grass hay; and**

8       **(B) On the effective date of this 2009 Act, is listed by the United States Department of**  
9 **Agriculture in the soil database for each county as capable of producing at least 75 percent**  
10 **of the average per acre production of any one of three leading crops, in acres, in the county**  
11 **in 2006 as set forth in the Oregon County and State Agricultural Estimates report of the**  
12 **Oregon State University Extension Service;**

13       **(c) In Tillamook County that in 2004, 2005 or 2006 was used as irrigated pasture for live-**  
14 **stock production or as nonirrigated pasture for livestock production or dairy operations;**

15       **(d) Not used in the production of commercial crops because it is in a farm-related gov-**  
16 **ernment program, such as an annual commodity acreage adjustment program, a conserva-**  
17 **tion reserve program or any other federal conservation program; or**

18       **(e) That in 2004, 2005 or 2006 was predominantly employed in growing grapes, cranberries**  
19 **or Christmas trees.**

20       **(5) Crops grown on commercial farmland include but are not limited to field, seed or**  
21 **nursery crops, aquacultural crops, berries, fruit, Christmas trees, nuts, vegetables, specialty**  
22 **crops, grapes or mechanically harvested forage crops other than nonirrigated grass hay.**  
23 **Crops grown on commercial farmland also include specified perennials as demonstrated by**  
24 **the most recent aerial photography of the Farm Service Agency of the United States De-**  
25 **partment of Agriculture.**

26       **(6) Commercial forestland is land in a tract that:**

27       **(a)(A) Is used predominantly for growing commercial tree species recognized under rules**  
28 **adopted under ORS 527.715 for commercial production in a density that, if harvested, would**  
29 **be subject to reforestation requirements; or**

30       **(B) If harvested after January 1, 1995, would be restocked either with commercial tree**  
31 **species or subject to reforestation requirements; and**

32       **(b) Is more than 20 acres and:**

33       **(A) Contains predominant forest soils productivity of more than:**

34       **(i) Eighty-five cubic feet per acre per year in western Oregon except in Josephine and**  
35 **Jackson Counties;**

36       **(ii) Fifty cubic feet per acre per year in Josephine and Jackson Counties; or**

37       **(iii) Thirty cubic feet per acre per year in eastern Oregon; and**

38       **(B) Is capable of producing at least the following amounts of wood fiber per year that are**  
39 **permissible to harvest under ORS 527.610 to 527.770:**

40       **(i) 5,000 cubic feet in western Oregon; and**

41       **(ii) 4,000 cubic feet in eastern Oregon.**

42       **(7) A county shall designate any land that is not described as commercial farmland or**  
43 **commercial forestland as secondary land.**

44       **(8) Notwithstanding subsection (2) of this section, secondary land shall only be designated**  
45 **in blocks larger than 80 acres. An 80-acre block may include land designated as an exception**

1 area under ORS 197.732 (2)(a) and (b). However, the exception area included as part of the  
 2 80-acre block need not be designated secondary land.

3 (9) As used in this section, “block” means one or more contiguous tracts. If a tract is  
 4 more than 40 acres in size, portions of the tract greater than 20 acres may be included in  
 5 the block if the block would otherwise meet the requirements of subsection (7) of this sec-  
 6 tion. Land shall be considered contiguous even if separated by roadways, waterways, rail-  
 7 roads or similar strips of land, unless the strips of land merely provide a longitudinal  
 8 connection.

9  
 10 **DWELLINGS AND PARCEL SIZES ON SECONDARY LAND**

11  
 12 **SECTION 3.** (1) If a local government identifies secondary land under section 2 of this  
 13 2009 Act, the local government:

14 (a) May allow uses and land divisions on secondary land and may adopt zoning ordinances  
 15 to regulate secondary land pursuant to the provisions of sections 3 to 5 of this 2009 Act and  
 16 under ORS 215.213 or 215.283.

17 (b) Shall allow uses and land divisions on commercial farmland and shall adopt zoning  
 18 ordinances to regulate commercial farmland pursuant to the provisions of section 4 of this  
 19 2009 Act and ORS 215.213 or 215.283.

20 (2) Notwithstanding any other provision of this chapter, a single-family dwelling may be  
 21 established on a lot or parcel of secondary land provided that:

22 (a) The lot or parcel on which the dwelling will be sited does not already include a  
 23 dwelling;

24 (b) The dwelling will be sited outside of the Willamette River Greenway; and

25 (c) The dwelling will not be sited within 300 feet of land identified as commercial farmland  
 26 or commercial forestland unless impracticable, in which case the greatest distance practi-  
 27 cable will be used.

28 (3) The minimum lot or parcel size for secondary land is 20 acres, except for:

29 (a) Land adjacent to any commercial farmland or commercial forestland described in  
 30 section 2 of this 2009 Act, or to any public lands managed for timber production, in which  
 31 case the minimum lot or parcel size is 40 acres; and

32 (b) Land adjacent to urban growth boundaries, exception areas, nonresource areas or  
 33 marginal lands, in which case the minimum lot or parcel size is 10 acres.

34  
 35 **TRANSITION TO SECONDARY LAND ZONING**

36  
 37 **SECTION 4.** (1) Until a county completes the secondary lands designation as set forth in  
 38 section 2 of this 2009 Act, the county shall allow uses on exclusive farm use land as otherwise  
 39 required by law.

40 (2) After a county completes the secondary lands designation as set forth in section 2 of  
 41 this 2009 Act, a county may designate all land zoned for exclusive farm use land as com-  
 42 mercial farmland, secondary land or commercial forestland.

43 (3) If a county designates commercial farmland and secondary land, for purposes of this  
 44 chapter and ORS 308A.050 to 308A.128, commercial farmland shall be treated as exclusive  
 45 farm use land. A county may approve uses of commercial farmland as provided for exclusive

1 farm use lands under the provisions of this chapter. Instead of the uses allowed under ORS  
 2 215.213 or 215.283, a county shall permit uses allowed under section 5 of this 2009 Act for  
 3 secondary land.

4  
 5 **USES ON SECONDARY LANDS**  
 6

7 **SECTION 5.** (1) The following uses may be established in any area zoned for secondary  
 8 land use under section 2 of this 2009 Act:

9 (a) Room and board arrangements for a maximum of five unrelated persons in existing  
 10 residences.

11 (b) Water intake facilities for irrigation.

12 (c) Any use, operation or practice allowed on forestland under ORS 527.610 to 527.770.

13 (d) Temporary forest labor camps.

14 (e) Uninhabited structures accessory to fish and wildlife enhancement.

15 (f) Open space, watershed and soil protection and other uses that comply with the pro-  
 16 visions of a statewide land use planning goal relating to protection of natural resources and  
 17 conservation of scenic, historic and open space resources.

18 (g) Caretaker residences for public parks, wildlife preserves and fish hatcheries.

19 (h) Local utility lines, conduits and accessory equipment.

20 (i) New water reservoirs that meet the requirements of the Water Resources Commis-  
 21 sion.

22 (j) Uses otherwise provided under ORS 215.213 (1) or 215.283 (1).

23 (k) Other uses the county determines to be consistent with secondary land zoning.

24 (2) A county may allow the following uses, subject to ORS 215.296 and the approval of the  
 25 governing body or its designee, in any area zoned for secondary land use under section 2 of  
 26 this 2009 Act:

27 (a) Mining and processing of geothermal resources as defined by ORS 522.005.

28 (b) Mining of aggregate, mineral and other subsurface resources subject to ORS 215.298.

29 (c) Processing, as defined in ORS 517.750, of aggregate into asphalt or portland cement.

30 (d) Processing of mineral resources and other subsurface resources not otherwise de-  
 31 scribed in this section.

32 (e) Any commercial activity in conjunction with farm use.

33 (f) Permanent facilities for primary processing of forest products.

34 (g) Logging equipment storage and repair facilities.

35 (h) Log scaling and weigh stations.

36 (i) Towers and fire stations for forest fire protection.

37 (j) Asphalt and concrete batch plants.

38 (k) Private hunting preserves, with living accommodations available for use during  
 39 hunting seasons, authorized by the State Department of Fish and Wildlife.

40 (L) Private accommodations accessory to fishing, for temporary use.

41 (m) Firearms training facilities.

42 (n) Water intake and related treatment facilities, pumping stations and distribution lines.

43 (o) Dog kennels and facilities for racing dogs.

44 (p) Golf courses.

45 (q) Television, radio and microwave communication facilities and transmission towers.

1 (r) Expansion of existing nonprofit governmental community centers and grange halls.

2 (s) Residential homes, as defined in ORS 197.660, in existing dwellings.

3 (t) Fire stations.

4 (u) Distribution conduits for electricity, gas, oil and geothermal resources within rights  
5 of way that are 30 feet or less in width.

6 (v) Commercial utility facilities for the purpose of generating power for public use by  
7 sale.

8 (w) Personal-use airports for airplanes and helicopter pads, including associated hangar,  
9 maintenance and service facilities. As used in this paragraph, “personal-use airport” means  
10 an airstrip restricted, except for aircraft emergencies, to use by the owner, by invited guests  
11 on an infrequent and occasional basis and by commercial aviation activities in connection  
12 with agricultural operations. Aircraft may not be based on a personal-use airport other than  
13 those owned or controlled by the owner of the airstrip. Exceptions to the activities permitted  
14 under this paragraph may be granted through waiver action by the Department of Trans-  
15 portation in specific instances. A county shall continue to allow a personal-use airport law-  
16 fully existing as of September 13, 1975, subject to applicable rules of the Department of  
17 Transportation. A county may allow expansion of existing personal-use airports.

18 (x) Aids to navigation and aviation.

19 (y) Surface mining, underground mining and processing, all as defined in ORS 517.750, of  
20 aggregate and mineral resources.

21 (z) New water reservoirs larger than five acres that meet the requirements of the Water  
22 Resources Commission.

23 (aa) Parks owned and operated by a governmental agency.

24 (bb) Home occupations as provided in ORS 215.448.

25 (cc) One manufactured dwelling in conjunction with an existing dwelling as a temporary  
26 use for the term of a hardship suffered by the existing resident or a relative of the resident.

27 (dd) Any other use allowed under ORS 215.213 or 215.283.

28  
29 **DEFINITIONS**

30  
31 **SECTION 6.** ORS 197.015 is amended to read:

32 197.015. As used in ORS chapters 195, 196 and 197, unless the context requires otherwise:

33 (1) “Acknowledgment” means a commission order that certifies that a comprehensive plan and  
34 land use regulations, land use regulation or plan or regulation amendment complies with the goals  
35 or certifies that Metro land use planning goals and objectives, Metro regional framework plan,  
36 amendments to Metro planning goals and objectives or amendments to the Metro regional frame-  
37 work plan comply with the statewide planning goals.

38 (2) “Board” means the Land Use Board of Appeals.

39 (3) “Carport” means a stationary structure consisting of a roof with its supports and not more  
40 than one wall, or storage cabinet substituting for a wall, and used for sheltering a motor vehicle.

41 (4) “Commission” means the Land Conservation and Development Commission.

42 (5) “Comprehensive plan” means a generalized, coordinated land use map and policy statement  
43 of the governing body of a local government that interrelates all functional and natural systems and  
44 activities relating to the use of lands, including but not limited to sewer and water systems, trans-  
45 portation systems, educational facilities, recreational facilities, and natural resources and air and

1 water quality management programs. “Comprehensive” means all-inclusive, both in terms of the  
 2 geographic area covered and functional and natural activities and systems occurring in the area  
 3 covered by the plan. “General nature” means a summary of policies and proposals in broad cate-  
 4 gories and does not necessarily indicate specific locations of any area, activity or use. A plan is “co-  
 5 ordinated” when the needs of all levels of governments, semipublic and private agencies and the  
 6 citizens of Oregon have been considered and accommodated as much as possible. “Land” includes  
 7 water, both surface and subsurface, and the air.

8 (6) “Department” means the Department of Land Conservation and Development.

9 (7) “Director” means the Director of the Department of Land Conservation and Development.

10 (8) “Goals” means the mandatory statewide planning standards adopted by the commission pur-  
 11 suant to ORS chapters 195, 196 and 197.

12 (9) “Guidelines” means suggested approaches designed to aid cities and counties in preparation,  
 13 adoption and implementation of comprehensive plans in compliance with goals and to aid state  
 14 agencies and special districts in the preparation, adoption and implementation of plans, programs  
 15 and regulations in compliance with goals. Guidelines shall be advisory and shall not limit state  
 16 agencies, cities, counties and special districts to a single approach.

17 (10) “Land use decision”:

18 (a) Includes:

19 (A) A final decision or determination made by a local government or special district that con-  
 20 cerns the adoption, amendment or application of:

21 (i) The goals;

22 (ii) A comprehensive plan provision;

23 (iii) A land use regulation; or

24 (iv) A new land use regulation;

25 (B) A final decision or determination of a state agency other than the commission with respect  
 26 to which the agency is required to apply the goals; or

27 (C) A decision of a county planning commission made under ORS 433.763;

28 (b) Does not include a decision of a local government:

29 (A) That is made under land use standards that do not require interpretation or the exercise  
 30 of policy or legal judgment;

31 (B) That approves or denies a building permit issued under clear and objective land use stan-  
 32 dards;

33 (C) That is a limited land use decision;

34 (D) That determines final engineering design, construction, operation, maintenance, repair or  
 35 preservation of a transportation facility that is otherwise authorized by and consistent with the  
 36 comprehensive plan and land use regulations;

37 (E) That is an expedited land division as described in ORS 197.360;

38 (F) That approves, pursuant to ORS 480.450 (7), the siting, installation, maintenance or removal  
 39 of a liquid petroleum gas container or receptacle regulated exclusively by the State Fire Marshal  
 40 under ORS 480.410 to 480.460; or

41 (G) That approves or denies approval of a final subdivision or partition plat or that determines  
 42 whether a final subdivision or partition plat substantially conforms to the tentative subdivision or  
 43 partition plan;

44 (c) Does not include a decision by a school district to close a school;

45 (d) Does not include authorization of an outdoor mass gathering as defined in ORS 433.735, or

1 other gathering of fewer than 3,000 persons that is not anticipated to continue for more than 120  
2 hours in any three-month period; and

3 (e) Does not include:

4 (A) A writ of mandamus issued by a circuit court in accordance with ORS 215.429 or 227.179;  
5 or

6 (B) Any local decision or action taken on an application subject to ORS 215.427 or 227.178 after  
7 a petition for a writ of mandamus has been filed under ORS 215.429 or 227.179.

8 (11) "Land use regulation" means any local government zoning ordinance, land division ordi-  
9 nance adopted under ORS 92.044 or 92.046 or similar general ordinance establishing standards for  
10 implementing a comprehensive plan.

11 (12) "Limited land use decision":

12 (a) Means a final decision or determination made by a local government pertaining to a site  
13 within an urban growth boundary that concerns:

14 (A) The approval or denial of a tentative subdivision or partition plan, as described in ORS  
15 92.040 (1).

16 (B) The approval or denial of an application based on discretionary standards designed to reg-  
17 ulate the physical characteristics of a use permitted outright, including but not limited to site re-  
18 view and design review.

19 (b) Does not mean a final decision made by a local government pertaining to a site within an  
20 urban growth boundary that concerns approval or denial of a final subdivision or partition plat or  
21 that determines whether a final subdivision or partition plat substantially conforms to the tentative  
22 subdivision or partition plan.

23 (13) "Local government" means any city, county or metropolitan service district formed under  
24 ORS chapter 268 or an association of local governments performing land use planning functions  
25 under ORS 195.025.

26 (14) "Metro" means a metropolitan service district organized under ORS chapter 268.

27 (15) "Metro planning goals and objectives" means the land use goals and objectives that a met-  
28 ropolitan service district may adopt under ORS 268.380 (1)(a). The goals and objectives do not con-  
29 stitute a comprehensive plan.

30 (16) "Metro regional framework plan" means the regional framework plan required by the 1992  
31 Metro Charter or its separate components. Neither the regional framework plan nor its individual  
32 components constitute a comprehensive plan.

33 (17) "New land use regulation" means a land use regulation other than an amendment to an  
34 acknowledged land use regulation adopted by a local government that already has a comprehensive  
35 plan and land regulations acknowledged under ORS 197.251.

36 (18) "Person" means any individual, partnership, corporation, association, governmental subdi-  
37 vision or agency or public or private organization of any kind. The Land Conservation and Devel-  
38 opment Commission or its designee is considered a person for purposes of appeal under ORS  
39 chapters 195 and 197.

40 (19) **"Secondary land" means land designated and zoned under section 2 of this 2009 Act.**

41 (20) **"Soil class" or "soil classification" means a designation as determined by the land**  
42 **capability classification system in use by the United States Department of Agriculture Na-**  
43 **tural Resources Conservation Service on the effective date of this 2009 Act.**

44 [(19)] (21) "Special district" means any unit of local government, other than a city, county,  
45 metropolitan service district formed under ORS chapter 268 or an association of local governments

1 performing land use planning functions under ORS 195.025, authorized and regulated by statute and  
 2 includes but is not limited to water control districts, domestic water associations and water coop-  
 3 eratives, irrigation districts, port districts, regional air quality control authorities, fire districts,  
 4 school districts, hospital districts, mass transit districts and sanitary districts.

5 [(20)] (22) “Urban unincorporated community” means an area designated in a county’s ac-  
 6 knowledged comprehensive plan as an urban unincorporated community after December 5, 1994.

7 [(21)] (23) “Voluntary association of local governments” means a regional planning agency in  
 8 this state officially designated by the Governor pursuant to the federal Office of Management and  
 9 Budget Circular A-95 as a regional clearinghouse.

10 [(22)] (24) “Wetlands” means those areas that are inundated or saturated by surface or ground  
 11 water at a frequency and duration that are sufficient to support, and that under normal circum-  
 12 stances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

13 **SECTION 7.** ORS 197.505 is amended to read:

14 197.505. As used in ORS 197.505 to 197.540:

15 (1) “Public facilities” means those public facilities for which a public facilities plan is required  
 16 under ORS 197.712.

17 (2) “Special district” refers to only those entities [as] defined as **special districts** in ORS  
 18 197.015 [(19)] that provide services for which public facilities plans are required.

19  
 20 **TAX STATUS**

21  
 22 **SECTION 8.** (1) As used in this section, “nonfarm use” means any use other than those  
 23 uses defined in ORS 215.203 (2).

24 (2) After land has been zoned as secondary land under section 2 of this 2009 Act, the as-  
 25 sessment provisions of ORS 308A.050 to 308A.128 continue to apply to the secondary land that  
 26 otherwise qualifies for and is receiving special assessment until the land is converted to a  
 27 nonfarm use. If a lot or parcel of secondary land otherwise qualifies for and is receiving  
 28 special assessment and a portion of that lot or parcel is converted to a nonfarm use, the  
 29 assessment provisions of ORS 308A.050 to 308A.128 continue to apply to the remainder of that  
 30 lot or parcel of secondary land not converted to a nonfarm use.

31  
 32 **COMMISSION LIMITATIONS**

33  
 34 **SECTION 9.** In accordance with ORS 197.240 and 197.245, the Land Conservation and De-  
 35 velopment Commission shall amend the statewide land use planning goals to authorize  
 36 counties to designate as secondary land any land:

- 37 (1) Outside of acknowledged urban growth boundaries;
- 38 (2) For which an exception has not been adopted under ORS 197.732; and
- 39 (3) That otherwise meets the criteria of section 2 of this 2009 Act.

40 **SECTION 10.** (1) Sections 1 to 5 of this 2009 Act are added to and made a part of ORS  
 41 chapter 215.

42 (2) Section 8 of this 2009 Act is added to and made a part of ORS 308A.050 to 308A.128.

43 (3) Section 9 of this 2009 Act is added to and made a part of ORS chapter 197.

44 **SECTION 11.** ORS 215.304 is amended to read:

45 215.304. (1) The Land Conservation and Development Commission [shall] **may** not adopt or im-



1 plement any rule to identify or designate small-scale farmland or secondary land.

2 (2) Amendments required to conform rules to the provisions of subsection (1) of this section and  
3 ORS 215.700 to 215.780 shall be adopted by March 1, 1994.

4 (3) Any portion of a rule inconsistent with the provisions of ORS 197.247 (1991 Edition), 215.213,  
5 215.214 (1991 Edition), 215.288 (1991 Edition), 215.317, 215.327 and 215.337 (1991 Edition) or 215.700  
6 to 215.780 on March 1, 1994:

7 (a) [*Shall*] **May** not be implemented or enforced; and

8 (b) Has no legal effect.

9 **(4) Any portion of a statewide land use planning goal, administrative rule, comprehensive**  
10 **plan, land use regulation or ordinance not in conformance with the provisions of sections 1**  
11 **to 5 of this 2009 Act on the effective date of this 2009 Act:**

12 (a) **May not be implemented or enforced; and**

13 (b) **Has no legal effect.**

14 (5) **The commission may not:**

15 (a) **Adopt rules for uses of commercial farmland or secondary land that prohibit or limit**  
16 **uses that are allowed in ORS 215.203, 215.213 or 215.283 or section 5 of this 2009 Act; or**

17 (b) **Adopt rules regarding the designation of secondary land except as allowed under**  
18 **sections 1 to 5 and 9 of this 2009 Act.**

19 **SECTION 12.** ORS 197.298 is amended to read:

20 197.298. (1) In addition to any requirements established by rule addressing urbanization, land  
21 may not be included within an urban growth boundary except under the following priorities:

22 (a) First priority is land that is designated urban reserve land under ORS 195.145, rule or met-  
23 ropolitan service district action plan.

24 (b) If land under paragraph (a) of this subsection is inadequate to accommodate the amount of  
25 land needed, second priority is land adjacent to an urban growth boundary that is identified in an  
26 acknowledged comprehensive plan as an exception area or nonresource land. Second priority may  
27 include resource land that is completely surrounded by exception areas unless such resource land  
28 is high-value farmland as described in ORS 215.710.

29 (c) If land under paragraphs (a) and (b) of this subsection is inadequate to accommodate the  
30 amount of land needed, third priority is land designated as marginal land pursuant to ORS 197.247  
31 (1991 Edition).

32 **(d) If land under paragraphs (a) to (c) of this subsection is inadequate to accommodate**  
33 **the amount of land needed, fourth priority is land designated as secondary land under section**  
34 **2 of this 2009 Act.**

35 [(*d*)] (e) If land under paragraphs (a) to [(*c*)] (d) of this subsection is inadequate to accommodate  
36 the amount of land needed, [*fourth*] **fifth** priority is land designated in an acknowledged compre-  
37 hensive plan for agriculture or forestry, or both.

38 (2) Higher priority shall be given to land of lower capability as measured by the capability  
39 classification system or by cubic foot site class, whichever is appropriate for the current use.

40 (3) Land of lower priority under subsection (1) of this section may be included in an urban  
41 growth boundary if land of higher priority is found to be inadequate to accommodate the amount  
42 of land estimated in subsection (1) of this section for one or more of the following reasons:

43 (a) Specific types of identified land needs cannot be reasonably accommodated on higher priority  
44 lands;

45 (b) Future urban services could not reasonably be provided to the higher priority lands due to

1 topographical or other physical constraints; or

2 (c) Maximum efficiency of land uses within a proposed urban growth boundary requires inclusion  
 3 of lower priority lands in order to include or to provide services to higher priority lands.

4  
 5 **MISCELLANEOUS**

6  
 7 **SECTION 13.** ORS 215.780 is amended to read:

8 215.780. (1) Except as provided in subsection (2) of this section, the following minimum lot or  
 9 parcel sizes apply to all counties:

- 10 (a) For land zoned for exclusive farm use and not designated rangeland, at least 80 acres;
- 11 (b) For land zoned for exclusive farm use and designated rangeland, at least 160 acres; and
- 12 (c) For land designated forestland, at least 80 acres.

13 (2) A county may adopt a lower minimum lot or parcel size than that described in subsection (1)  
 14 of this section in any of the following circumstances:

15 (a) By demonstrating to the Land Conservation and Development Commission that it can do so  
 16 while continuing to meet the requirements of ORS 215.243 and 527.630 and the land use planning  
 17 goals adopted under ORS 197.230.

18 (b) To allow the establishment of a parcel for a dwelling on land zoned for forest use or mixed  
 19 farm and forest use, subject to the following requirements:

20 (A) The parcel established shall not be larger than five acres, except as necessary to recognize  
 21 physical factors such as roads or streams, in which case the parcel shall be no larger than 10 acres;

22 (B) The dwelling existed prior to June 1, 1995;

23 (C)(i) The remaining parcel, not containing the dwelling, meets the minimum land division stan-  
 24 dards of the zone; or

25 (ii) The remaining parcel, not containing the dwelling, is consolidated with another parcel, and  
 26 together the parcels meet the minimum land division standards of the zone; and

27 (D) The remaining parcel, not containing the dwelling, is not entitled to a dwelling unless sub-  
 28 sequently authorized by law or goal.

29 (c) In addition to the requirements of paragraph (b) of this subsection, if the land is zoned for  
 30 mixed farm and forest use the following requirements apply:

31 (A) The minimum tract eligible under paragraph (b) of this subsection is 40 acres.

32 (B) The tract shall be predominantly in forest use and that portion in forest use qualified for  
 33 special assessment under a program under ORS chapter 321.

34 (C) The remainder of the tract shall not qualify for any uses allowed under ORS 215.213 and  
 35 215.283 that are not allowed on forestland.

36 (d) To allow a division of forestland to facilitate a forest practice as defined in ORS 527.620 that  
 37 results in a parcel that does not meet the minimum area requirements of subsection (1)(c) of this  
 38 section or paragraph (a) of this subsection. Parcels created pursuant to this subsection:

39 (A) Shall not be eligible for siting of a new dwelling;

40 (B) Shall not serve as the justification for the siting of a future dwelling on other lots or parcels;

41 (C) Shall not, as a result of the land division, be used to justify redesignation or rezoning of  
 42 resource lands;

43 (D) Shall not result in a parcel of less than 35 acres, except:

44 (i) Where the purpose of the land division is to facilitate an exchange of lands involving a gov-  
 45 ernmental agency; or

1 (ii) Where the purpose of the land division is to allow transactions in which at least one par-  
2 ticipant is a person with a cumulative ownership of at least 2,000 acres of forestland; and

3 (E) If associated with the creation of a parcel where a dwelling is involved, shall not result in  
4 a parcel less than the minimum lot or parcel size of the zone.

5 (e) To allow a division of a lot or parcel zoned for forest use or mixed farm and forest use under  
6 a statewide planning goal protecting forestland if:

7 (A) At least two dwellings lawfully existed on the lot or parcel prior to November 4, 1993;

8 (B) Each dwelling complies with the criteria for a replacement dwelling under ORS 215.213 (1)(t)  
9 or 215.283 (1)(s);

10 (C) Except for one lot or parcel, each lot or parcel created under this paragraph is between two  
11 and five acres in size;

12 (D) At least one dwelling is located on each lot or parcel created under this paragraph; and

13 (E) The landowner of a lot or parcel created under this paragraph provides evidence that a re-  
14 striction prohibiting the landowner and the landowner's successors in interest from further dividing  
15 the lot or parcel has been recorded with the county clerk of the county in which the lot or parcel  
16 is located. A restriction imposed under this paragraph shall be irrevocable unless a statement of  
17 release is signed by the county planning director of the county in which the lot or parcel is located  
18 indicating that the comprehensive plan or land use regulations applicable to the lot or parcel have  
19 been changed so that the lot or parcel is no longer subject to statewide planning goals protecting  
20 forestland or unless the land division is subsequently authorized by law or by a change in a state-  
21 wide planning goal for land zoned for forest use or mixed farm and forest use.

22 (f) To allow a proposed division of land in a forest zone or a mixed farm and forest zone as  
23 provided in ORS 215.783.

24 (3) A county planning director shall maintain a record of lots and parcels that do not qualify for  
25 division under the restrictions imposed under subsections (2)(e) and (4) of this section. The record  
26 shall be readily available to the public.

27 (4) A lot or parcel may not be divided under subsection (2)(e) of this section if an existing  
28 dwelling on the lot or parcel was approved under:

29 (a) A statute, an administrative rule or a land use regulation as defined in ORS 197.015 that  
30 required removal of the dwelling or that prohibited subsequent division of the lot or parcel; or

31 (b) A farm use zone provision that allowed both farm and forest uses in a mixed farm and forest  
32 use zone under a statewide planning goal protecting forestland.

33 (5) A county with a minimum lot or parcel size acknowledged by the commission pursuant to  
34 ORS 197.251 after January 1, 1987, or acknowledged pursuant to periodic review requirements under  
35 ORS 197.628 to 197.650 that is smaller than those prescribed in subsection (1) of this section need  
36 not comply with subsection (2) of this section.

37 (6)(a) An applicant for the creation of a parcel pursuant to subsection (2)(b) of this section shall  
38 provide evidence that a restriction on the remaining parcel, not containing the dwelling, has been  
39 recorded with the county clerk of the county where the property is located. An applicant for the  
40 creation of a parcel pursuant to subsection (2)(d) of this section shall provide evidence that a re-  
41 striction on the newly created parcel has been recorded with the county clerk of the county where  
42 the property is located. The restriction shall allow no dwellings unless authorized by law or goal  
43 on land zoned for forest use except as permitted under subsection (2) of this section.

44 (b) A restriction imposed under this subsection shall be irrevocable unless a statement of release  
45 is signed by the county planning director of the county where the property is located indicating that

1 the comprehensive plan or land use regulations applicable to the property have been changed in  
2 such a manner that the parcel is no longer subject to statewide planning goals pertaining to agri-  
3 cultural land or forestland.

4 (c) The county planning director shall maintain a record of parcels that do not qualify for the  
5 siting of a new dwelling under restrictions imposed by this subsection. The record shall be readily  
6 available to the public.

7 (7) A landowner allowed a land division under subsection (2) of this section shall sign a state-  
8 ment that shall be recorded with the county clerk of the county in which the property is located,  
9 declaring that the landowner and the landowner's successors in interest will not in the future com-  
10 plain about accepted farming or forest practices on nearby lands devoted to farm or forest use.

11 **(8) For secondary land identified under section 2 of this 2009 Act, the minimum lot and**  
12 **parcel sizes set forth in subsections (1) and (2) of this section do not apply.**

13 **SECTION 14. The unit captions used in this 2009 Act are provided only for convenience**  
14 **in locating provisions of this 2009 Act and do not become part of the statutory law of this**  
15 **state or express any legislative intent in the enactment of this 2009 Act.**

16 **SECTION 15. This 2009 Act being necessary for the immediate preservation of the public**  
17 **peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect**  
18 **on its passage.**

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