

Senate Bill 547

Sponsored by Senator GEORGE (Presession filed.)

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 as secondary land.

Declares emergency, effective on passage.

A BILL FOR AN ACT

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

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

POLICY

5
6
7
8 **SECTION 1. The purposes of sections 1 to 5 of this 2011 Act are to:**

9 (1) **Declare that the policy of the State of Oregon is to protect farmlands, forestlands and**
10 **other natural resources in the State of Oregon from the detrimental effects of land uses and**
11 **activities not related to resource use;**

12 (2) **Provide greater protection for commercial resource lands in Oregon than has been**
13 **provided before the effective date of this 2011 Act, while authorizing a broader range of uses**
14 **on secondary land; and**

15 (3) **Provide clear procedures to identify secondary lands in Oregon.**

DESIGNATION OF SECONDARY LAND

16
17
18
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 of changes proposed under this section, the**
24 **Director of the Department of Land Conservation and Development shall accept a county**
25 **designation of secondary land if the county identifies land that meets the requirements of**
26 **this section.**

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

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

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

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

2 (4) Commercial farmland is land:

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

5 (b) That:

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

9 (B) Is listed, on the effective date of this 2011 Act, by the United States Department of
10 Agriculture in the soil database for each county as capable of producing at least 75 percent
11 of the average per-acre production of any one of three leading crops, in acres, in the county
12 in 2006 as set forth in the Oregon County and State Agricultural Estimates report of the
13 Oregon State University Extension Service;

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

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

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

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

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

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

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

33 (b) Is more than 20 acres and:

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

35 (i) 85 cubic feet per acre per year in western Oregon except in Josephine and Jackson
36 Counties;

37 (ii) 50 cubic feet per acre per year in Josephine and Jackson Counties; or

38 (iii) 30 cubic feet per acre per year in eastern Oregon; and

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

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

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

43 (7) A county shall designate land that is not described as commercial farmland or com-
44 mercial forestland as secondary land.

45 (8) A county may only designate secondary land in blocks of at least 80 acres.

1 Notwithstanding subsection (3) of this section, an 80-acre block may include land designated
 2 as an exception area under ORS 197.732 (2)(a) or (b). Inclusion of the exception area as part
 3 of the 80-acre block does not cause the exception area to qualify as secondary land. A 20-acre
 4 or larger portion of a 40-acre or larger tract containing commercial farmland or commercial
 5 forestland may be included in the block if the 20-acre or larger portion satisfies the re-
 6 quirements of subsection (3) of this section.

7 (9) As used in this section, “block” means one or more contiguous tracts. Land is deemed
 8 to be contiguous even if separated by roadways, waterways, railroads or similar strips of
 9 land, unless the strips of land merely provide a longitudinal connection.

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

12
 13 **SECTION 3.** (1) If a local government identifies secondary land under section 2 of this
 14 2011 Act, the local government:

15 (a) May allow uses and land divisions on secondary land and may adopt zoning ordinances
 16 to regulate secondary land pursuant to the provisions of sections 3 to 5 of this 2011 Act and
 17 under ORS 215.213 or 215.283.

18 (b) Shall allow uses and land divisions on commercial farmland and shall adopt zoning
 19 ordinances to regulate commercial farmland pursuant to section 4 of this 2011 Act and ORS
 20 215.213 or 215.283.

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

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

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

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

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

30 (a) Land adjacent to commercial farmland or commercial forestland described in section
 31 2 of this 2011 Act, or to public lands managed for timber production, in which case the min-
 32 imum lot or parcel size is 40 acres; and

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

35
 36 **TRANSITION TO SECONDARY LAND ZONING**

37
 38 **SECTION 4.** (1) Before a county completes the secondary lands designation as set forth
 39 in section 2 of this 2011 Act, the county shall allow uses on land zoned for exclusive farm
 40 use as otherwise required by law.

41 (2) After a county completes the secondary lands designation as set forth in section 2 of
 42 this 2011 Act, a county may designate all land zoned for exclusive farm use as commercial
 43 farmland, commercial forestland or secondary land.

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

1 farm use land. A county may approve uses of commercial farmland as provided for lands
 2 zoned for exclusive farm use under the provisions of this chapter. Instead of the uses allowed
 3 under ORS 215.213 or 215.283, a county shall permit uses allowed under section 5 of this 2011
 4 Act for secondary land.

5
 6 **USES ON SECONDARY LANDS**
 7

8 **SECTION 5.** (1) The following uses may be established in any area zoned for secondary
 9 land use under section 2 of this 2011 Act:

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

12 (b) Water intake facilities for irrigation.

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

14 (d) Temporary forest labor camps.

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

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

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

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

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

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

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

25 (2) A county may allow the following uses, subject to ORS 215.296 and the approval of the
 26 governing body or its designee, in any area zoned for secondary land use under section 2 of
 27 this 2011 Act:

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

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

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

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

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

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

35 (g) Logging equipment storage and repair facilities.

36 (h) Log scaling and weigh stations.

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

38 (j) Asphalt and concrete batch plants.

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

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

42 (m) Firearms training facilities.

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

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

45 (p) Golf courses.

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

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

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

4 (t) Fire stations.

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

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

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

19 (x) Aids to navigation and aviation.

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

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

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

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

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

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

29
30 **TAX STATUS**

31
32 **SECTION 6. (1) As used in this section:**

33 (a) "Lot" has the meaning given that term in ORS 92.010.

34 (b) "Nonfarm use" means any use other than those uses defined in ORS 215.203 (2).

35 (c) "Parcel" has the meaning given that term in ORS 215.010.

36 (2) After land has been zoned as secondary land under section 2 of this 2011 Act, the as-
37 sessment provisions of ORS 308A.050 to 308A.128 continue to apply to the secondary land that
38 otherwise qualifies for and is receiving special assessment until the land is converted to a
39 nonfarm use. If a lot or parcel of secondary land otherwise qualifies for and is receiving
40 special assessment and a portion of that lot or parcel is converted to a nonfarm use, the
41 assessment provisions of ORS 308A.050 to 308A.128 continue to apply to the remainder of that
42 lot or parcel of secondary land not converted to a nonfarm use.

43
44 **COMMISSION LIMITATIONS**

1 **SECTION 7.** In accordance with ORS 197.240 and 197.245, the Land Conservation and De-
 2 velopment Commission shall amend the statewide land use planning goals to authorize
 3 counties to designate secondary land under sections 1 to 5 of this 2011 Act.

4 **SECTION 8.** (1) Sections 1 to 5 of this 2011 Act are added to and made a part of ORS
 5 chapter 215.

6 (2) Section 6 of this 2011 Act is added to and made a part of ORS 308A.050 to 308A.128.

7 (3) Section 7 of this 2011 Act is added to and made a part of ORS chapter 197.

8 **SECTION 9.** ORS 215.304 is amended to read:

9 215.304. (1) The Land Conservation and Development Commission [*shall*] **may** not adopt or im-
 10 plement any rule to identify or designate small-scale farmland or secondary land.

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

13 (3) Any portion of a rule inconsistent with the provisions of ORS 197.247 (1991 Edition), 215.213,
 14 215.214 (1991 Edition), 215.288 (1991 Edition), 215.317, 215.327 and 215.337 (1991 Edition) or 215.700
 15 to 215.780 on March 1, 1994:

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

17 (b) [*Has no*] **Does not have a** legal effect.

18 (4) **Any portion of a statewide land use planning goal, administrative rule, comprehensive**
 19 **plan, land use regulation or ordinance not in conformance with the provisions of sections 1**
 20 **to 5 of this 2011 Act on the effective date of this 2011 Act:**

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

22 (b) **Does not have a legal effect.**

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

24 (a) **Adopt rules for uses of commercial farmland or secondary land that prohibit or limit**
 25 **uses that are allowed in ORS 215.203, 215.213 or 215.283 or section 5 of this 2011 Act; or**

26 (b) **Adopt rules regarding the designation of secondary land except as allowed under**
 27 **sections 1 to 5 and 7 of this 2011 Act.**

28 **SECTION 10.** ORS 197.298 is amended to read:

29 197.298. (1) In addition to any requirements established by rule addressing urbanization, land
 30 may not be included within an urban growth boundary except under the following priorities:

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

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

38 (c) If land under paragraphs (a) and (b) of this subsection is inadequate to accommodate the
 39 amount of land needed, third priority is land designated as marginal land pursuant to ORS 197.247
 40 (1991 Edition).

41 (d) **If land under paragraphs (a) to (c) of this subsection is inadequate to accommodate**
 42 **the amount of land needed, fourth priority is land designated as secondary land under section**
 43 **2 of this 2011 Act.**

44 [(d)] (e) If land under paragraphs (a) to [(c)] (d) of this subsection is inadequate to accommodate
 45 the amount of land needed, [*fourth*] **fifth** priority is land designated in an acknowledged compre-

1 hensive plan for agriculture or forestry, or both.

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

4 (3) Land of lower priority under subsection (1) of this section may be included in an urban
5 growth boundary if land of higher priority is found to be inadequate to accommodate the amount
6 of land [*estimated in subsection (1) of this section*] **needed** for one or more of the following reasons:

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

9 (b) Future urban services could not reasonably be provided to the higher priority lands due to
10 topographical or other physical constraints; or

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

13
14 **MISCELLANEOUS**

15
16 **SECTION 11.** ORS 215.780 is amended to read:

17 215.780. (1) Except as provided in subsection (2) of this section, the following minimum lot or
18 parcel sizes apply to all counties:

19 (a) For land zoned for exclusive farm use and not designated rangeland, at least 80 acres;

20 (b) For land zoned for exclusive farm use and designated rangeland, at least 160 acres; and

21 (c) For land designated forestland, at least 80 acres.

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

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

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

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

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

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

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

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

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

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

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

43 (C) The remainder of the tract shall not qualify for any uses allowed under ORS 215.213 and
44 215.283 that are not allowed on forestland.

45 (d) To allow a division of forestland to facilitate a forest practice as defined in ORS 527.620 that

1 results in a parcel that does not meet the minimum area requirements of subsection (1)(c) of this
2 section or paragraph (a) of this subsection. Parcels created pursuant to this subsection:

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

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

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

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

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

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

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

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

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

17 (B) Each dwelling complies with the criteria for a replacement dwelling under ORS 215.213 (1)(q)
18 or 215.283 (1)(p);

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

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

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

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

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

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

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

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

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

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

8 (b) A restriction imposed under this subsection shall be irrevocable unless a statement of release
 9 is signed by the county planning director of the county where the property is located indicating that
 10 the comprehensive plan or land use regulations applicable to the property have been changed in
 11 such a manner that the parcel is no longer subject to statewide planning goals pertaining to agri-
 12 cultural land or forestland.

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

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

20 **(8) For secondary land identified under section 2 of this 2011 Act, the minimum lot or**
 21 **parcel sizes set forth in subsections (1) and (2) of this section do not apply.**

22 **SECTION 12. The unit captions used in this 2011 Act are provided only for convenience**
 23 **in locating provisions of this 2011 Act and do not become part of the statutory law of this**
 24 **state or express any legislative intent in the enactment of this 2011 Act.**

25 **SECTION 13. This 2011 Act being necessary for the immediate preservation of the public**
 26 **peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect**
 27 **on its passage.**